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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-0773; Project Identifier MCAI-2023-00256-R; Amendment 39-22835; AD 2024-18-01]

RIN 2120-AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021-22-05, which applied to all Leonardo S.p.a. (Leonardo) Model A119 and AW119 MKII helicopters. AD 2021-22-05 required repetitively inspecting certain torque tube assemblies for any deficiency and corrective action if necessary, and replacing any affected part with a serviceable part, which was terminating action for the repetitive inspections. AD 2021-22-05 was prompted by reports of abnormal play on the collective torque tube on two Leonardo Model AW119 MKII helicopters, which were due to an erroneous manufacturing process. Since the FAA issued AD 2021-22-05, it was discovered that additional torque tube assemblies are subject to the unsafe condition. This AD retains certain requirements specified in AD 2021-22-05, reduces the applicability to include helicopters with only affected part-numbered collective torque tube assemblies, reduces the inspection intervals, and removes the previously approved terminating action. These requirements are specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 12, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 12, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-0773; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; internet easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu.

- You may view this EASA material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-0773.

Other Related Material: For Leonardo material identified in this AD, contact Leonardo S.p.A., Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone (+39) 0331-225074; fax (+39) 0331-229046; or at customer.portal.leonardocompany.com/en-US/.

FOR FURTHER INFORMATION CONTACT:

Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (781) 238-7241; email: Sungmo.D.Cho@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021-22-05, Amendment 39-21778 (86 FR 67301, November 26, 2021) (AD 2021-22-05). AD 2021-22-05 applied to all Leonardo

Model A119 and AW119 MKII helicopters. AD 2021-22-05 required repetitive inspections of certain batches of affected torque tube assemblies for any deficiency and corrective action if necessary; and the replacement of any affected part with a serviceable part, which is terminating action for the repetitive inspections. The FAA issued AD 2021-22-05 to address abnormal play on the collective torque tube, which could result in reduced control of the helicopter, resulting in a forced landing and consequent damage to the helicopter and injury to occupants.

The NPRM published in the **Federal Register** on April 12, 2024 (89 FR 25825). The NPRM was prompted by EASA AD 2023-0035, dated February 10, 2023 (EASA AD 2023-0035) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The NPRM was prompted by additional occurrences of abnormal play on parts not previously included in the affected batches of torque tube assemblies. In light of this, Leonardo issued updated material and EASA issued EASA AD 2023-0035 to reduce the applicability to include helicopters with only affected part-numbered collective torque tube assemblies, reduce the inspection intervals, and simplify the inspection method.

In the NPRM, the FAA proposed to reduce the applicability to include helicopters with only affected all part-numbered collective torque tube assemblies. In the NPRM, the FAA also proposed to retain certain requirements of AD 2021-22-05 and require accomplishing the actions specified in EASA AD 2023-0035 except for any differences identified as exceptions in the regulatory text of this AD.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-0773.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the

FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2023–0035 requires repetitive inspections of the affected torque tube assemblies for any deficiency (*i.e.*, any abnormal play or relative rotation) by marking the torque tube assembly and the collar and applying specific loads to determine if there is any play; and depending on the results of these inspections replacing the torque tube assembly with a serviceable part.

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.

Other Related Material

The FAA reviewed Leonardo Helicopters Alert Service Bulletin No. 119–098, Revision B, dated January 25, 2023. This material specifies procedures for inspecting the collective torque tube assembly for abnormal play and specifies instructions for replacing affected parts.

Costs of Compliance

The FAA estimates that this AD affects 184 helicopters of U.S. registry. Labor costs are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting the torque tube assembly inspection takes about 1 work-hour for an estimated cost of \$85 per inspection and \$15,640 for the U.S. fleet per inspection cycle.

The FAA estimates the following costs to do any necessary replacements that are required based on the results of the required inspections. The agency has no way of determining the number of helicopters that might need these replacements.

If required, replacing the torque tube assembly takes about 16 work-hours and parts cost \$10,000 for an estimated cost of \$11,360 per torque tube assembly replacement.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the

costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
 - a. Removing Airworthiness Directive 2021–22–05, Amendment 39–21778 (86 FR 67301, November 26, 2021); and
 - b. Adding the following new airworthiness directive:

2024–18–01 Leonardo S.p.a.; Amendment 39–22835; Docket No. FAA–2024–0773; Project Identifier MCAI–2023–00256–R.

(a) Effective Date

This airworthiness directive (AD) is effective November 12, 2024.

(b) Affected ADs

This AD replaces AD 2021–22–05, Amendment 39–21778 (86 FR 67301, November 26, 2021).

(c) Applicability

This AD applies to Leonardo S.p.a. Model A119 and AW119 MKII helicopters, certificated in any category, as identified in European Union Aviation Safety Agency AD 2023–0035, dated February 10, 2023 (EASA AD 2023–0035).

(d) Subject

Joint Aircraft System Component (JASC) Code 6700: Rotorcraft Flight Control.

(e) Unsafe Condition

This AD was prompted by reports of abnormal play on the collective torque tube assemblies. The FAA is issuing this AD to address this unsafe condition which could result in reduced control of the helicopter, resulting in a forced landing and consequent damage to the helicopter and injury to occupants.

(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 EASA AD 2023–0035.

(h) Exceptions to EASA AD 2023–0035

(1) Where EASA AD 2023–0035 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2023–0035 refers to April 14, 2021 (the effective date of EASA AD 2021–0096, dated March 31, 2021), this AD requires using January 3, 2022 (the effective date of AD 2021–22–05).

(3) Where EASA AD 2023–0035 refers to its effective date, this AD requires using the effective date of this AD.

(4) Where the material referenced in paragraphs (1) and (2) of EASA AD 2023–0035 specifies “in case of doubt” apply marks on both sides of the torque tube assembly, move the pilot collective stick lever, and verify that the markings stay aligned, this AD requires those actions.

(5) Instead of the credit allowed in paragraph (4) of EASA AD 2023–0035, you may take credit for the following in

paragraphs (h)(5)(i) through (iii) of this AD, as applicable.

(i) The inspections required by paragraph (1) of EASA AD 2023–0035 that have been accomplished before the effective date of this AD using Leonardo Helicopters Alert Service Bulletin No. 119–098, dated March 13, 2019 (ASB 119–098, original issue) but this credit is limited to the torque tube assembly batch numbers identified in ASB 119–098, original issue.

(ii) The inspections required by paragraph (1) of EASA AD 2023–0035 that have been accomplished before the effective date of this AD using Leonardo Helicopters ASB No. 119–098, Revision A, dated March 31, 2021 (ASB 119–098, Revision A) but this credit is limited to the torque tube assembly batch numbers identified in ASB 119–098, Revision A.

(iii) Replacing an affected part, as defined in EASA AD 2023–0035, with a serviceable part, as defined in EASA AD 2023–0035, required by paragraph (3) of EASA AD 2023–0035 that has been accomplished before the effective date of this AD using ASB 119–098, original issue; or ASB 119–098, Revision A.

(6) Where the material referenced in EASA AD 2023–0035 specifies to return a torque tube assembly to the manufacturer, this AD does not include that requirement.

(7) This AD does not adopt the “Remarks” section of EASA AD 2023–0035.

(i) No Reporting Requirement

Although the material referenced in EASA AD 2023–0035 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD or email to AMOC@faa.gov. If mailing information, also submit information by email.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local Flight Standards District Office/certificate holding district office.

(k) Additional Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: Sungmo.D.Cho@faa.gov.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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) European Union Aviation Safety Agency (EASA) AD 2023–0035, dated February 10, 2023.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADS@easa.europa.eu; internet easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(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 August 28, 2024.

Victor Wicklund,

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

[FR Doc. 2024–23065 Filed 10–4–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0997; Project Identifier MCAI–2022–01306–R; Amendment 39–22832; AD 2024–17–07]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Leonardo S.p.a. Model AB139 and AW139 helicopters. This AD was prompted by multiple reports of cracks found on tail rotor (TR) damper bracket assemblies. This AD requires accomplishing repetitive detailed visual inspections (DVI) of certain part-numbered TR damper bracket assemblies for corrosion and cracks and, depending on the results, taking corrective action. This AD also prohibits installing an affected TR damper bracket assembly unless it is new. These actions are specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 12, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 12, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2024–0997; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone +49 221 8999 000; email: ADS@easa.europa.eu; internet: easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu.

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at regulations.gov under Docket No. FAA–2024–0997.

Other Related Material: For Leonardo Helicopters material, contact Leonardo S.p.A., Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; phone: (+39) 0331–225074; fax: (+39) 0331–229046; or at customer.portal.leonardocompany.com/en-US/.

FOR FURTHER INFORMATION CONTACT:

Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: Sungmo.D.Cho@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Leonardo S.p.a. Model AB139 and AW139 helicopters. The NPRM published in the **Federal Register** on April 10, 2024 (89 FR 25194). The NPRM was prompted by EASA AD 2022–0154, dated August 1, 2022 (EASA AD 2022–0154; also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. EASA AD 2022–0154 stated that during scheduled

inspections, some TR damper bracket assemblies were found cracked and that subsequent investigation revealed that the cracks originated from the outer edges of the TR damper bracket lug bores and were due to stress corrosion. That condition, if not detected and corrected, could lead to fracture of the affected part (TR damper bracket assembly), TR blade loss, unbalance or damage to the tail or other parts of the helicopter, possibly resulting in failure of the TR damper, and consequent loss of control of the helicopter. Therefore, EASA AD 2022–0154 required repetitive DVIs of the affected part for cracks and corrosion, and, depending on findings, replacing the affected part with a serviceable part.

After EASA AD 2022–0154 was issued, new occurrences were reported on additional serial-numbered and part-numbered TR damper bracket assemblies that were not included in the initial batch of affected parts and it was determined that additional TR damper bracket assemblies must also be inspected. Consequently, EASA issued EASA AD 2022–0205, dated October 4, 2022 (EASA AD 2022–0205), to retain the requirements of EASA AD 2022–0154, which is superseded, expand the definition of “affected part,” and require the DVIs for all affected parts.

In the NPRM, the FAA proposed to require accomplishing repetitive DVIs of certain part-numbered TR damper bracket assemblies for corrosion and cracks and, depending on the results, taking corrective action. In the NPRM, the FAA also proposed to prohibit installing an affected TR damper bracket assembly unless it is new. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine EASA AD 2022–0205 in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–0997.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from one anonymous commenter. The commenter supported the NPRM without change.

Conclusion

These products have been approved EASA and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting the AD

as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Material Under 1 CFR Part 51

EASA AD 2022–0205 requires repetitive DVIs of the TR damper bracket assembly for cracks and corrosion. Depending on the results of these inspections, EASA AD 2022–0205 requires removing any corrosion, replacing any cracked part or a part which the corrosion cannot be removed with a serviceable part, and reporting any discrepancies to Leonardo. EASA AD 2022–0205 allows installing an affected part on any helicopter, provided it is a serviceable part, which is an affected part that is new. EASA AD 2022–0205 also allows installing any TR damper bracket assembly that is not an affected part as defined within.

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** section.

Other Related Material

The FAA also reviewed Leonardo Helicopters Alert Service Bulletin No. 139–724, Revision B, dated September 29, 2022. This material specifies procedures for inspecting and if necessary, replacing certain part-numbered and serial-numbered TR damper bracket assemblies.

Differences Between This AD and EASA AD 2022–0205

EASA AD 2022–0205 requires reporting certain information to Leonardo, whereas this AD does not.

Costs of Compliance

The FAA estimates that this AD affects 126 helicopters of U.S. registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

A DVI of the TR damper bracket assembly takes approximately 1 work-hour for an estimated cost of \$85 per helicopter and up to \$10,710 for the U.S. fleet, per inspection cycle.

If required, removing corrosion from the TR damper bracket assembly takes approximately 1 work-hour for an estimated cost of \$85 per helicopter.

If required, removing a TR damper bracket assembly and replacing it with a serviceable part takes approximately 8 work-hours and parts cost approximately \$4,540 for an estimated cost of \$5,220 per TR damper bracket assembly.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–17–07 Leonardo S.p.a.: Amendment 39–22832; Docket No. FAA–2024–0997; Project Identifier MCAI–2022–01306–R.

(a) Effective Date

This airworthiness directive (AD) is effective November 12, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model AB139 and AW139 helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6400, Tail Rotor System.

(e) Unsafe Condition

This AD was prompted by multiple reports of cracks found on tail rotor (TR) damper bracket assemblies. The FAA is issuing this AD to detect and address corrosion or cracks on the TR damper bracket assembly. The unsafe condition, if not addressed, could lead to fracture of the affected part (TR damper bracket assembly), TR blade loss, unbalance or damage to the tail or other parts of the helicopter, possibly resulting in failure of the TR damper, and consequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in 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 2022–0205, dated October 4, 2022 (EASA AD 2022–0205).

(h) Exceptions to EASA AD 2022–0205

(1) Where EASA AD 2022–0205 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2022–0205 refers to its effective date and August 15, 2022 (the effective date of EASA AD 2022–0154, dated August 1, 2022), this AD requires using the effective date of this AD.

(3) Where paragraph (4) of EASA AD 2022–0205 states to “replace the affected part with a serviceable part in accordance with the instructions of section 3 of the ASB;” for this AD, replace that text with “remove the affected part, as defined in EASA AD 2022–0205, from service and replace it with a serviceable part, as defined in EASA AD 2022–0205, in accordance with the instructions of section 3 of the ASB.”

(4) Where the material referenced in paragraph (4) of EASA AD 2022–0205 specifies to perform detailed visual

inspections (DVI) and “If no cracks are found, but suspected evidences of corrosion signs are found, gently polish the interested area,” for the purposes of this AD, “suspected signs of corrosion” and “suspected evidences of corrosion signs” are signs of discoloration, pitting, flaking, or rust stains.

(5) Where the material referenced in paragraph (4) of EASA AD 2022–0205 specifies to discard certain parts, this AD requires removing those parts from service.

(6) This AD does not require compliance with paragraph (6) of EASA AD 2022–0205.

(7) This AD does not adopt the “Remarks” section of EASA AD 2022–0205.

(i) No Reporting Requirement

Although the material referenced in EASA AD 2022–0205 specifies to reporting certain information to the manufacturer, this AD does not include that requirement.

(j) Credit for Previous Actions

This paragraph provides credit for the initial instance of the detailed visual inspections (DVI) required by paragraph (g) of this AD, for TR damper bracket assemblies identified in Table 1 of EASA AD 2022–0205, if those actions were performed before the effective date of this AD using Leonardo Helicopters Alert Service Bulletin No. 139–724, Revision A, dated September 19, 2022.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l)(1) of this AD. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (l)(1) of this AD or email to: 9-AVS-AIR-730-AMOC@faa.gov. If mailing information, also submit information by email.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Additional Information

(1) For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: Sungmo.D.Cho@faa.gov.

(2) For Leonardo Helicopters material identified in this AD that is not incorporated by reference, contact Leonardo S.p.A., Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; phone: (+39) 0331–225074; fax: (+39) 0331–229046; or at customerportal.leonardocompany.com/en-US/.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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) European Union Aviation Safety Agency (EASA) AD 2022–0205, dated October 4, 2022.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; internet: easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(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 August 22, 2024.

Steven W. Thompson,

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

[FR Doc. 2024–23066 Filed 10–4–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31570; Amdt. No. 581]

IFR Altitudes; Miscellaneous Amendments

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

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective:* 0901 UTC, 31 October 2024.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., STB Annex, Bldg. 26, Room 217, Oklahoma City, OK 73169–6918. Telephone: (405) 954–1139.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace

System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on September 20, 2024.

Thomas J. Nichols,

Manager, Aviation Safety, Flight Standards Service, Standards Section, Flight Procedures & Airspace Group, Flight Technologies and Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, 31 October 2024.

PART 95—IFR Altitudes

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113 and 14 CFR 11.49(b)(2).

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[AMENDMENT 581 effective date October 31, 2024]

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3204 RNAV Route T204 Is Amended To Delete			
TAYLOR, FL VORTAC	BRUNSWICK, GA VORTAC	2100	15000
§ 95.3210 RNAV Route T210 Is Amended by Adding			
MILLP, FL WP	MHOUS, FL WP	2000	17500
MHOUS, FL WP	GRNVL, FL WP	2400	17500
GRNVL, FL WP	HADDE, FL FIX	1900	17500
VARZE, FL WP	WEZER, FL WP	2000	17500
Is Amended To Read in Part			
HADDE, FL FIX	MISSM, FL WP	2000	17500
§ 95.3254 RNAV Route T254 Is Amended by Adding			
SAN ANGELO, TX VORTAC	DILLO, TX WP	4000	17500
DILLO, TX WP	KALLA, TX FIX	*4100	17500
*2900–MOCA			
KALLA, TX FIX	DOWWD, TX WP	4100	10000
DOWWD, TX WP	COLLEGE STATION, TX VORTAC	2400	10000
CREPO, TX WP	KNZLY, LA WP	2200	15000
Is Amended To Delete			
CREPO, TX WP	LAKE CHARLES, LA VORTAC	2200	15000
§ 95.3328 RNAV Route T328 Is Amended by Adding			
PRRKS, WA WP	ZAGGS, WA WP	7500	17500

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[AMENDMENT 581 effective date October 31, 2024]

From	To	MEA	MAA
ZAGGS, WA WP	INOBE, ID WP	7300	17500
Is Amended To Delete			
PRRKS, WA WP	DAINA, WA WP	7500	17500
DAINA, WA WP	INOBE, ID FIX	7300	17500
§ 95.3336 RNAV Route T336 Is Amended by Adding			
MILLP, FL WP	TERES, FL FIX	*2100	17500
*1600—MOCA			
TERES, FL FIX	HEVVN, FL FIX	1700	17500
HEVVN, FL FIX	CCITY, FL WP	1800	17500
CCITY, FL WP	FUTSY, FL WP	2500	17500
Is Amended To Delete			
TROYR, FL WP	FUTSY, FL WP	2500	17500
§ 95.3341 RNAV Route T341 Is Amended by Adding			
ZAGPO, FL WP	KNRAD, FL WP	1700	17500
KNRAD, FL WP	CUSEK, FL WP	1800	17500
CUSEK, FL WP	FEBRO, FL WP	1900	17500
FEBRO, FL WP	YELLZ, FL WP	2000	17500
OMMNI, FL WP	WALEE, FL WP	1900	17500
WALEE, FL WP	MARQO, FL WP	2100	17500
MARQO, FL WP	TWEST, GA WP	2100	17500
TWEST, GA WP	DURBE, SC WP	2000	17500
DURBE, SC WP	HARAB, SC FIX	2000	17500
HARAB, SC FIX	VANNC, SC WP	1900	17500
VANNC, SC WP	MADLY, SC WP	2100	17500
MADLY, SC WP	DUTEE, SC WP	1800	17500
DUTEE, SC WP	FLRNS, SC WP	1900	17500
Is Amended To Delete			
ZAGPO, FL WP	CUSEK, FL WP	1700	17500
CUSEK, FL WP	YELLZ, FL WP	1900	17500
OMMNI, FL WP	WHOOU, FL WP	2100	12000
WHOOU, FL WP	MARQO, FL WP	1900	12000
Is Amended To Read in Part			
DULFN, FL WP	OMMNI, FL WP	1900	17500
§ 95.3343 RNAV Route T343 Is Amended To Read in Part			
CUSEK, FL WP	FEBRO, FL WP	1900	17500
§ 95.3349 RNAV Route T349 Is Amended by Adding			
NEWER, FL FIX	GILBI, FL FIX	1700	17500
GILBI, FL FIX	KNRAD, FL WP	1700	17500
KNRAD, FL WP	CUSEK, FL WP	1800	17500
CUSEK, FL WP	QUNCY, FL FIX	1800	17500
QUNCY, FL FIX	FEBRO, FL WP	1900	17500
FEBRO, FL WP	YELLZ, FL WP	2000	17500
YELLZ, FL WP	WEZER, FL WP	2000	17500
WEZER, FL WP	VARZE, FL WP	2000	17500
VARZE, FL WP	EXWAY, FL WP	2000	17500
EXWAY, FL WP	CCITY, FL WP	1900	17500
CCITY, FL WP	CODYS, FL FIX	1800	17500
CODYS, FL FIX	OLUGY, FL FIX	1900	17500
OLUGY, FL FIX	OALDY, AL FIX	2000	17500
OALDY, AL FIX	LYFEE, AL WP	2300	17500
Is Amended To Delete			
VARZE, FL WP	MILOW, FL WP	1900	17500
MILOW, FL WP	MURDE, FL WP	1900	17500

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[AMENDMENT 581 effective date October 31, 2024]

From	To	MEA	MAA
MURDE, FL WP	TROYR, FL WP	1900	17500
§ 95.3399 RNAV Route T399 Is Amended by Adding			
EVIEE, AK WP	WHYTT, AK WP	3600	17500
WHYTT, AK WP	NENANA, AK VORTAC	3300	17500
Is Amended To Delete			
EVIEE, AK WP	*SEAHK, AK WP	4000	17500
*4600—MCA SEAHK, AK WP, S BND			
SEAHK, AK WP	NENANA, AK VORTAC	*3300	17500
*2800—MOCA			
Is Amended To Read in Part			
TALKEETNA, AK VOR/DME	*EGRAM, AK FIX	6000	17500
*6100—MCA EGRAM, AK FIX, N BND			
EGRAM, AK FIX	*ZEKLI, AK WP	6400	17500
*7200—MCA ZEKLI, AK WP, N BND			
ZEKLI, AK WP	*AILEE, AK FIX	10100	17500
*9100—MCA AILEE, AK FIX, S BND			
AILEE, AK FIX	*CRISL, AK WP	8200	17500
*7000—MCA CRISL, AK WP, S BND			
CRISL, AK WP	PAWWW, AK WP	6900	17500
PAWWW, AK WP	*EVIEE, AK WP	5800	17500
*4800—MCA EVIEE, AK WP, S BND			
§ 95.3484 RNAV Route T484 Is Added To Read			
NELLO, GA FIX	TALLE, GA FIX	5600	17500
TALLE, GA FIX	MILBY, SC WP	5400	17500
MILBY, SC WP	BURGG, SC WP	4600	17500
§ 95.3489 RNAV Route T489 Is Added To Read			
BOLTS, FL WP	ATTAK, FL WP	2000	17500
ATTAK, FL WP	NESST, FL FIX	1700	17500
NESST, FL FIX	CEDDI, FL FIX	1700	17500
CEDDI, FL FIX	CCITY, FL WP	*2000	17500
*1400—MOCA			
CCITY, FL WP	GRNVL, FL WP	*2100	17500
*1600—MOCA			
GRNVL, FL WP	YALMI, GA FIX	2500	17500
YALMI, GA FIX	*HARKE, GA FIX	2000	17500
*2200—MCA HARKE, GA FIX, N BND			
HARKE, GA FIX	SALER, GA FIX	2600	17500
SALER, GA FIX	PCANN, GA WP	2000	17500
§ 95.3491 RNAV Route T491 Is Added To Read			
BOLTS, FL WP	EXWAY, FL WP	2000	17500
EXWAY, FL WP	WALEE, FL WP	2100	17500
WALEE, FL WP	OHLEE, FL WP	2000	17500
OHLEE, FL WP	SIROC, GA WP	2600	17500
§ 95.3493 RNAV Route T493 Is Added To Read			
BOLTS, FL WP	CHAAZ, FL WP	2000	17500
CHAAZ, FL WP	ORATE, FL FIX	2000	17500
ORATE, FL FIX	CCITY, FL WP	*2000	17500
*1400—MOCA			
CCITY, FL WP	VLDST, GA WP	2100	17500
VLDST, GA WP	JOGOS, GA WP	2000	17500
JOGOS, GA WP	WALPI, GA WP	2200	17500
WALPI, GA WP	TIFFT, GA WP	2000	17500
TIFFT, GA WP	DOOLY, GA WP	2000	17500
§ 95.3495 RNAV Route T495 Is Added To Read			
BOLTS, FL WP	ATTAK, FL WP	2000	17500
ATTAK, FL WP	NESST, FL FIX	1700	17500

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[AMENDMENT 581 effective date October 31, 2024]

From	To	MEA	MAA
NESST, FL FIX	DEANR, FL WP	* 2000	17500
* 1500—MOCA			
DEANR, FL WP	BWDEN, FL WP	2000	17500
§ 95.3499 RNAV Route T499 Is Added To Read			
CORPUS CHRISTI, TX VORTAC	CARTI, TX FIX	2000	17500
CARTI, TX FIX	LEMIG, TX FIX	2200	17500
LEMIG, TX FIX	SAN ANTONIO, TX VORTAC	2900	17500
SAN ANTONIO, TX VORTAC	STONEWALL, TX VORTAC	4100	17500
STONEWALL, TX VORTAC	DILLO, TX WP	3800	17500
§ 95.4000 High Altitude RNAV Routes			
§ 95.4004 RNAV Route Q4 Is Amended by Adding			
EL PASO, TX VORTAC	PECOS, TX VOR/DME	* 18000	45000
* 18000—GNSS MEA			
* DME/DME/IRU MEA			
PECOS, TX VOR/DME	FUSCO, TX FIX	* 18000	45000
* 18000—GNSS MEA			
* DME/DME/IRU MEA			
FUSCO, TX FIX	DILLO, TX WP	* 18000	45000
* 18000—GNSS MEA			
* DME/DME/IRU MEA			
DILLO, TX WP	COLLEGE STATION, TX VORTAC	* 18000	45000
* 18000—GNSS MEA			
* DME/DME/IRU MEA			
§ 95.4104 RNAV Route Q104 Is Amended To Delete			
ACORI, AL WP	CABLO, GA WP	* 18000	45000
* 18000—GNSS MEA			
* DME/DME/IRU MEA			
CABLO, GA WP	HEVVN, FL FIX	* 18000	45000
* 18000—GNSS MEA			
* DME/DME/IRU MEA			
HEVVN, FL FIX	LEGGT, FL WP	* 18000	45000
* 18000—GNSS MEA			
* DME/DME/IRU MEA			
LEGGT, FL WP	PLYER, FL FIX	* 18000	45000
* 18000—GNSS MEA			
* DME/DME/IRU MEA			
PLYER, FL FIX	SWABE, FL WP	* 18000	45000
* 18000—GNSS MEA			
* DME/DME/IRU MEA			
SWABE, FL WP	ENDEW, FL WP	* 18000	45000
* 18000—GNSS MEA			
* DME/DME/IRU MEA			
ENDEW, FL WP	ST PETERSBURG, FL VORTAC	* 18000	45000
* 18000—GNSS MEA			
* DME/DME/IRU MEA			
§ 95.4108 RNAV Route Q108 Is Added To Read			
LOUISVILLE, KY VORTAC	ZIEBR, KY FIX	* 18000	45000
* GNSS REQUIRED			
ZIEBR, KY FIX	SITTR, WV WP	* 18000	45000
* GNSS REQUIRED			
SITTR, WV WP	DENNY, VA FIX	* 18000	45000
* GNSS REQUIRED			
DENNY, VA FIX	MAULS, VA WP	* 18000	45000
* GNSS REQUIRED			
MAULS, VA WP	QUART, VA WP	* 18000	45000
* GNSS REQUIRED			
QUART, VA WP	HURTS, VA WP	* 18000	45000
* GNSS REQUIRED			
HURTS, VA WP	SAWED, VA WP	* 18000	45000
* GNSS REQUIRED			
SAWED, VA WP	KALDA, VA WP	* 18000	45000
* GNSS REQUIRED			
KALDA, VA WP	ZJAAAY, MD WP	* 18000	45000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[AMENDMENT 581 effective date October 31, 2024]

From	To	MEA	MAA
* GNSS REQUIRED ZJAAY, MD WP	BYSEL, MD WP	* 18000	45000
* GNSS REQUIRED BYSEL, MD WP	ACTUP, DE WP	* 18000	45000
* GNSS REQUIRED ACTUP, DE WP	SEA ISLE, NJ VORTAC	* 18000	45000
* GNSS REQUIRED			
§ 95.4147 RNAV Route Q109 Is Amended To Delete			
YURCK, NC WP	LAANA, NC WP	* 18000	45000
* 18000—GNSS MEA * DME/DME/IRU MEA			
LAANA, NC WP	TINKK, NC WP	* 18000	45000
* 18000—GNSS MEA * DME/DME/IRU MEA			
Is Amended by Adding			
YURCK, NC WP	JOHAR, NC WP	* 18000	45000
* 18000—GNSS MEA * DME/DME/IRU MEA			
JOHAR, NC WP	TINKK, NC WP	* 18000	45000
* 18000—GNSS MEA * DME/DME/IRU MEA			
§ 95.4147 RNAV Route Q147 Is Added To Read			
BURGG, SC WP	CHARLESTON, WV VOR/DME	* 18000	45000
* 18000—GNSS MEA * DME/DME/IRU MEA			
CHARLESTON, WV VOR/DME	JAMOX, OH FIX	* 18000	45000
* 18000—GNSS MEA * DME/DME/IRU MEA			
JAMOX, OH FIX	DRYER, OH VOR/DME	* 18000	45000
* 18000—GNSS MEA * DME/DME/IRU MEA			
§ 95.4149 RNAV Route Q149 Is Added To Read			
BURGG, SC WP	APPLETON, OH VORTAC	* 18000	45000
* 18000—GNSS MEA * DME/DME/IRU MEA			
APPLETON, OH VORTAC	DRYER, OH VOR/DME	* 18000	45000
* 18000—GNSS MEA * DME/DME/IRU MEA			
§ 95.4801 RNAV Route Q801 Is Added To Read			
HARPR, OR WP	FELIX, OR WP	* 18000	45000
* 18000—GNSS MEA * DME/DME/IRU MEA			
FELIX, OR WP	ECTOOF, OR WP	* 18000	45000
* 18000—GNSS MEA * DME/DME/IRU MEA			
ECTOOF, OR WP	WAPTO, WA FIX	* 18000	45000
* 18000—GNSS MEA * DME/DME/IRU MEA			
WAPTO, WA FIX	TATOOSH, WA VORTAC	* 18000	45000
* 18000—GNSS MEA * DME/DME/IRU MEA			
TATOOSH, WA VORTAC	U.S. CANADIAN BORDER	* 18000	45000
* 18000—GNSS MEA * DME/DME/IRU MEA			
U.S. CANADIAN BORDER	MACIE, OP WP	* 18000	45000
* GNSS REQUIRED			
MACIE, OP WP	LAIRE, AK FIX	* 18000	45000
* GNSS REQUIRED			
LAIRE, AK FIX	CSMOS, OP WP	* 18000	45000
* GNSS REQUIRED			
CSMOS, OP WP	JOHNSTONE POINT, AK VOR/DME	* 18000	45000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[AMENDMENT 581 effective date October 31, 2024]

From	To	MEA	MAA
* GNSS REQUIRED JOHNSTONE POINT, AK VOR/DME * GNSS REQUIRED	ANCHORAGE, AK VOR/DME	* 18000	45000

From	To	MEA

§ 95.6001 Victor Routes—U.S.

§ 95.6035 VOR Federal Airway V35 Is Amended To Read in Part

PHILIPSBURG, PA VORTAC	STONYFORK, PA VOR/DME	4900 MAA—17500

§ 95.6076 VOR Federal Airway V76 Is Amended To Delete

SAN ANGELO, TX VORTAC	EVILE, TX FIX	3700 MAA—17500
EVILE, TX FIX	BREDY, TX FIX	3800 MAA—17500
BREDY, TX FIX	LLANO, TX VORTAC	3500 MAA—17500
LLANO, TX VORTAC	CENTEX, TX VORTAC	3200 MAA—17500
CENTEX, TX VORTAC	MOUZE, TX FIX	2200 MAA—17500
MOUZE, TX FIX	INDUSTRY, TX VORTAC	2100 MAA—17500

§ 95.6161 VOR Federal Airway V161 Is Amended To Delete

CENTER POINT, TX VORTAC	LLANO, TX VORTAC	4000 MAA—17500
LLANO, TX VORTAC	BUILT, TX FIX	* 6000 MAA—17500
BUILT, TX FIX	* DUFFA, TX FIX	** 6000 MAA—17500
* 6000—MRA ** 2900—MOCA DUFFA, TX FIX	MILLSAP, TX VORTAC	3000 MAA—17500

§ 95.6558 VOR Federal Airway V558 Is Amended To Delete

LLANO, TX VORTAC	SLIMM, TX FIX	3100 MAA—17500
SLIMM, TX FIX	CENTEX, TX VORTAC	4100 MAA—17500

§ 95.6565 VOR Federal Airway V565 Is Amended To Delete

LLANO, TX VORTAC	AMUSE, TX FIX	3500 MAA—17500
AMUSE, TX FIX	CENTEX, TX VORTAC	* 3300 MAA—17500
* 2900—MOCA		

§ 95.6568 VOR Federal Airway V568 Is Amended To Delete

STONEWALL, TX VORTAC	LLANO, TX VORTAC	3700 MAA—17500

§ 95.6477 ALASKA VOR Federal Airway V477 Is Amended To Delete

SELAWIK, AK VOR/DME	JELLE, AK FIX	3500 MAA—17500
JELLE, AK FIX	AMBLER, AK NDB	
	NE BND	5000
	SW BND	4000
		MAA—17500

From	To	MEA	MAA
§ 95.7001 JET Routes			
§ 95.7133 JET Route J133 Is Amended To Delete			
SITKA, AK NDB * 20000—MCA WOXOX, AK FIX, E BND	* WOXOX, AK FIX	20000	45000
WOXOX, AK FIX	ORCA BAY, AK NDB	18000	45000
ORCA BAY, AK NDB	JOHNSTONE POINT, AK VOR/DME	18000	45000
JOHNSTONE POINT, AK VOR/DME	ANCHORAGE, AK VOR/DME	18000	45000
§ 95.7183 JET Route J183 Is Amended To Delete			
PECOS, TX VOR/DME	LLANO, TX VORTAC	20000	45000
LLANO, TX VORTAC	COLLEGE STATION, TX VORTAC	18000	45000
Airway Segment		Changeover Points	
From	To	Distance	From
§ 95.8005 JET Routes Changeover Points J183 Is Amended To Delete Changeover Point			
LLANO, TX VORTAC	COLLEGE STATION, TX VORTAC	93	LLANO.

[FR Doc. 2024–23076 Filed 10–4–24; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND
SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2024–0865]

RIN 1625–AA08

Special Local Regulation; Lake
Havasu, Lake Havasu City, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation in the navigable waters of the Bridgewater Channel, Lake Havasu, AZ during the Annual Bridgewater Channel Underwater Cleanup marine event. This regulation is necessary to provide for the safety of the participants, crew, supporting vessels, and general users of the waterway during the event, which will be held on October 19, 2024. This special local regulation will temporarily prohibit persons and vessels from entering, transiting through, anchoring, blocking, or loitering within the event area unless authorized by the Captain of the Port San Diego or a designated representative.

DATES: This rule is effective from 7 a.m. through 11 a.m. on October 19, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Shelley Turner, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone

(619) 278–7656, email
D11MarineEventsSD@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and
Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we must establish this special local regulation by October 19, 2024. The Coast Guard did not receive final details regarding this event with sufficient notice to issue a proposed rule. Therefore, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. This regulation is necessary to ensure the safety of life on the navigable waters of Lake Havasu during the marine event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for

making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is needed to ensure the safety of life on the navigable waters of Lake Havasu during the marine event on October 19, 2024.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Sector San Diego (COTP) has determined that the presence of divers associated with the Annual Bridgewater Channel Underwater Cleanup on October 19, 2024, poses a potential safety concern in the regulated area. This rule is needed to protect persons, vessels, and the marine environment in the navigable waters of Lake Havasu during the marine event.

IV. Discussion of the Rule

This rule establishes a special local regulation from 7 a.m. to 11 a.m. on October 19, 2024. This special local regulation will cover all navigable waters, from surface to bottom in the Bridgewater Channel, Lake Havasu, AZ, starting at the London Bridge, proceeding south through the channel, and concluding at the southern entrance of the channel. The duration of the temporary special local regulation is intended to ensure the safety of participants, vessels, and the marine environment in these navigable waters during the scheduled marine event. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. The affected portion of the navigable waterway in Lake Havasu will be of very limited duration of 4 hours and is necessary for safety of life of participants in the marine event. Moreover, the Coast Guard will issue a Local Notice to Mariners about 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 rule will not have a significant economic impact on a substantial number of small entities.

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

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

compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting only 4 hours that will prohibit entry to a specific portion of the Bridgewater Channel in Lake Havasu, AZ. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 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. Add § 100.T11–134 to read as follows:

§ 100.T11–134 13th Annual Bridgewater Channel Underwater Cleanup, Lake Havasu, Arizona.

(a) *Regulated area.* The regulations in this section apply to the following area: All navigable waters, from surface to bottom, of the Bridgewater Channel in Lake Havasu, AZ, starting at the London Bridge, proceeding south through the channel, and concluding at the southern entrance of the channel.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander,

including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Diego (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participant in the race.

(c) *Regulations.* All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port San Diego or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative. They may be contacted by telephone at 619-278-7033. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via Local Notice to Mariners.

(d) *Enforcement period.* This section will be enforced from 7 a.m. to 11 a.m. on October 19, 2024.

J.W. Spittler,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2024-23089 Filed 10-4-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2024-0866]

RIN 1625-AA08

Special Local Regulation; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for the San Diego Sharkfest Swim marine event that will be held on the navigable waters of San Diego Bay, San Diego, CA. This action is necessary to provide for the safety of life on these navigable waters of San Diego Bay during a swim event on October 20, 2024. This rule would prohibit spectators from anchoring, blocking, loitering or transiting through the event area unless authorized by the Captain of

the Port San Diego or a designated representative.

DATES: This rule is effective from 8 a.m. to 10 a.m. on October 20, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Shelley Turner, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278-7656, email MarineEventsSD@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we must establish this special local regulation by October 20, 2024. The Coast Guard did not receive final details regarding this event with sufficient notice to issue a proposed rule. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule in time for the new event dates. This regulation is necessary to ensure the safety of life on the navigable waters of San Diego Bay during the marine event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to ensure the safety of life on the navigable waters of San Diego Bay during the marine event on October 20, 2024.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Sector San Diego

(COTP) has determined that a large number of swimmers in San Diego Bay associated with the San Diego Sharkfest Swim marine event on October 20, 2024, poses a potential safety concern. This rule is needed to protect persons, vessels, and the marine environment in the navigable waters within San Diego Bay while the event is occurring.

IV. Discussion of the Rule

This rule establishes a special local regulation from 8 a.m. to 10 a.m. on October 20, 2024. This special local regulation will cover the navigable waters of San Diego Bay encompassed by a line connecting the following coordinates beginning at 32°42'14" N, 117°09'55" W (Point A); thence running southerly to 32°41'49" N, 117°09'57" W (Point B); thence running south, along the shoreline to 32°41'19" N, 117°09'48" W (Point C); thence running north easterly to 32°41'23" N, 117°09'41" W (Point D); thence running northerly to 32°42'00" N, 117°09'38" (Point E); thence running northerly, along the shoreline to the beginning point. The duration of the zone is intended to ensure the safety of vessels, event participants, and these navigable waters during the scheduled marine event. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. The affected portion of the San Diego Bay will be of a 2-hour limited duration, during morning hours when vessel

traffic is historically low and is necessary for safety of life to participants in the event. Moreover, the Coast Guard would make a post in the Local Notice to Mariners with details on the regulated area, as well as issue a Safety Marine Information Broadcast over Channel 22A.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated area that would limit access to certain areas of San Diego Bay from 8 a.m. to 10 a.m. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the

person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T11–133 to read as follows:

§ 100.T11–133 San Diego Sharkfest Swim, San Diego Bay, California.

(a) *Regulated area.* The regulations in this section apply to the following area: all navigable waters of San Diego Bay encompassed by a line connecting the following points beginning at 32°42′14″ N, 117°09′55″ W (Point A); thence running southerly to 32°41′49″ N, 117°09′57″ W (Point B); thence running south, along the shoreline to 32°41′19″ N, 117°09′48″ W (Point C); thence running north easterly to 32°41′23″ N, 117°09′41″ W (Point D); thence running northerly to 32°42′00″ N, 117°09′38″ (Point E); thence running northerly, along the shoreline to the beginning point. These coordinates are based on the 1984 World Geodetic System (WGS 84).

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Diego (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participant in the race.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port San Diego or their designated representative.

(2) Vessels requiring entry into this regulated area must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 21A or by telephone at 619-278-7033.

(3) The COTP will provide notice of the regulated area through advanced notice via Local Notice to Mariners and Safety Marine Information Broadcasts on Channel 22A.

(d) *Enforcement period.* This section will be enforced from 8 a.m. to 10 a.m. on October 20, 2024.

J.W. Spittler,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2024-23090 Filed 10-4-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2024-0905]

Security Zone; Lower Mississippi River, Mile Marker 94 to 97 Above Head of Passes, New Orleans, LA—Gretna Heritage Festival

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a security zone for all navigable waters within 350 yards off the Right Descending Bank (RDB) of the Lower Mississippi River (LMR) Mile Marker (MM) 96.8 to MM 97.5, Above Head of Passes (AHP), New Orleans, LA. This security zone is necessary to provide security and protection for visiting personnel during the events related to the Gretna Heritage Festival. No person or vessel may enter this security zone unless authorized by the Captain of the Port New Orleans (COTP) or a designated representative.

DATES: The regulations in 33 CFR 165.846 will be enforced from 3 p.m. on October 4, 2024 until 10 p.m. on October 6, 2024.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a security zone in 33 CFR 165.846 for events related to Gretna Heritage Festival from 3 p.m. on October

4, 2024 until 10 p.m. on October 6, 2024. This action is being taken to provide security and protection for visiting personnel during the events related to the Gretna Heritage Festival. The security zone will cover all navigable waters within 350 yards of the Right Descending Bank on the Lower Mississippi River from MM 96.8 to MM 97.5 AHP, New Orleans, LA. No person or vessel may enter this security zone unless authorized by the COTP or a designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector New Orleans; to include a Federal, State, and/or local officer designated by or assisting the COTP in the enforcement of the security zone. To seek permission to enter, contact the COTP or a designated representative by telephone at (504) 365-2545 or VHF-FM Channel 16 or 67. Those in the security zone must transit at their slowest speed and comply with all lawful orders or directions given to them by the COTP or a designated representative.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard will inform the public of the enforcement period of this security zone through Broadcast Notices to Mariners (BNMs).

Dated: October 1, 2024.

G.A. Callaghan,

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

[FR Doc. 2024-23153 Filed 10-4-24; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2023-0318; FRL-11926-02-R5]

Air Plan Approval; Ohio; Greif Packaging LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving under the Clean Air Act (CAA), a State Implementation Plan (SIP) revision to the sulfur dioxide (SO₂) regulations under chapter 3745-18 of the Ohio Administrative Code (OAC). Ohio submitted the request to EPA on June 8, 2023. The revision removes SO₂ emissions limitations for fuel burning

equipment at the Greif Packaging, LLC facility located at 9420 Warmington Rd. SW in Massillon, Ohio (Greif facility). The units that were subject to these limits have been permanently shut down. EPA proposed to approve this action on July 17, 2024, and received no adverse comments.

DATES: This final rule is effective on November 6, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2023-0318. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through <https://www.regulations.gov> or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Tyler Salamasick, at (312) 886-6206 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:

Tyler Salamasick, Air and Radiation Division (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6206, salamasick.tyler@epa.gov.

SUPPLEMENTARY INFORMATION:

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

I. Background Information

On July 17, 2024 (89 FR 58099), EPA proposed to approve Ohio’s removal of the emission limits for the Greif facility contained in Ohio’s SIP under OAC rule 3745-18-82(F). An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA’s reasons for proposing approval were provided in the notice of proposed rulemaking and will not be restated here. The public comment period for this proposed rule ended on August 18, 2024. EPA received no comments on the proposal. Therefore, we are finalizing our action as proposed.

II. Final Action

EPA is approving the removal of the emission limits for the Greif facility contained in OAC rule 3745–18–82(F) from Ohio's SIP. Specifically, EPA is approving into the SIP OAC 3745–18–82(F), effective April 16, 2023, which does not contain the emission limits for the Greif facility.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio Regulation described in section II of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov>, and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines 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 State of Ohio did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither

prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this 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 EJ for communities with EJ concerns.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

Dated: October 2, 2024.

Debra Shore,

Regional Administrator, Region 5.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

- 2. In § 52.1870, the table in paragraph (c) is amended by revising the entry for “3745–18–82” to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

¹ 62 FR 27968 (May 22, 1997).

EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/subject	Ohio effective date	EPA approval date	Notes
3745-18-82	Stark County Emission Limits	4/16/2023	10/7/2024, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	

* * * * *

[FR Doc. 2024-23141 Filed 10-4-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2023-0269; FRL-12097-01-OCSPP]

Flazasulfuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of flazasulfuron in or on Avocado. ISK Biosciences Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 7, 2024. Objections and requests for hearings must be received on or before December 6, 2024, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the SUPPLEMENTARY INFORMATION).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2023-0269, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room, and the OPP Docket is (202) 566-1744. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC

20460-0001; main telephone number: (202) 566-1030; email address: RDfRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at <https://www.ecfr.gov/current/title-40>.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2023-0269 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before December 6, 2024. Addresses for mail and hand delivery of objections and

hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2023-0269, by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets/where-send-comments-epa-dockets>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of September 20, 2023 (88 FR 64909) (FRL-10578-08-OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F9055) by ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. The petition requested that 40 CFR 180.655 be amended by a establishing tolerance for residues of the herbicide Flazasulfuron, 1-(4,6-dimethoxypyrimidin-2-yl)-3-(3-trifluoromethyl-2-pyridylsulfonyl)urea, in or on Avocado at 0.01 parts per

million (ppm). That document referenced a summary of the petition prepared by ISK Biosciences Corporation, the registrant, which is available in the docket, <https://www.regulations.gov>. One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for flazasulfuron including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with flazasulfuron follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemakings of the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings, and republishing the same sections are unnecessary. EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has evaluated the available toxicity data and considered its validity,

completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by flazasulfuron as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found in Unit II.A, of the May 25, 2017, rulemaking.

There are no changes to the prior endpoint selections from the 2015 Draft Risk Assessment for Registration Review. In that risk assessment some studies used for endpoint selection were judged to have conservative NOAEL/LOAEL values because they were not updated to reflect current standards for evaluating toxicity studies. Such updates would likely result in higher NOAEL/LOAEL values and given the current risk picture, would not impact the overall findings of this risk assessment. Therefore, these studies were not re-evaluated in conjunction with this risk assessment. A detailed description of endpoint selection can be found at <https://www.regulations.gov>, "Flazasulfuron: Human Health Draft Risk Assessment for Registration Review, dated September 15, 2015.

The acute and chronic dietary risk assessments for flazasulfuron are unrefined assessments which incorporate tolerance-level residues, 100% crop treated (CT), and modeled estimated drinking water concentrations (EDWCs). The processing factors were set to 1 for the processed commodities that are in table 1 (860.1000). A default processing factor was used for hazelnut. The results of acute dietary (food and drinking water) analysis are below the Agency's level of concern (LOC) for all population subgroups. The acute dietary risk estimates utilized <1.0% of the acute population-adjusted dose (aPAD) for the general U.S. population and 3.3% of the aPAD for infants (<1 years old), the most highly exposed population subgroup. The results of chronic dietary (food and drinking water) analysis are below the Agency's LOC for all population subgroups. The chronic dietary risk estimates utilized 8.8% of the chronic population-adjusted dose (cPAD) for the general U.S. population and 32% of the cPAD for infants (<1 years old), the most highly exposed population subgroup. Based on the data summarized in Unit III.A. of the May 25, 2017, rulemaking, EPA has concluded that flazasulfuron does not

pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

EDWCs from the previous drinking water assessment are considered protective of the new use and may be used to represent EDWCs for the proposed new use on avocados. EDWCs include total toxic residues of flazasulfuron (*i.e.*, all of the degradates: DTPU, DTPP, HTPP, TPSA, ADMP, and 2,3-GTF). The highest EDWCs from the previous assessment were from ground water and were modeled using Pesticide Root Zone Model for Ground Water (PRZM-GW). EPA's conclusions remain unchanged from Unit II. C.2 of the May 25, 2017, rulemaking.

There is no residential exposure associated with the proposed use in this action; however, there is residential exposure from an existing registered use on turf that has been previously assessed using current data and assumptions for flazasulfuron. Risk estimates have been presented for the purpose of aggregate assessment; and conclude all residential risk estimates are not of concern. For more details, see Unit II.C.3 of the May 25, 2017, rulemaking. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide>.

No further data are required to determine that no common mechanism of toxicity exists for flazasulfuron and other pesticides. As a result, no further cumulative evaluation is necessary for flazasulfuron as published in Unit II.C.4 of the May 25, 2017, rulemaking.

The toxicity database for flazasulfuron is complete and adequate to assess susceptibility in the young. While there is evidence of increased qualitative and quantitative susceptibility in the young based on rat malformations and decreased fetal weight in two rat developmental toxicity studies, the Food Quality Protection Act (FQPA) Safety Factor (SF) is reduced to 1X and is protective of the observed offspring susceptibility because: (1) there are clear NOAELs for the developmental effects in the two rat studies developmental toxicity studies and the PODs selected for risk assessment are protective of those effects, (2) there is no evidence of neurotoxicity, and (3) exposure estimates are unlikely to underestimate risk. These conclusions are further discussed in Unit II.D of the May 25, 2017, rulemaking.

There are no acute and chronic residential exposure scenarios; therefore, the acute and chronic aggregate risks are equivalent to the acute and chronic dietary (food and drinking water) risk estimates and are not of concern. For risk conclusions specific to flazasulfuron in/on avocado, refer to Unit III section for acute and chronic dietary risk assessments within this document.

Flazasulfuron is currently registered for a use that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to flazasulfuron.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1660 for adults and 860 for children. Because EPA's level of concern for flazasulfuron is a MOE of 100 or greater, these MOEs are not of concern.

Further, no intermediate-term adverse effect was identified, as a result, intermediate-term risk is not expected.

Aggregate cancer risk for U.S. population. A cancer aggregate risk assessment was not conducted because there was no evidence of carcinogenicity to humans based on lack of carcinogenic effects in the rat and mouse carcinogenicity studies. Flazasulfuron was classified as "not likely to be carcinogenic to humans;" therefore, a cancer dietary assessment was not performed.

Determination of safety. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to flazasulfuron residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement method for flazasulfuron is available. The method uses high-performance liquid chromatography/tandem mass spectrometry with multiple reaction monitoring (HPLC/MS-MS/MRM). The validated limit of quantitation (LOQ) is 0.01 ppm.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the

international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for flazasulfuron. There are currently no MRLs established by Codex or Canada; therefore, there are no issues regarding international harmonization to date.

C. Response to Comments

One comment was received in favor of this action from the United States Department of Agriculture (USDA). Given the potential herbicide resistance management value for flazasulfuron in avocado, USDA strongly supports the application for registration of flazasulfuron in avocado.

V. Conclusion

Therefore, a tolerance is established for residues of flazasulfuron, 1-(4,6-dimethoxypyrimidin-2-yl)-3-(3-trifluoromethyl-2-pyridylsulfonyl)urea, in or on Avocado at 0.01 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address

Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the National Government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 24, 2024.

Charles Smith,

*Director, Registration Division, Office of
Pesticide Programs.*

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

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

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.655, amend the table in paragraph (a) by:

■ a. Adding the table heading “Table 1 to Paragraph (a)”; and

■ b. Adding in alphabetical order the commodity “Avocado”.

The additions read as follows:

§ 180.655 Flazasulfuron; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Avocado	0.01

* * * * *

[FR Doc. 2024–23085 Filed 10–4–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 9

[GN Docket No. 23–65, IB Docket No. 22–271, FCC 24–28]

Single Network Future: Supplemental Coverage From Space; Space Innovation

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, a new information collection associated with certain rules adopted in the 2024 Single Network Future: Supplemental Coverage from Space; Space Innovation Report and Order (Report and Order).

This document is consistent with the Report and Order, which stated the Commission would publish a document in the **Federal Register** announcing the effective date for these rules.

DATES: The additions of 47 CFR 9.10(t)(3) through (5) (amendatory instruction 8), published at 89 FR 34148 on April 30, 2024, are effective on October 7, 2024.

FOR FURTHER INFORMATION CONTACT:

Rachel Wehr, Public Safety and Homeland Security Bureau at 202–418–1138 or via email Rachel.Wehr@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements, contact Nicole Ongele at (202) 418–2991 or via email: Nicole.Ongele@fcc.gov.

SUPPLEMENTARY INFORMATION: This document announces that, on September 27, 2024, OMB approved, for a period of three years, the information collection requirements contained in the Commission’s Report and Order, FCC 24–28, published at 89 FR 34148 on April 30, 2024. The OMB Control Number is 3060–1331. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens cause thereby, please contact Nicole Ongele, Federal Communications Commission, Room 3.310, 45 L Street NE, Washington, DC 20554. Please include OMB Control Number, 3060–1331, in your correspondence. The Commission will also accept your comments via email at PRA@fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public it received OMB approval on September 27, 2024, for the information collection requirements contained in the Commission’s rules at 47 CFR 9.10(t)(3) through (5).

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not

display a current, valid OMB Control Number.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1331.

OMB Approval Date: September 27, 2024.

OMB Expiration Date: September 30, 2027.

Title: Section 9.10(t), Interim 911 Requirements for Supplemental Coverage from Space.

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 59 respondents; 59 responses.

Estimated Time per Response: 49 hours.

Frequency of Response: One-time and annual reporting requirements.

Obligation to Respond: Mandatory. Statutory authority for this collection is contained in sections 1, 2, 4(i), 4(j), 4(o), 251(e), 303(b), 303(g), 303(r), 316, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 154(o), 251(e), 303(b), 303(g), 303(r), 316, 403, and section 4 of the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, sections 101 and 201 of the New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, and section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, as amended 47 U.S.C. 615a, 615a–1, 615b, 615c.

Total Annual Burden: 2,891 hours.

Total Annual Cost: No Cost.

Needs and Uses: In the Report and Order, the Commission adopted rules to enable collaborations between satellite operators and terrestrial service providers to offer ubiquitous connectivity directly to consumer handsets using spectrum previously allocated only to terrestrial service. The Commission noted that this Supplemental Coverage from Space (SCS) framework will expand the reach of communications services, particularly emergency services, so that connectivity and assistance is available in more remote places. In recognition of the importance of 911 service to emergency response and disaster preparedness, the Commission also adopted interim 911 text and call routing requirements for terrestrial

providers that use SCS arrangements to extend their coverage service areas, including certain information collection requirements. The Commission will use the data generated by these information collections to monitor CMRS provider compliance as well as analyze the growth and development of 911 system access for end-users.

Annual Reporting Requirement. Under 47 CFR 9.10(t)(3), each CMRS provider that utilizes SCS arrangements to expand its coverage areas for providing service to its end-user subscribers must maintain records of all SCS 911 voice calls and SCS 911 text messages received on its network and received at its emergency call center. In addition, by October 15 of each year, each CMRS provider that utilizes SCS arrangements to expand its coverage areas for providing service to its end-user subscribers must submit a report to the Commission regarding SCS 911 voice calls and 911 text messages, and its emergency call center data, current as of September 30 of that year. CMRS providers must submit these reports in the Commission's Electronic Comment Filing System.

These reports must include, at a minimum: (i) The name and address of the CMRS provider, the address of that CMRS provider's emergency call center, and the contact information of the emergency call center; (ii) The aggregate number of SCS 911 voice calls and SCS 911 text messages received by the network of the CMRS provider that provides SCS service to its end-user subscribers during each month during the relevant reporting period; (iii) The aggregate number of SCS 911 voice calls and SCS 911 text messages received by the emergency call center each month during the relevant reporting period; (iv) The aggregate number of SCS 911 voice calls and SCS 911 text messages received by the emergency call center each month during the relevant reporting period that required forwarding to a PSAP and how many did not require forwarding to a PSAP; (v) The aggregate number of SCS 911 voice calls that were routed using location information that met the timeliness and accuracy thresholds defined in paragraphs (s)(3)(i)(A) and (B) of this section; (vi) The aggregate number of SCS 911 voice calls and SCS 911 text messages that were routed using location information that did not meet the timeliness and accuracy thresholds defined in paragraphs (s)(3)(i)(A) and (B) of this section; and (vii) An explanation of how the SCS deployment, including network architecture, systems, and procedures, will support routing SCS 911 voice calls

and SCS 911 text messages to the geographically appropriate PSAP with sufficient location information in compliance with paragraph (t)(2) of this section.

One-time Privacy Certification Requirement. Under 47 CFR 9.10(t)(4), CMRS providers that utilize SCS arrangements to expand their coverage areas for providing service to their end-user subscribers must certify on a one-time basis that neither they nor any third party they rely on to obtain location information or associated data used for compliance with paragraph (t)(2)(i) or (ii) will use such location information or associated data for any non-911 purpose, except with prior express consent or as otherwise permitted or required by law. The certification must state that the CMRS provider and any third parties it relies on to obtain location information or associated data used for compliance with paragraph (t)(2)(i) or (ii) have implemented measures sufficient to safeguard the privacy and security of such location information or associated data. CMRS providers must submit this one-time certification in the Commission's Electronic Comment Filing System on the due date of the first report made under paragraph (t)(3) of this section.

Subscriber Notification Requirement. Under 47 CFR 9.10(t)(5), each CMRS provider that utilizes SCS arrangements to expand its coverage areas for providing service to its end-user subscribers shall specifically advise every subscriber, both new and existing, in writing prominently and in plain language, of the circumstances under which 911 service for all SCS 911 calls or SCS 911 text messages may not be available via SCS or may be in some way limited by comparison to traditional enhanced 911 service.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024-23074 Filed 10-4-24; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

48 CFR Chapter 4

[Docket No. USDA-2024-0001]

RIN 0599-AA28

Agriculture Acquisition Regulation (AGAR)

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This United States Department of Agriculture (USDA) amends the Agriculture Acquisition Regulation (AGAR) to align the AGAR with changes to acquisition law, regulations, and internal USDA policies since the AGAR's last major revision in 1996.

DATES: Effective November 6, 2024.

ADDRESSES: The docket for this rulemaking is available for review at <https://www.regulations.gov/document/USDA-2024-0005-0001>. The docket for the final rule includes comments and other supporting documents/materials. For further information on how to review the docket, email the point of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Crandall Watson, Procurement Policy Division, Office of Contracting and Procurement, USDA, Telephone: (202) 617-7067; Email: Procurement.Policy@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is necessary to update the AGAR located in 48 CFR parts 401 through 499.

I. Background

The AGAR implements the Federal Acquisition Regulation (FAR) (48 CFR ch. 1) where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. USDA identified parts of the AGAR which required updating or streamlining based on updates to acquisition law, regulations, and internal USDA policies. USDA's review indicated that almost all parts of the AGAR required revision. Accordingly, USDA reviewed and revised substantially all parts of the AGAR and published a proposed rule (89 FR 60582) on July 26, 2024. After a 30-day comment period ending August 26, 2024, USDA received feedback from five commentators on the proposed rule.

Summary of Comments: All commentators generally supported the proposed rule and two commentators provided suggestions to strengthen the rule for clarity. No commentators disagreed with the goal of the rule to update the AGAR. The comments are summarized below. One commentator recommends USDA prohibit commercial operations on public lands and waters as the commentator believes it would better protect public lands, eliminate most corruption, and give the public better experiences and access to their lands. USDA recommends the

commentor contact the Bureau of Land Management (BLM) within the Department of the Interior on their recommendation since Public lands, as defined in 43 U.S.C. 1702, means “any land and interest in land owned by the United States . . . and are administered by the Secretary of the Interior through the BLM.”

Two commentors expressed strong support for the proposed amendments to the Agriculture Acquisition

Regulation (AGAR) and had no recommended changes.

One commentor is silent on the AGAR document and only requests consideration for employment opportunity. USDA recommends the commentor obtain information on federal job eligibility and job opportunities at USAJOBS—The Federal Government’s official employment site.

One commentor is not averse to the AGAR updates but provided thoughts on additional topics and associated clauses that could be added to the

AGAR. USDA will address much of this with our Office of General Counsel and update in a later version of the AGAR or in our internal guidance if USDA supports the proposals. One exception is that the final rule updates the AGAR to immediately add line items clarifications in the clause located at 452.232–70 by adding a table that shows how applicable contract line item numbers (CLINs) are incrementally funded in part (a) of the clause. The additional table will appear as follows:

Line item	Description	Total contract value	Funded amount	Unfunded amount	Funding date
(Add line items as needed)					

II. Procedural Requirements

Executive Orders 12866 and 13563

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 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is an internal rule of agency procedure and therefore is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis.

This final rule updates the AGAR to bring it up to date and ensures correspondence with the FAR is maintained. The final rule amends the AGAR to correct and update internal references to the FAR; to remove sections supplementing material that has been removed from the FAR; and to update designations of USDA. Therefore, pursuant to section 605(b),

USDA certifies that this final rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects

48 CFR Part 401

Government procurement, Reporting and recordkeeping requirements.

48 CFR Parts 402, 405 Through 406, 411 Through 416, 434 Through 437, and 447 Through 470

Government procurement.

48 CFR Part 403

Antitrust, Conflict of interest, Government procurement.

48 CFR Part 404

Classified information, Government procurement.

48 CFR Part 408

Government procurement, Printing.

48 CFR Part 419

Government procurement, Small businesses.

48 CFR Part 422

Equal employment opportunity, Government procurement, Individuals with disabilities, Labor.

48 CFR Part 423

Air pollution control, Government procurement, Occupational safety and health, Water pollution control.

48 CFR Part 425

Foreign currencies, Foreign trade, Government procurement.

48 CFR Part 428

Government procurement, Insurance, Surety bonds.

48 CFR Parts 430 Through 432

Accounting, Government procurement.

48 CFR Part 433

Administrative practice and procedure, Government procurement.

48 CFR Part 445

Government procurement, Government property.

■ Under the authority of 5 U.S.C. 301 and 40 U.S.C. 486(c), revise 48 CFR chapter 4 to read as follows:

CHAPTER 4—DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—GENERAL

PART 400—[RESERVED]

PART 401—AGRICULTURE

ACQUISITION REGULATION SYSTEM

PART 402—DEFINITIONS OF WORDS AND TERMS

PART 403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS

PART 404—ADMINISTRATIVE AND INFORMATION MATTERS

SUBCHAPTER B—ACQUISITION PLANNING

PART 405—PUBLICIZING CONTRACT ACTIONS

PART 406—COMPETITION REQUIREMENTS

PART 407—[RESERVED]

PART 408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

PARTS 409 and 410—[RESERVED]

PART 411—DESCRIBING AGENCY NEEDS

PART 412—ACQUISITION OF COMMERICAL ITEMS

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 413—SIMPLIFIED ACQUISITION PROCEDURES

PART 414—SEALED BIDDING

PART 415—CONTRACTING BY NEGOTIATION

PART 416—TYPES OF CONTRACTS

PARTS 417 AND 418—[RESERVED]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 419—SMALL BUSINESS PROGRAMS

PARTS 420 AND 421—[RESERVED]

PART 422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

PART 423—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

PART 424—[RESERVED]

PART 425—FOREIGN ACQUISITION

PART 426—[RESERVED]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 427—[RESERVED]

PART 428—BONDS AND INSURANCE

PART 429—[RESERVED]

PART 430—COST ACCOUNTING STANDARDS ADMINISTRATION

PART 431—CONTRACT COST

PRINCIPLES AND PROCEDURES

PART 432—CONTRACT FINANCING

PART 433—PROTESTS, DISPUTES AND APPEALS

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 434—MAJOR SYSTEM ACQUISITION

PART 435—[RESERVED]

PART 436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

PART 437—SERVICE CONTRACTING

PARTS 438 THROUGH 441—[RESERVED]

SUBCHAPTER G—CONTRACT MANAGEMENT

PARTS 442 THROUGH 444—[RESERVED]

PART 445—GOVERNMENT PROPERTY

PARTS 446 THROUGH 448—[RESERVED]

449—TERMINATION OF CONTRACTS

PART 450—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

PART 451—[RESERVED]

SUBCHAPTER H—CLAUSES AND FORMS

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

PARTS 453 THROUGH 469—[RESERVED]

SUBCHAPTER I—FOOD ASSISTANCE PROGRAMS

PART 470—COMMODITY ACQUISITIONS

PARTS 471 THROUGH 499—[RESERVED]

SUBCHAPTER A—GENERAL

PART 400—[RESERVED]

PART 401—AGRICULTURE ACQUISITION REGULATION SYSTEM

Subpart 401.1—Purpose, Authority, Issuance

Sec.

401.101 Purpose.

401.103 Authority.

401.104 Applicability.

401.105 Issuance.

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401.105-2 Arrangement of regulations.

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401.201 Maintenance of the FAR.

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401.370 Exclusions.

401.371 USDA Contracting Desk Book.

401.372 Departmental directives.

Subpart 401.4—Deviations From the FAR and AGAR

401.402 Policy.

401.403 Individual deviations.

401.404 Class deviations.

Subpart 401.6—Career Development, Contracting Authority, and Responsibilities

401.601 General.

401.602 Contracting officers.

401.602-3 Ratification of unauthorized commitments.

401.603 Selection, appointment, and termination of appointment for contracting officers.

401.603-1 General.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 401.1—Purpose, Authority, Issuance

401.101 Purpose.

The United States Department of Agriculture's (USDA's) Acquisition

Regulation (AGAR) provides for the codification and publication of uniform policies and procedures for acquisitions by contracting activities within USDA. The purpose of the AGAR is to implement the Federal Acquisition Regulation (FAR), where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The AGAR is not by itself a complete document, as it must be used in conjunction with the FAR.

401.103 Authority.

The AGAR and subsequent amendments are issued under 5 U.S.C. 301 and 40 U.S.C. 486(c). The Senior Procurement Executive (SPE) has the delegated authority to transmit Departmental acquisition regulations.

401.104 Applicability.

The FAR and AGAR apply to all USDA acquisitions of supplies and services (including construction) which obligate appropriated funds, unless otherwise specified or excepted by law.

401.105 Issuance.

401.105-1 Publication and code arrangement.

(a) The AGAR is codified in the Code of Federal Regulations (CFR) as chapter 4 of title 48, Federal Acquisition Regulations System, to implement and supplement chapter 1 which constitutes the FAR. Parts 400 through 499 have been assigned to USDA by the Office of the Federal Register.

(b) The AGAR and its subsequent changes are published in:

(1) Daily issues of the **Federal Register**;

(2) Cumulative form in the CFR; and

(3) Electronic form on the USDA Departmental Administration procurement website (see AGAR 401.170).

(c) Section 553(a)(2) of the Administrative Procedure Act, 5 U.S.C. 553, provides an exception from the standard public rulemaking procedures to the extent that the rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(d) The AGAR may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedure Act. The USDA is also required to publish for public comment procurement regulations in the **Federal Register**, pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 418b), and FAR 1.301.

401.105–2 Arrangement of regulations.

AGAR coverage parallels the FAR in format, arrangement, and numbering system. However, subdivisions below the section and subsection levels may not always correlate directly to FAR designated paragraphs and subparagraphs.

401.105–3 Copies.

Copies of the AGAR published in the CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Requests should reference chapter 4 of title 48 CFR.

401.170 Electronic access to regulatory information.

The USDA procurement website provides access to the AGAR, AGAR amendments (circulars), the USDA Contracting Desk Book, and other USDA procurement policy and guidance.

Subpart 401.2—Administration**401.201 Maintenance of the FAR.****401.201–1 The two councils.**

(a) USDA's representative on the Civilian Agency Acquisition Council is designated by the SPE.

(b) USDA Office of Contracting and Procurement, Procurement Policy Division will coordinate proposed FAR revisions within USDA.

Subpart 401.3—Agency Acquisition Regulations**401.301 Policy.**

(a) The SPE, subject to the authorities in AGAR 401.103 and FAR 1.301, may issue and publish Departmental regulations, that together with the FAR constitute Department-wide policies, procedures, solicitation provisions, and contract clauses governing the contracting process or otherwise controlling the relationship between USDA (including any of its contracting activities) and contractors or prospective contractors.

(b) Each designated Mission Area senior contracting official is authorized to issue or authorize the issuance of, at any organizational level, internal guidance which does not have a significant effect beyond the internal operating procedures of the activity, or a significant cost or administrative impact on offerors or contractors. Internal guidance issued by contracting activities will not be published in the **Federal Register**. Mission Area contracting leadership shall ensure that the guidance, procedures, or instructions issued—

(1) Are consistent with the policies and procedures contained in this

regulation and the USDA Contracting Desk Book;

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable;

(3) Contain no material which duplicates, paraphrases, or is inconsistent with this regulation; and

(4) Are numbered and identified by use of alphabetical suffices to the chapter number as follows:

(i) Marketing and Regulatory Programs (MRP).

(ii) Research, Education and Economics (REE).

(iii) Food, Nutrition and Consumer Services (FNCS).

(iv) Natural Resources and Environment (NRE).

(v) Farm Production and Conservation (FPAC).

(vi) Food Safety and Inspection Services (FSIS).

(vii) [Reserved]

(viii) Departmental Administration (DA) or Departmental Management (DM).

(ix) [Reserved]

(x) Rural Development (RD).

401.304 Agency control and compliance procedures.

(a) The AGAR System is under the direct oversight and control of the SPE, who is responsible for review and issuance of all Department-wide acquisition regulations published in the **Federal Register** to assure compliance with FAR part 1.

(b) The SPE is also responsible for review and issuance of unpublished, Department-wide internal guidance under the AGAR System.

(c) The Mission Area senior contracting official is responsible for establishment and implementation of formal procedures for oversight and control of unpublished internal guidance issued within the contracting activity to implement FAR or AGAR requirements. These procedures shall be subject to the review and approval by the SPE.

(d) The SPE is responsible for evaluating coverage under the AGAR system to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

(e) Recommendations for revision of existing FAR coverage or new FAR coverage shall be submitted by the Mission Area senior contracting official to the SPE for further action.

401.370 Exclusions.

Subject to the policies of FAR 1.3, certain USDA acquisition policies and procedures may be excluded from the

AGAR under appropriately justified circumstances, such as:

(a) Subject matter which is effective for a period less than 12 months.

(b) Subject matter which is instituted on an experimental basis for a reasonable period.

(c) Acquisition procedures instituted on an interim basis to comply with the requirements of statute, regulation, Executive Order, Office of Management and Budget (OMB) Circular, or Office of Federal Procurement Policy (OFPP) Policy Letter.

401.371 USDA Contracting Desk Book.

(a) The SPE may issue and update the USDA Contracting Desk Book, consistent with the policies of the FAR and the AGAR, for the following purposes:

(1) To communicate Department-wide policy and/or procedural guidance to contracting activities;

(2) To delegate to procurement officials the authority to make determinations or to take action to implement the policies of the FAR or the AGAR; and,

(3) To establish internal policy and procedures on an interim basis, prior to incorporation in the AGAR or in a Departmental Directive.

(b) The USDA Contracting Desk Book is only available in electronic format on the USDA procurement website.

401.372 Departmental directives.

Subject to the policies of FAR 1.3, USDA from time to time may issue internal directives to establish procedures, standards, guidance, methods of performing duties, functions, or operations. Such directives include Departmental Regulations (DRs), Departmental Notices, and Secretary's Memoranda.

Subpart 401.4—Deviations From the FAR and AGAR**401.402 Policy.**

Requests for authority to deviate from the provisions of the FAR or the AGAR shall be submitted in writing as far in advance of the situation as time will permit. Each request for deviation shall contain the following:

(a) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR and AGAR;

(b) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(c) If applicable, the name of the contractor and identification of the contract affected;

(d) A statement as to whether the deviation has been requested previously

and, if so, circumstances of the previous request;

(e) A description of the intended effect of the deviation;

(f) A statement of the period of time for which the deviation is needed; and

(g) Any pertinent background information which will contribute to a full understanding of the desired deviation.

401.403 Individual deviations.

In individual cases, deviations from either the FAR or the AGAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make such deviations clearly in the best interest of the Government. Except for cost principles, the Head of the Contracting Activity (HCA) may approve individual deviations from the AGAR, after coordinating with the Office of General Counsel (OGC) and the SPE. No deviations from the FAR or AGAR may be authorized by an individual contracting officer or an individual contracting office. A copy of each deviation and its supporting documents shall be provided to the SPE. Deviations from the FAR shall not be made unless such action is authorized by the SPE after consultation with the OGC and any other appropriate office, based on a written justification stating clearly the special circumstances involved.

401.404 Class deviations.

Where deviations from the FAR or AGAR are considered necessary for classes of contracts, requests for authority to deviate shall be submitted in writing to the SPE for approval. The SPE may authorize class deviations from the FAR without consulting the Chairperson of the Civilian Agency Acquisition Council (CAAC) where urgency precludes consultation. The SPE shall subsequently inform the Chairperson of the CAAC of the deviation, including the circumstances under which it was required.

Subpart 401.6—Career Development, Contracting Authority, and Responsibilities

401.601 General.

(a) The authority and responsibility vested in the Secretary to manage USDA's acquisition function is delegated through the Assistant Secretary for Administration to the SPE. This broad authority includes, but is not limited to, the following responsibilities:

(1) Prescribing and publishing Departmental acquisition policies, regulations, and procedures.

(2) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions.

(3) Designating contracting officers.

(4) Establishing clear lines of contracting authority.

(5) Evaluating and monitoring the performance of USDA's acquisition system.

(6) Managing and enhancing career development of the acquisition workforce.

(7) Participating in the development of Government-wide acquisition policies, regulations, and standards; and determining specific areas where government-wide performance standards should be established and applied.

(8) Determining areas of Department-unique standards and developing unique Department-wide standards.

(9) Certifying to the Secretary that the acquisition system meets approved standards.

(b) The SPE may delegate specified contracting authority and the responsibility to manage related acquisition functions.

(c) Unless prohibited by the FAR, the AGAR, or by other applicable statutes and regulations, the SPE may redelegate specified authority to make determinations in order to implement the policies and procedures of the FAR. Such delegations shall be in writing but need not be published. Such delegations may be made by the HCA if authority has been delegated by the SPE.

401.602 Contracting officers.

401.602–3 Ratification of unauthorized commitments.

(a) *Ratification* means the signed, documented action taken by an authorized official to approve and sanction a previously unauthorized commitment. *Unauthorized commitment* means an agreement made by a Government representative who lacked the authority to enter into a contract on behalf of the Government.

(b) Procedures are in accordance with the USDA Contracting Desk Book, Part 401.602–3.

401.603 Selection, appointment, and termination of appointment for contracting officers.

401.603–1 General.

The SPE may delegate contracting authority to the extent authorized by general written delegation of acquisition authority appointing qualified individuals as contracting officers, in accordance with selection and

appointment procedures as stated in the USDA Contracting Desk Book.

PART 402—DEFINITIONS OF WORDS AND TERMS

Subpart 402.1—Definitions

Sec.

402.101 Definitions.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 402.1—Definitions

402.101 Definitions.

Acquisition official means an individual who has been delegated authority to manage or to exercise acquisition functions and responsibilities.

Agency head or *head of the agency* means the Secretary of Agriculture (Secretary), Deputy Secretary, or the Assistant Secretary for Administration (ASA).

Head of the Contracting Activity (HCA) means the official with overall responsibility of one or more USDA contracting activities.

Mission Area senior contracting official means the official designated by the Senior Procurement Executive or Head of the Contracting Activity with specific responsibilities within an individual Mission Area's contracting activity.

Senior Procurement Executive (SPE) means the agency official appointed as such by the Head of the Agency pursuant to Executive Order 12931. The Director, Office of Contracting and Procurement, has been designated as the USDA SPE.

PART 403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS

Subpart 403.1—Safeguards

Sec.

403.101 Standards of conduct.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 403.1—Safeguards

403.101 Standards of conduct.

(a) The standards of conduct for USDA procurement officials are the uniform standards established by the Office of Government Ethics in 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Executive Branch, and FAR 3.104, Procurement Integrity.

(b) Procurement officials and other employees who require advice concerning the application of standards of conduct to any acquisition issue shall obtain opinions from the USDA Office

of Ethics or the ethics advisory officials within their agency.

PART 404—ADMINISTRATIVE AND INFORMATION MATTERS

Subpart 404.8—Government Contract Files Sec.

404.804 Closeout of contract files.

Subpart 404.13—Personal Identity Verification

404.1303 Contract clause.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 404.8—Government Contract Files

404.804 Closeout of Contract Files.

The contracting officer shall insert the clause at AGAR 452.204–70, Modification for Contract Closeout, in all solicitations and contracts that use simplified acquisition procedures.

Subpart 404.13—Personal Identity Verification

404.1303 Contract clause.

FAR 4.13, Personal Identity Verification, establishes the policy and use requirements for FAR 52.204–9. The contracting officer shall insert a clause that contains language similar to that in AGAR 452.204–71 in all covered solicitations and contracts which include FAR 52.204–9.

SUBCHAPTER B—ACQUISITION PLANNING

PART 405—PUBLICIZING CONTRACT ACTIONS

Subpart 405.4—Release of Information

Sec.

405.404 Release of long-range acquisition estimates.

405.404–1 Release procedures.

Subpart 405.5—Paid Advertisements

405.502 Authority.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 405.4—Release of Information

405.404 Release of long-range acquisition estimates.

405.404–1 Release procedures.

The HCA is the agency head designee pursuant to FAR 5.404–1.

Subpart 405.5—Paid Advertisements

405.502 Authority.

The authority vested in the HCA to authorize publication of paid advertisements in newspapers (44 U.S.C. 3702) is delegated, with power of redelegation, to Mission Area senior contracting officials. A Mission Area

senior contracting official's redelegation of this authority shall be in writing.

PART 406—COMPETITION REQUIREMENTS

Subpart 406.2—Full and Open Competition After Exclusion of Sources

Sec.

406.202 Establishing or maintaining alternative sources.

Subpart 406.3—Other Than Full and Open Competition

406.302 Circumstances permitting other than full and open competition.

406.302–70 Otherwise authorized by law.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 406.2—Full and Open Competition After Exclusion of Sources

406.202 Establishing or maintaining alternative sources.

The SPE is authorized to make determinations pursuant to FAR 6.202(a) and sign the determination and findings required by FAR 6.202(b).

Subpart 406.3—Other Than Full and Open Competition

406.302 Circumstances permitting other than full and open competition.

406.302–70 Otherwise authorized by law.

(a) *Authority.* Section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318) (the Act) authorizes the Secretary of Agriculture to award contracts, without competition, to further research, extension, or teaching programs in the food and agricultural sciences.

(b) *Limitations.* The use of this authority is limited to those instances where it can be determined that contracting without full and open competition is in the best interest of the Government and necessary to the accomplishment of the research, extension, or teaching program. Therefore:

(1) Contracts under the authority of the Act shall be awarded on a competitive basis to the maximum practicable extent.

(2) When full and open competition is not deemed appropriate, the contracting officer shall make a written justification on a case-by-case basis in accordance with procedures in FAR 6.303 and 6.304.

PART 407—[RESERVED]

PART 408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 408.8—Acquisition of Printing and Related Supplies

408.802 Policy.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 408.8—Acquisition of Printing and Related Supplies

408.802 Policy.

The Director, Office of Communications (OC) has been designated as the central printing authority in USDA, with the authority to represent the USDA before the Joint Committee on Printing (JCP), the Government Printing Office, and other Federal and State agencies on all matters related to printing.

PARTS 409 AND 410—[RESERVED]

PART 411—DESCRIBING AGENCY NEEDS

Subpart 411.1—Selecting and Developing Requirements Documents

Sec.

411.101 Order of precedence for requirements documents.

Subpart 411.2—Using and Maintaining Requirements Documents

411.202 Maintenance of standardization documents.

Subpart 411.6—Priorities and Allocations

411.602 General.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 411.1—Selecting and Developing Requirements Documents

411.101 Order of precedence for requirements documents.

(a) OMB Circular A–119 establishes a Federal policy requiring the use of voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical.

(b) An HCA is authorized to submit the determination required by OMB Circular A–119 that a voluntary standard is inconsistent with law or otherwise impracticable. The HCA must submit the determination to OMB through the National Institute of Standards and Technology (NIST) in accordance with the Circular with a copy provided to the SPE.

Subpart 411.2—Using and Maintaining Requirements Documents

411.202 Maintenance of standardization documents.

Recommendations for changes to standardization documents are to be submitted through the SPE, who will coordinate the submission of these recommendations to the cognizant preparing activity.

Subpart 411.6—Priorities and Allocations

411.602 General.

USDA has authority to issue rated orders under section 202(c) of Executive Order 13603, and the Defense Production Act of 1950, as Amended (DPA), 50 U.S.C. 4501 *et seq.*

PART 412—ACQUISITION OF COMMERCIAL ITEMS

Subpart 412.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

412.302 Tailoring of provisions and clauses for the acquisition of commercial items.

The HCA is authorized to approve waivers in accordance with FAR 12.302(c). The approved waiver may be either for an individual contract or for a class of contracts for the specific item. The approved waiver and supporting documentation shall be incorporated into the contract file.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 413—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 413.3—Simplified Acquisition Methods

Sec.
413.302 Purchase orders.
413.302–5 Clauses.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 413.3—Simplified Acquisition Methods

413.302 Purchase orders.

413.302–5 Clauses.

The contracting officer shall insert the clause at AGAR 452.204–70, Modification for Contract Closeout, in all solicitations and contracts that use simplified acquisition procedures.

PART 414—SEALED BIDDING

Subpart 414.4—Opening of Bids and Award of Contract

Sec.

414.404 Rejection of bids.
414.407 Mistakes in bids.
414.407–3 Other mistakes disclosed before award.
414.407–4 Mistakes after award.
414.409 Information to bidders.
414.409–2 Award of classified contracts.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 414.4—Opening of Bids and Award of Contract

414.404 Rejection of bids.

414.404–1 Cancellation of invitations after opening.

An acquisition official at a level above the contracting officer is authorized to request the determinations under FAR 14.404–1(c) and (e)(1).

414.407 Mistakes in bids.

414.407–3 Other mistakes disclosed before award.

The authority to make the determinations under FAR 14.407–3(a), (b), and (d) is delegated, without power of redelegation, to the HCA. The authority to make the determination under FAR 14.407–3(c) is delegated to the contracting officer. Each determination pursuant to FAR 14.407–3 shall have the concurrence of the Office of the General Counsel (OGC).

414.407–4 Mistakes after award.

If a mistake in bid is disclosed after award, the contracting officer shall make a final determination in accordance with the provisions of FAR 14.407–4 (b) and (c) and shall coordinate each proposed determination with OGC. Such coordination shall, at a minimum, consist of the contracting officer providing the proposed determination and the case file to OGC for comment.

414.409 Information to bidders.

414.409–2 Award of classified contracts.

Disposition of classified information shall be in accordance with Departmental Regulation and Manual (3400–001 Series) and in accordance with direction issued by the USDA Office of Homeland Security (OHS), Personnel and Document Security Division.

PART 415—CONTRACTING BY NEGOTIATION

Subpart 415.2—Solicitation and Receipt of Proposals and Information

Sec.
415.204 Contract format.

Subpart 415.3—Source Selection

415.305 Proposal evaluation.

Subpart 415.6—Unsolicited Proposals

415.604 Agency points of contact.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 415.2—Solicitation and Receipt of Proposals and Information

415.204 Contract format.

The HCA is authorized to exempt contracts from the uniform contract format.

Subpart 415.3—Source Selection

415.305 Proposal evaluation.

Each Mission Area senior contracting official is responsible for establishing procedures regarding the release of cost information to the members of the technical evaluation team per FAR 15.305(a)(4).

Subpart 415.6—Unsolicited Proposals

415.604 Agency points of contact.

Each Mission Area senior contracting official is responsible for establishing points of contact for the control of unsolicited proposals. An unsolicited proposal must be formally submitted to the Agency by way of the point of contact.

PART 416—TYPES OF CONTRACTS

Subpart 416.1—Selecting Contract Types

Sec.
416.102 Policies.

Subpart 416.2—Fixed-Price Contracts

416.203 Fixed-price contracts with economic price adjustment.
416.203–4 Contract clauses.

Subpart 416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

416.603 Letter contracts.
416.603–2 Application.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 416.1—Selecting Contract Types

416.102 Policies.

The contracting officer shall insert the clause at AGAR 452.204–70, Modification for Contract Closeout, in all solicitations and contracts that use other than cost reimbursement contract types.

Subpart 416.2—Fixed-Price Contracts

416.203 Fixed-price contracts with economic price adjustment.

416.203–4 Contract clauses.

An economic price adjustment clause based on cost indexes of labor or material may be used under the

conditions listed in FAR 16.203–4(d) after HCA approval and consultation with the Office of the General Counsel (OGC).

Subpart 416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

416.603 Letter contracts.

416.603–2 Application.

The HCA is authorized to extend the period for defining a letter contract required by FAR 16.603–2(c) in extreme cases where it is determined in writing that such action is in the best interest of the Government.

PARTS 417 AND 418—[RESERVED]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 419—SMALL BUSINESS PROGRAMS

Subpart 419.2—Policies

Sec.

419.201 General Policy.

419.201–71 Small business coordinators.

419.201–72 Reports.

Subpart 419.6—Certificates of Competency and Determinations of Responsibility

419.602 Procedures.

419.602–3 Resolving differences between the agency and the Small Business Administration.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 419.2—Policies

419.201 General policy.

419.201–71 Small business coordinators.

The Mission Area senior contracting official shall designate, in writing, small business coordinator(s). The number of coordinators shall be determined by the Mission Area senior contracting official and sufficient for the number of contracting officers or contracting offices.

419.201–72 Reports.

The Office of Small & Disadvantaged Business Utilization (OSDBU) Director shall be responsible for submitting reports concerning USDA's progress and achievements in the procurement preference program.

Subpart 419.6—Certificates of Competency and Determinations of Responsibility

419.602 Procedures.

419.602–3 Resolving differences between the agency and the Small Business Administration.

The HCA is authorized to appeal the issuance of a Certificate of Competency

(COC) to SBA as provided by FAR 19.602–3(a).

PARTS 420 AND 421—[RESERVED]

PART 422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 422.3—Contract Work Hours and Safety Standards Act

Sec.

422.302 Liquidated damages and overtime pay.

Subpart 422.4—Labor Standards for Contracts Involving Construction

422.404 Construction Wage Rate Requirements statute wage determinations.

422.404–6 Modifications of wage determinations.

422.406 Administration and enforcement.

422.406–8 Investigations.

Subpart 422.8—Equal Employment Opportunity

422.804 Affirmative action programs.

422.804–2 Construction.

422.807 Exemptions.

Subpart 422.13—Equal Opportunity for Veterans

422.1305 Waivers.

Subpart 422.14—Employment of Workers With Disabilities

422.1403 Waivers.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 422.3—Contract Work Hours and Safety Standards Act

422.302 Liquidated damages and overtime pay.

The Mission Area senior contracting official is authorized to review determinations of liquidated damages due under section 104(c) of the Contract Work Hours and Safety Standards Act, and to recommend remedial action, if appropriate, in accordance with FAR 22.302(c). Contractors or subcontractors may request review of administrative determinations of liquidated damages by written notice to the contracting officer. The contracting officer shall promptly forward appeals of liquidated damages determinations to the Mission Area senior contracting official.

Subpart 422.4—Labor Standards for Contracts Involving Construction

422.404 Construction Wage Rate Requirements statute wage determinations.

422.404–6 Modifications of wage determinations.

The Mission Area senior contracting official is authorized to process the request for extension of the 90-day

period for award after bid opening as provided in FAR 22.404–6(b)(6).

422.406 Administration and enforcement. 422.406–8 Investigations.

The HCA is authorized to submit reports of violations to the agency head in accordance with FAR 22.406–8(d).

Subpart 422.8—Equal Employment Opportunity

422.804 Affirmative action programs.

422.804–2 Construction.

The Mission Area senior contracting official shall ensure that each contracting office awarding nonexempt construction contracts maintains a current listing of covered geographical areas subject to affirmative action requirements specifying goals for minorities and women in covered construction trades, as provided in FAR 22.804–2(b).

422.807 Exemptions.

The HCA oversees exemptions of all or part of the requirements of E.O. 11246 pursuant to FAR 22.807(c).

Subpart 422.13—Equal Opportunity for Veterans

422.1305 Waivers.

The Assistant Secretary for Administration (ASA) is authorized to make the waiver determination in FAR 22.1305(b) that a contract is essential to the national security. The waiver shall be prepared for the ASA's signature and submitted by the Mission Area senior contracting official to the SPE for referral to the ASA.

Subpart 422.14—Employment of Workers With Disabilities

422.1403 Waivers.

The ASA is authorized to make the waiver determinations under FAR 22.1403(a) and FAR 22.1403(b) with the concurrence of the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor. The waiver shall be prepared for the ASA's signature and submitted by the Mission Area senior contracting official to the SPE for referral to the ASA.

PART 423—ENVIRONMENT, SUSTAINABLE ACQUISITION, AND MATERIAL SAFETY

Subpart 423.1—Use of Recovered Materials and Biobased Products

Sec.

423.107 Agency affirmative procurement programs.

Subpart 423.3—Notice of Radioactive Material

423.301 Requirements.

Subpart 423.5—Drug-Free Workplace

423.506 Suspension of payments, termination of contract, and debarment and suspension actions.

Subpart 423.6—Notice of Radioactive Material

423.601 Requirements.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 423.1—Use of Recovered Materials and Biobased Products

423.107 Agency affirmative procurement programs.

The USDA affirmative procurement program (APP) policy applicable to all USDA agencies and staff offices is hereby established. Components of the APP are in the USDA Contracting Desk Book Part 423.

Subpart 423.3—Notice of Radioactive Material

423.301 Requirements.

The HCA shall establish a system of instructions to identify the installation/facility radiation protection officer.

Subpart 423.6—Notice of Radioactive Material

423.601 Requirements.

PART 424—[RESERVED]**PART 425—FOREIGN ACQUISITION****Subpart 425.6—American Recovery and Reinvestment Act—Buy American Statute—Construction Materials**

Sec.

425.603 Exceptions.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 425.6—American Recovery and Reinvestment Act—Buy American Statute—Construction Materials

425.603 Exceptions.

The Secretary, without power of redelegation, has the authority to make the necessary determination(s) and authorize award(s) of contract(s) in accordance with FAR 25.603(b).

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS**PART 426—OTHER SOCIOECONOMIC PROGRAMS****Subpart 426.5—Drug-Free Workplace**

426.505 Suspension of payments, termination of contract, and debarment and suspension actions.

The SPE will submit the request for a waiver to the agency head with a recommendation for action per FAR 23.506(e).

PART 427—[RESERVED]**PART 428—BONDS AND INSURANCE****Subpart 428.1—Bonds and Other Financial Protections**

Sec.

428.101 Bid guarantees.

428.101–1 Policy on use.

428.106 Administration.

428.106–6 Furnishing information.

Subpart 428.2—Sureties and Other Security for Bonds

428.203 Individual sureties.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 428.1—Bonds and Other Financial Protections

428.101 Bid guarantees.

428.101–1 Policy on use.

The SPE may authorize class waivers of the requirement to obtain bid guarantees per FAR 28.101–1(c).

428.106 Administration.

428.106–6 Furnishing information.

HCAs or their designees may furnish certified copies of bonds and the contracts for which they were given as provided by FAR 28.106–6(c). Requesters may be required to pay costs of certification and copying established by the Departmental Fee Schedule for records requests (7 CFR part 1, subpart A, appendix A).

Subpart 428.2—Sureties and Other Security for Bonds

428.203 Individual sureties.

Evidence of possible criminal or fraudulent activities by an individual surety shall be reported to the OIG in accordance with Departmental Regulations (1700 series). The Mission Area senior contracting official shall establish procedures to ensure protection and conveyance of deposited securities of the types listed in FAR 28.204–1 through 28.204–3.

PART 429—[RESERVED]**PART 430—COST ACCOUNTING STANDARDS ADMINISTRATION****Subpart 430.2—CAS Program Requirements**
430.201 Contract requirements.

Sec.

430.201–5 Waiver.

430.202 Disclosure requirements.

430.202–2 Impracticity of submission.

430.202–8 Subcontractor disclosure statements.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 430.2—CAS Program Requirements

430.201 Contract requirements.

430.201–5 Waiver.

The SPE, without the authority to further redelegate, is authorized to request the Cost Accounting Standards Board to waive the application of the Cost Accounting Standards (CAS) in accordance with FAR 30.201–5.

430.202 Disclosure requirements.

430.202–2 Impracticity of submission.

The Secretary, without the power to redelegate, is authorized to determine, in accordance with 48 CFR 9903.202–2, that the Disclosure Statement is impractical to secure and to authorize award without obtaining the Disclosure Statement.

430.202–8 Subcontractor disclosure statements.

The Secretary, without the power to redelegate, is authorized to determine, in accordance with 48 CFR 9903.202–2, that the Disclosure Statement for a subcontractor is impractical to secure and to authorize award without obtaining the Disclosure Statement.

PART 431—CONTRACT COST PRINCIPLES AND PROCEDURES**Subpart 431.1—Applicability**

Sec.

431.101 Objectives.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 431.1—Applicability

431.101 Objectives.

(a) The SPE is designated as the official authorized to give advance approval of an individual deviation concerning cost principles.

(b) The SPE is designated as the official authorized to give advance approval of a class deviation concerning cost principles after coordination with

the Civilian Agency Acquisition Council (CAAC).

PART 432—CONTRACT FINANCING

Sec.

- 432.001 Definitions.
- 432.006 Reduction or suspension of contract payments upon finding of fraud.
- 432.006–5 Reporting.
- 432.007 Contract financing payments.

Subpart 432.1—Non-Commercial Item Purchase Financing

- 432.114 Unusual contract financing.

Subpart 432.2—Commercial Item Purchase Financing

- 432.206 Solicitation provisions and contract clauses.

Subpart 432.3—Loan Guarantees for Defense Production

- 432.301 Definitions.

Subpart 432.4—Advance Payments for Non-Commercial Items

- 432.402 General.
- 432.406 Letters of credit.
- 432.407 Interest.
- 432.412 Contract clause.

Subpart 432.7—Contract Funding

- 432.703 Contract funding requirements.
- 432.703–3 Contracts crossing fiscal years.
- 432.770 USDA specific funding limitations.

Subpart 432.8—Assignment of Claims

- 432.802 Conditions.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

432.001 Definitions.

Agency contract finance office is the office, other than the office of the requisitioner, providing funding or performing funding record keeping for the contract action.

Head of agency. For the purposes of this part, head of the agency means, exclusively, the Secretary or the Deputy Secretary.

Remedy coordination official (RCO). The USDA RCO is the Assistant Secretary for Administration.

Responsible fiscal authority is that officer in the agency contract finance office with the responsibility to ensure that adequate funds are available and usable for the intended purpose.

432.006 Reduction or suspension of contract payments upon finding of fraud.

432.006–5 Reporting.

The annual report required by FAR 32.006–5 is to be prepared by the SPE and submitted to the Secretary within 90 calendar days after the end of the fiscal year. When signed by the Secretary, the report is to be maintained by the SPE.

432.007 Contract financing payments.

The Mission Area senior contracting official may prescribe, on a case-by-case basis, a shorter period for financing payments.

Subpart 432.1—Non-Commercial Item Purchase Financing

432.114 Unusual contract financing.

The HCA is authorized to approve unusual contract financing.

Subpart 432.2—Commercial Item Purchase Financing

432.206 Solicitation provisions and contract clauses.

The responsibility for administration of the liquidation provisions of a contract may not be transferred from the contracting officer.

Subpart 432.3—Loan Guarantees for Defense Production

432.301 Definitions.

Within this subpart, the *agency* or *guaranteeing agency* is the HCA and may not be redelegated.

Subpart 432.4—Advance Payments for Non-Commercial Items

432.402 General.

An HCA is designated as the individual responsible for making the findings and determination, and for approval of the contract terms concerning advance payments.

432.406 Letters of credit.

The HCA is designated as the individual responsible for coordination with the Department of Treasury concerning letters of credit.

432.407 Interest.

(a) The HCA is designated as the individual who may authorize, on a case-by-case basis, advance payments without interest for the contract types described in FAR 32.407(d)(1), through (4). The signed determination and findings supporting these authorizations shall be included in the contract files.

(b) The SPE is designated as the individual who may authorize advance payments without interest other than those described in paragraph (a) of this section.

432.412 Contract clause.

The decision to use Alternates I or III to FAR 52.232–12 must be supported by a determination and finding.

Subpart 432.7—Contract Funding

432.703 Contract funding requirements.

Use the clause AGAR 452.232–70, Limitation of Government's Obligation,

in solicitations and resultant incrementally funded fixed-price contracts.

432.703–3 Contracts crossing fiscal years.

Funds appropriated to USDA may be used for one-year contracts which are to be performed in two fiscal years so long as the total amount for such contracts is obligated in the year for which the funds are appropriated (7 U.S.C. 2209c).

432.770 USDA specific funding limitations.

The expenditure of any USDA appropriation for any consulting service through any contract, pursuant to section 3109 of Title 5 of the U.S. Code shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law (7 U.S.C. 2225a).

Subpart 432.8—Assignment of Claims

432.802 Conditions.

Written notices of assignment and a true copy of the assigned instrument are to be sent to the contracting officer rather than the agency head per FAR 32.802(e)(1). Other copies are distributed as directed in FAR 32.802.

PART 433—PROTESTS, DISPUTES AND APPEALS

Subpart 433.1—Protests

Sec.

- 433.102 General.

Subpart 433.2—Disputes and Appeals

- 433.203 Applicability.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 433.1—Protests

433.102 General.

The SPE is responsible for coordinating the processing of bid protests lodged with the Government Accountability Office (GAO).

Subpart 433.2—Disputes and Appeals

433.203 Applicability.

The Assistant Secretary for Administration is authorized to determine the applicability of the Contract Disputes Act to contracts with foreign governments pursuant to FAR 33.203.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 434—MAJOR SYSTEM ACQUISITION

- Sec.
434.001 Definition.
434.002 Policy.
434.003 Responsibilities.
434.005 General requirements.
434.005–6 Full production.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

434.001 Definition.

Pursuant to OMB Circular No. A–11 (Circular A–11) and the definition at FAR 2.101, within USDA, a system shall be considered a *major system* if:

- (a) The system has been identified as a Major IT Investment pursuant to USDA Departmental Regulation 3030–008, Definition of Major Information Technology Investments,
- (b) The total non-IT acquisition costs are estimated to be \$50 million or more, or
- (c) The system, regardless of estimated acquisition or life cycle costs, has been specifically designated to be a major system by the USDA Acquisition Executive or by the Major Information Technology Systems Executive. The Assistant Secretary for Administration (ASA) is the USDA Acquisition Executive for major system acquisition other than acquisitions of information technology.

434.002 Policy.

In addition to the policy guidance at FAR 34.002 and other parts of the FAR, the policies outlined in part 7 of Circular A–11 should serve as guidelines for all contracting activities in planning and developing systems, major or otherwise.

434.003 Responsibilities.

(a) The key executives of USDA (Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) individually or as a group will participate in making four key decision in each major system acquisition process.

(1) Identification and definition of a specific mission need to be fulfilled, the relative priority assigned within the agency, and the general magnitude of resources that may be invested.

(2) Selection of competitive system design concepts to be advanced to a test/demonstration phase or authorization to proceed with the development of a noncompetitive (single concept) system.

(3) Commitment of a system to full-scale development and limited production.

(4) Commitment of a system to full production.

(b) The Chief Information Officer (CIO) is the Major Information Technology Systems Executive. For acquisitions of information technology, the CIO will ensure that Circular A–11 is implemented in USDA and that the management objectives of Circular A–11 are realized. The CIO is responsible for designating the program manager for each major information technology system acquisition, designating an acquisition to be a major information technology system acquisition, and approving the written charter and project control system for each major information technology system acquisition.

(c) The ASA will ensure that Circular A–11 is implemented in USDA and that the management objectives of Circular A–11 are realized. The SPE is responsible for designating the program manager for each major system non-IT acquisition, designating an acquisition to be a major system non-IT acquisition, and approving the written charter and project control system for each major system non-IT acquisition.

(d) The Mission Area senior contracting official must:

(1) Ensure compliance with the requirements of Circular A–11, FAR part 34, and AGAR part 434.

(2) Ensure that potential major system acquisitions are brought to the attention of the USDA Acquisition Executive or the Major Information Technology Systems Executive, as appropriate.

(3) Coordinate with Mission Area Program Managers (MASPMs) to recommend qualified candidates for designation as program managers for each major system acquisition within their jurisdiction.

(4) Coordinate with MASPMs to verify that program managers fulfill their responsibilities and discharge their duties.

(5) Cooperate with the ASA and Major Information Technology Systems Executive in implementing the requirements of Circular A–11.

(e) The program manager is responsible for planning and executing the major system acquisition, ensuring appropriate coordination with the USDA Acquisition Executive, Major Information Technology Systems Executive, and other key USDA executives.

434.005 General requirements.

434.005–6 Full production.

The Secretary or the Secretary's designee for the specific program is the agency head for the purposes of FAR 34.005–6.

PART 435—[RESERVED]

PART 436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 436.2—Special Aspects of Contracting for Construction

- Sec.
436.205 Statutory cost limitations.
436.209 Construction contracts with architect-engineer firms.
436.213 Special procedures for sealed bidding in construction contracting.
436.213–2 Presolicitation notices.

Subpart 436.5—Contract Clauses

- 436.500 Scope of subpart.
436.570 Emergency response, fire suppression and liability.

Subpart 436.6—Architect-Engineer Services

- 436.602 Selection of firms for architect-engineer contracts.
436.602–1 Selection criteria.
436.602–2 Evaluation boards.
436.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.
436.603 Collecting data on and appraising firm's qualifications.
436.609 Contract clauses.
436.609–1 Design within funding limitations.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 436.2—Special Aspects of Contracting for Construction

436.205 Statutory cost limitations.

(a) When it appears that funds may be insufficient for all the desired features of construction, the contracting officer may provide in the solicitation for a base bid item covering the work as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority.

(b) In the alternative, the contracting officer may use the policies and procedures found in FAR 17.2, Options.

436.209 Construction contracts with architect-engineer firms.

The HCA is authorized to approve a contract to construct a project, in whole or in part, to the firm that designed the project (inclusive of its subsidiaries or affiliates).

436.213 Special procedures for sealed bidding in construction contracting.

436.213–2 Presolicitation notices.

The authority to waive a presolicitation notice on any construction requirement when the proposed contract is expected to exceed the simplified acquisition threshold is restricted to the HCA.

Subpart 436.5—Contract Clauses**436.500 Scope of subpart.**

This subpart prescribes clauses for insertion in USDA solicitations and contracts for construction and for dismantling, demolition, or removal of improvements or structures. The contracting officer shall use the clauses as prescribed in contracts that exceed the simplified acquisition threshold. The contracting officer may use the clauses if the contract amount is expected to be at or below the simplified acquisition threshold.

436.570 Emergency response, fire suppression and liability.

The contracting officer shall insert the clause at AGAR 452.236–70, Emergency Response, Fire Suppression and Liability, in Integrated Resource Service Contracts (IRSCs) awarded for the Forest Service. The clause AGAR 452.236–70, Emergency Response, Fire Suppression and Liability, is optional for non-IRSCs.

Subpart 436.6—Architect-Engineer Services**436.602 Selection of firms for architect-engineer contracts.****436.602–1 Selection criteria.**

The Mission Area senior contracting official is authorized to approve the use of design competition under the conditions in FAR 36.602–1(b).

436.602–2 Evaluation boards.

The Mission Area senior contracting official shall establish written procedures for providing permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602–2.

436.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

The Mission Area senior contracting official may include either or both procedures in FAR 36.602–5(a) and (b) in the procedures for evaluation boards.

436.603 Collecting data on and appraising firm's qualifications.

Mission Area senior contracting officials for Mission Areas that require architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

436.609 Contract clauses.**436.609–1 Design within funding limitations.**

(a) Should the HCA appoint a designee to make the determination in FAR 36.609–1(c)(1), the appointment may be to one no lower than the official authorized to commit program funds for the work being acquired.

(b) The contracting officer, with the advice of appropriate technical representatives, may make the determination in FAR 36.609–1(c)(2) or (3).

PART 437—SERVICE CONTRACTING**Subpart 437.1—Service Contracts—General**

Sec.

437.104 Personal services contracts.

Subpart 437.2—Advisory and Assistance Services

437.204 Guidelines for determining availability of personnel.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 437.1—Service Contracts—General**437.104 Personal services contracts.**

USDA has the following specific statutory authorities to contract for personal services:

(a) Section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225) authorizes contracting with persons or organizations on a temporary basis, without regard to civil service compensation classification standards in 5 U.S.C., chapter 51 and subchapter III of chapter 53, Provided:

(1) That no expenditures shall be made unless specifically provided for in the applicable appropriation, and

(2) Expenditures do not exceed any limitations prescribed in the appropriation.

(b) Title 7 U.S.C., section 1627 authorizes the Secretary of Agriculture to contract with technically qualified persons, firms or organizations to perform research, inspection, classification, technical, or other special services, without regard to the civil-service laws, if it is for a temporary basis and for a term not to exceed six months in any fiscal year.

Subpart 437.2—Advisory and Assistance Services

437.204 Guidelines for determining availability of personnel.

The HCA is authorized to request the use of non-Government evaluators in proposal evaluations. Each decision shall be supported by a written determination in accordance with FAR 37.204.

PARTS 438 THROUGH 441—[RESERVED]**SUBCHAPTER G—CONTRACT MANAGEMENT****PARTS 442 THROUGH 444—[RESERVED]****PART 445—GOVERNMENT PROPERTY****Subpart 445.1—General**

Sec.

445.103 General.

Subpart 445.3—Authorizing the Use and Rental of Government Property

445.301 Use and rental.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 445.1—General**445.103 General.**

The Mission Area senior contracting official is authorized to make determinations for charging rent on the basis of use under the Use and Charges clause in FAR 52.245–9 as prescribed in FAR 45.103(a)(5).

Subpart 445.3—Authorizing the Use and Rental of Government Property**445.301 Use and rental.**

(a) The Mission Area senior contracting official is authorized to make determinations for providing facilities to contractors as prescribed in FAR 45.301(f).

(b) Requests for non-Government use of plant equipment as prescribed in FAR

45.301 shall be submitted by the HCA to the SPE for approval.

PARTS 446 THROUGH 448—[RESERVED]**PART 449—TERMINATION OF CONTRACTS****Subpart 449.5—Contract Termination Clauses**

Sec.

449.501 General.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 449.5—Contract Termination Clauses**449.501 General.**

Use of special purpose termination clauses pursuant to the authority of FAR 49.501 shall be approved in advance by the HCA.

PART 450—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Subpart 450.1—Extraordinary Contractual Actions

Sec.

450.100 Definitions.

450.102 Delegation of and limitations on exercise of authority.

450.102–1 Delegation of authority.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 450.1—Extraordinary Contractual Actions

450.100 Definitions.

Approving authority, as used in this part, means the Assistant Secretary for Administration.

Secretarial level, as used in this part means the Assistant Secretary for Administration.

450.102 Delegation of and limitations on exercise of authority.

450.102–1 Delegation of authority.

The Assistant Secretary for Administration is authorized to approve all actions under FAR part 50 except indemnification actions listed in FAR 50.102–1(d), which must be approved by the Secretary, without power of redelegation.

PART 451—[RESERVED]

SUBCHAPTER H—CLAUSES AND FORMS

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 452.2—Texts of Provisions and Clauses

Sec.

452.204–70 Modification for Contract Closeout

452.204–71 Personal Identity Verification of Contractor Employees.

452.232–70 Limitation of Government's Obligation.

452.236–70 Emergency Response, Fire Suppression, and Liability.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 452.2—Texts of Provisions and Clauses

452.204–70 Modification for Contract Closeout.

As prescribed in AGAR 404.804, 413.302–5, and 416.102, insert the following clause:

Modification for Contract Closeout (Month Year)

“Upon contract closeout for contracts utilizing anything other than cost reimbursement:

(a) If unliquidated funds in the amount of \$1000 or less remain on the contract, the Contracting Officer (CO) shall issue a unilateral modification for deobligation. The contractor will receive a copy of the modification but will not be required to provide a signature. The CO shall immediately proceed with contract closeout upon completion of the period of performance, receipt and acceptance of supplies or services, and final payment.

(b) Upon contract closeout for contracts utilizing SAP: if unliquidated funds of more than \$1000 remain on the contract, the CO shall issue a bilateral modification for deobligation. The contractor will receive a copy of the modification and will be required to provide a signature. (The CO may also request a “Contractor Release of Claims” be completed by the contractor, although not required for contracts and orders using SAP.) If the bilateral modification and Release of Claims are not returned to the CO within 60 days, the CO shall release the modification as unilateral and proceed with contract closeout upon completion of the period of performance, receipt and acceptance of supplies or services, and final payment.

(c) Upon contract closeout for contracts utilizing anything other than cost reimbursement, if unliquidated funds of more than \$1000 remain on the contract, the CO shall issue a bilateral modification for deobligation. The contractor will receive a copy of the modification and a “Contractor Release of Claims” and will be required to provide a signature on both forms. If the bilateral modification and Release of Claims are not returned to the CO within 120 days, the CO shall release the modification as unilateral and proceed with contract closeout upon completion of the period of performance, receipt and acceptance of supplies or services, and final payment. (End of Clause)

452.204–71 Personal Identity Verification of Contractor Employees.

As prescribed in AGAR 404.1303, insert the following clause:

Personal Identity Verification of Contractor Employees (Month Year)

(a) The contractor shall comply with the personal identity verification (PIV)

policies and procedures established by the United States Department of Agriculture (USDA) Directives 4620–002 series.

(b) Should the USDA Directives 4620–002 require the exclusion of a contractor's employee, the contracting officer will notify the contractor in writing. The contractor must appoint a representative to manage compliance with the PIV policies established by the USDA Directives 4620–002 and to maintain a list of employees eligible for a USDA LincPass required for performance of the work.

(c) The responsibility of maintaining a sufficient workforce remains with the contractor. Contractor employees may be barred by the Government from performance of work should they be found ineligible or to have lost eligibility for a USDA LincPass. Failure to maintain a sufficient workforce of employees eligible for a USDA LincPass may be grounds for termination of the contract.

(d) The contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine unaccompanied physical access to a Federally controlled facility and/or routine unaccompanied access to a Federally controlled information system.

(e) The PIV Sponsor for this contract is a designated program point of contact, which in most cases is the COR, unless otherwise specified in this contract. The PIV Sponsor will be available to receive contractor identity information from [hours and days to be added by CO] to [hours and days to be added by CO] at [office address for registration to be added by CO]. The Government will notify the contractor if there is a change in the PIV Sponsor, the office address, or the office hours for registration; however, it is the contractor's responsibility to meet all aspects of paragraphs (c), (d), and (e). (End of Clause)

452.232–70 Limitation of Government's Obligation.

As prescribed in AGAR 432.703, insert the following clause:

Limitation of Government's Obligation (Month Year)

(a) Contract line item(s) listed below is/are incrementally funded. For this/these item(s), the sum of \$ [Contracting Officer insert after negotiations] of the total price is presently available for payment and allotted to this contract.

Line item	Description	Total contract value	Funded amount	Unfunded amount	Funding date
(Add line items as needed)					

An allotment schedule is set forth in paragraph (j) below.

(b) For item(s) identified in paragraph (a) as not fully funded, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement of costs in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor more than the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government". The total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (j), the Contractor will notify the contracting officer in writing at least [30, 60, or 90, as appropriate] days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount currently allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j), or to a mutually agreed upon substitute date. The notification will also advise the contracting officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded, for a subsequent period as may be specified in the allotment schedule in paragraph (j) or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the contracting officer will terminate any item(s) for which additional funds have not been allotted,

pursuant to the clause of this contract entitled "Termination for Convenience of the Government".

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) above, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) will apply similarly to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a), the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) above.

(g) The termination provisions do not limit the rights of the Government under the clauses entitled "Default" and "Termination for Cause". The provisions are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) above. These terms no longer apply once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (e) and (f) above.

(h) Nothing herein affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Government".

(i) Nothing herein shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

(j) The parties agree that the Government will allot funds to this

contract in accordance with the following schedule:

On execution of contract \$
 (month) (day), (year) \$
 (month) (day), (year) \$
 (month) (day), (year) \$
 (End of Clause)

452.236–70 Emergency Response, Fire Suppression, and Liability.

As prescribed in AGAR 436.570, the following clause shall be used in Forest Service Integrated Resource Service Contracts (IRSCs), and is optional for non-IRSCs:

Emergency Response, Fire Suppression and Liability (Month Year)

(a) *Contractor's Responsibility for Responding to Emergencies.* When directed by the contracting officer, the Contractor shall allow the Government to temporarily use employees and equipment from the work site for emergency work (anticipated to be restricted to firefighting). This is considered to be within the general scope of the contract. An equitable adjustment for the temporary use of employees and equipment will be made under the CHANGES clause, FAR 52.243–4.

(b) *Contractor's Responsibility for Fire Fighting.* The Contractor, under the provisions of FAR 52.236–9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, shall immediately extinguish all fires on the work site other than those fires in use as a part of the work. The Contractor may be held liable for all damages and for all costs incurred by the Government for labor, subsistence, equipment, supplies, and transportation deemed necessary to control or suppress a fire set or caused by the Contractor or the Contractor's agents, subcontractors, or employees subject to the fire classifications listed in subsection (c).

(c) *Fire Suppression Costs.* The Contractor's obligations for cost of fire suppression vary according to three classifications of fires as follows:

(1) *Operations Fire.* An "operations fire" is a fire caused by the Contractor's operations other than a negligent fire. The Contractor agrees to reimburse the Forest Service for such cost for each operations fire, subject to a maximum dollar amount of [Contracting Officer insert amount]. The cost of the Contractor's actions, supplies, and

equipment expended or used on suppressing any such fire, or otherwise provided at the request of Forest Service, shall be credited toward such maximum. If the Contractor's actual cost exceeds the contractor's maximum obligation stated above, the Forest Service shall reimburse the contractor for the excess.

(2) *Negligent Fire*. A "negligent fire" is a fire caused by the negligence or fault of the Contractor's operations including, but not limited to, one caused by smoking by persons engaged in the Contractor's operations during the course of their employment, or during rest or lunch periods; or if the Contractor's failure to comply with requirements under this contract results in a fire starting or permits a fire to spread. Damages and the cost of suppressing negligent fires shall be borne by the Contractor.

(3) *Other Fires on Contract Area*. The Forest Service shall pay the Contractor, at firefighting rates common in the area or at prior agreed rates, for equipment or personnel furnished by the Contractor at the request of the Forest Service, on any fire on the contract area other than an operations fire or a negligent fire.

(d) *Contractor's Responsibility for Notification in Case of Fire*. The Contractor shall immediately notify the Government of any fires sighted on or in the vicinity of the work site.

(e) *Performance by the Contractor*. Where the Contractor's employees, agents, contractors, subcontractors, or their employees or agents perform the Contractor's operations in connection with fire responsibilities, the Contractor's obligations shall be the same as if performance was by the Contractor.

(f) *State Law*. The Contractor shall not be relieved by the terms of this contract of any liability to the United States for fire suppression costs recovered in an action based on State law, except for such costs resulting from operations fires. Amounts due to the Contractor for firefighting expenditures on operations fires shall not be withheld pending settlement of any such claim or action based on State law.
(End of Clause)

PARTS 453 THROUGH 469— [RESERVED]

SUBCHAPTER I—FOOD ASSISTANCE PROGRAMS

PART 470—COMMODITY ACQUISITIONS

Sec.

470.000 Scope of part.

470.101 Definitions.

470.102 Policy.

470.103 United States origin of agricultural products.

470.201 Acquisition of commodities and freight shipment for Foreign Agricultural Service (FAS) programs.

470.202 Acquisition of commodities for United States Agency for International Development (USAID) programs.

470.203 Cargo preference.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

470.000 Scope of part.

This part sets forth the policies, procedures and requirements governing the procurement of agricultural commodities by the Department of Agriculture for use:

(a) Under child nutrition programs such as the National School Lunch Program, The Emergency Food Assistance Program, Commodity Supplemental Food Program, Food Distribution Program on Indian Reservations, and any other domestic food assistance program.

(b) Under Title II of the Food for Peace Act (7 U.S.C. 1721 *et seq.*), the Food for Progress Act of 1985, the McGovern-Dole International Food for Education and Child Nutrition Program, and any other international food assistance program.

470.101 Definitions.

The following definitions are applicable to this subpart:

Commingled product means grains, oilseeds, rice, pulses, other similar commodities and the products of such commodities, when such commodity or product is normally stored on a commingled basis in such a manner that the commodity or product produced in the United States cannot be readily distinguished from a commodity or product not produced in the United States.

Foreign Agriculture Service (FAS) means such agency located within the Department of Agriculture.

Free alongside ship (f.a.s.) means a term of sale where the seller fulfills its obligation to deliver when the goods have been placed alongside the vessel on the quay or in lighters at the named port of shipment. The buyer bears all costs and risks of loss of or damage to the goods from that moment.

Grantee organization means an organization which will receive commodities from the United States Agency for International Development under Title II of the Food for Peace Act (7 U.S.C. 1721 *et seq.*) or from the Foreign Agricultural Service under the Food for Progress Act of 1985; the McGovern-Dole International Food for

Education and Child Nutrition Program; and any other international food assistance program.

Ingredient means spices, vitamins, micronutrients, desiccants, and preservatives when added to an agricultural commodity product.

Last contract lay day means the last day specified in an ocean freight contract by which the carriage of goods must start for contract performance.

Lowest landed cost means with respect to an agricultural product acquired under this part, the lowest aggregate cost for the acquisition of such product and the shipment of such product to a foreign destination.

Multi-port or multi-trip voyage charter means the charter of an ocean carrier in which the carrier will stop at two or more ports to discharge cargo.

470.102 Policy.

(a) *Policy*. USDA follows the policies and procedures set forth in the FAR as supplemented by the AGAR, in the procurement of agricultural commodities and products of agricultural commodities that are used in domestic and international food assistance and nutrition programs.

(b) *Electronic submission*. To the maximum extent possible, the use of electronic submission of solicitation-related documents shall be used with respect to the acquisition of agricultural commodities and related freight. However, to the extent that a solicitation allows for the submission in paper or hard copy format in addition to information in an electronic format and there is a discrepancy in such submissions, the information submitted in paper or hard copy format shall prevail unless the electronic submission states that a specific existing written term is superseded by the electronic submission.

(c) *Freight*. With respect to the acquisition of freight for the shipment of agricultural commodities and products of agricultural commodities, the provisions of the FAR, including part 47, shall be utilized as applicable and various types of services to be obtained may include multi-trip voyage charters.

470.103 United States origin of agricultural products.

(a) *Products for use in international food assistance programs*. As provided by 7 U.S.C. 1732(2) and 1736o–1(a) commodities and the products of agricultural commodities acquired for use in international feeding and development programs shall be products of United States origin. A product shall not be considered to be a product of the United States if it

contains any ingredient that is not produced in the United States if that ingredient is:

- (1) Produced in the United States; and
- (2) Commercially available in the United States at fair and reasonable prices from domestic sources.

(b) *Products for use in domestic food assistance programs.* Commodities and the products of agricultural commodities acquired by USDA for use in domestic food assistance programs shall be a product of the United States, except as may otherwise be required by law, and shall be considered to be such a product if it is grown, processed, and otherwise prepared for sale or distribution exclusively in the United States except with respect to ingredients as defined above. Ingredients from non-domestic sources will be allowed to be utilized as a United States product if such ingredients are not otherwise:

- (1) Produced in the United States; and
- (2) Commercially available in the United States at fair and reasonable prices from domestic sources.

(c) *Commingled product.* (1) Except as provided in paragraph (c)(2) of this section, a commingled product shall be considered to be a product of the United States if the offeror can establish that the offeror has in inventory at the time the contract for the commodity or product is awarded to the offeror, or obtains during the contract performance period specified in the solicitation, or a combination thereof, a sufficient quantity of the commodity or product that was produced in the United States to fulfill the contract being awarded, and all unfulfilled contracts that the offeror entered into to provide such commingled product to the United States.

(2) To the extent USDA has determined a commodity is one that is generally commingled but is also one which can be readily stored on an identity preserved basis with respect to its country of origin, USDA may require that the commodity procured shall be of 100 percent United States origin.

(d) *Product derived from animals.* With respect to the procurement of products derived from animals, the solicitation will set forth any specific requirement that is applicable to the country in which the animal was bred, raised, slaughtered or further processed.

470.201 Acquisition of commodities and freight shipment for Foreign Agricultural Service (FAS) programs.

(a) *Lowest landed cost and delivery considerations.* (1) Except as provided in paragraphs (a)(3) and (4) of this section, in contracts for FAS for commodities and related freight

shipment for delivery to foreign destinations, the contracting officer shall consider the lowest landed cost of delivering the commodity to the intended destination. This lowest landed cost determination will be calculated on the basis of rates and service for that portion of the commodities being purchased that is determined is necessary and practicable to meet cargo preference requirements and on an overall (foreign and U.S. flag) basis for the remaining portion of the commodities being procured and the additional factors set forth in this section. Accordingly, the solicitations issued with respect to a commodity procurement, or a related freight procurement will specify that in the event an offer submitted by a party is the lowest offered price, the contracting officer reserves the right to reject such offer if the acceptance of another offer for the commodity or related freight, when combined with other offers for commodities or related freight, results in a lower landed cost.

(2) USDA may contact any port prior to award to determine the port's cargo handling capabilities, including the adequacy of the port to receive, accumulate, handle, store, and protect the cargo. Factors considered in this determination may include, but not be limited to: The adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices. USDA may consider the use of another coastal range or port if a situation exists at a port that may adversely affect the ability of USDA to have the commodity delivered in a safe and timely manner. Such situations include:

- (i) A port is congested;
- (ii) Port facilities are overloaded;
- (iii) A vessel would not be able to dock and load cargo without delay;
- (iv) Labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; or
- (v) Other similar situation that may adversely affect the ability of USDA to have the commodity delivered in a timely manner.

(3) Use of other than lowest landed cost. In order to ensure that commodities are delivered in a timely fashion to foreign destinations and without damage, the contracting officer may award an acquisition without regard to the lowest land cost process set forth in paragraph (a)(1) of this section if:

- (i) The solicitation specifies that the lowest land cost process will not be followed in the completion of the contract; or

(ii) After issuance of the solicitation, it is determined that:

(A) Internal strife at the foreign destination or urgent humanitarian conditions threatens the lives of persons at the foreign destination;

(B) A specific port's cargo handling capabilities (including the adequacy of the port to receive, accumulate, handle, store, and protect commodities) and other similar factors may adversely affect the delivery of such commodities through damage or untimely delivery. Such similar factors include, but are not limited to: Port congestion; overloaded facilities at the port; vessels not being able to dock and load cargo without delay due to conditions at the port; labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; and the existence of inadequate or unsanitary warehouse and other supporting facilities;

(C) The total transit time of a carrier, as it relates to a final delivery date at the foreign destination may impair the timely delivery of the commodity;

(D) Other similar situations arise that materially affect the administration of the program for which the commodity or freight is being procured; or

(E) The contracting officer determines that extenuating circumstances preclude awards on the basis of lowest-landed cost, or that efficiency and cost-savings justify use of types of ocean service that would not involve an analysis of freight. However, in all such cases, commodities would be transported in compliance with cargo preference requirements. Other types of services may include, but are not limited to, multi-trip voyage charters, indefinite delivery/indefinite quantity (IDIQ), delivery cost and freight (C & F), delivery cost insurance and freight (CIF), and indexed ocean freight costs.

(4) If the contracting officer determines that action may be appropriate under paragraph (a)(3) of this section, prior to the acceptance of any applicable offer, the contracting officer will provide to the Head of Contracting Activity or Designee a written request to obtain commodities and freight in a manner other than on a lowest landed cost basis consistent with title 48 of the CFR. This request shall include a statement of the reasons for not using lowest landed cost basis. The HCA, or the designee one level above the contracting officer, may either accept or reject this request and shall document this determination.

(b) *Multiple offers or delivery points.* If more than one offer for the sale of commodities is received or more than one delivery point has been designated

in such offers, in order to achieve a combination of a freight rate and commodity award that produces the lowest landed cost for the delivery of the commodity to the foreign destination, the contracting officer shall evaluate offers submitted on a delivery point by delivery point basis; however, consideration shall be given to prioritized ocean transport service in determining lowest landed cost.

(c) *Freight shipping and rates.* (1) In determining the lowest-landed cost, USDA shall use the freight rates offered in response to solicitations issued by USDA or, if applicable, the grantee organization.

(2) Freight rates offered must be submitted as specified in the solicitation issued by USDA or, if applicable, the grantee organization. Any such solicitation issued by a grantee organization must contain the following elements:

(i) If directed by USDA, include a closing time for the receipt of written freight offers and state that late written freight offers will not be considered;

(ii) Provide that freight offers are required to have a canceling date no later than the last contract lay day specified in the solicitation;

(iii) Provide the same deadline for receipt of written freight offers from both U.S. flag vessel and non-U.S. flag vessels; and

(iv) Be received and opened prior to any related offer for acquisition of commodities to be shipped.

(3) USDA may require organizations that will receive commodities from USDA to submit information relating to the capacity of a U.S. port, or, if applicable, a terminal, prior to the acquisition of such commodities or freight.

(d) *Freight rate notification.* If USDA is not the party procuring freight with respect to a shipment of an agricultural commodity for delivery to a foreign destination, the organization that will receive commodities from USDA, or its shipping agent, shall be notified by USDA of the vessel freight rate used in determining the commodity contract award and the organization will be responsible for finalizing the charter or booking contract with the vessel representing the freight rate.

470.202 Acquisition of commodities for United States Agency for International Development (USAID) programs.

(a) *Lowest landed cost and delivery considerations.* (1) Except as provided in paragraphs (a)(3) and (d)(2) of this section, with respect to the acquisition of agricultural commodities for delivery to foreign destinations and related

freight to transport such commodities under Title II of Public Law 83–480, contracts will be entered into in a manner that will result in the lowest landed cost of such commodity delivery to the intended destination. This lowest landed cost determination shall be calculated on the basis of rates and service for that portion of the commodities being purchased that is determined is necessary and practicable to meet cargo preference requirements and on an overall (foreign and U.S. flag) basis for the remaining portion of the commodities being procured and the additional factors set forth in this section. Accordingly, the solicitations issued with respect to a commodity procurement, or a freight procurement will specify that in the event an offer submitted by a party is the lowest offered price, the contracting officer reserves the right to reject such offer if the acceptance of another offer for the commodity or freight, when combined with other offers for commodities or freight, results in a lower landed cost.

(2) USDA may contact any port prior to award to determine the port's cargo handling capabilities, including the adequacy of the port to receive, accumulate, handle, store, and protect the cargo. Factors which will be considered in this determination will include, but not be limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices. USDA may consider the use of another coastal range or port if a situation exists at a port that may adversely affect the ability of USDA to have the commodity delivered in a safe and/or timely manner. Such situations include:

(i) A port is congested;

(ii) Port facilities are overloaded;

(iii) A vessel would not be able to dock and load cargo without delay;

(iv) Labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; or

(v) Other similar situation that may adversely affect the ability of the Department to have the commodity delivered in a timely manner.

(3) In order to ensure that commodities are delivered in a timely fashion to foreign destinations and without damage, USDA may complete an acquisition without regard to the lowest land cost process set forth in paragraph (a)(1) of this section, if:

(i) The solicitation specifies that the lowest land cost process will not be followed in the completion of the contract; or

(ii) After issuance of the solicitation, it is determined that:

(A) Internal strife at the foreign destination or urgent humanitarian conditions threatens the lives of persons at the foreign destination;

(B) A specific port's cargo handling capabilities (including the adequacy of the port to receive, accumulate, handle, store, and protect commodities) and other similar factors will adversely affect the delivery of such commodities without damage or in a timely manner. Such similar factors include, but are not limited to: Port congestion; overloaded facilities at the port; vessels would not be able to dock and load cargo without delay; labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; and the existence of inadequate or unsanitary warehouse and other supporting facilities;

(C) The total transit time of a carrier, as it relates to a final delivery date at the foreign destination may impair the ability of USDA to achieve timely delivery of the commodity; or

(D) Other similar situations arise that materially affect the administration of the program for which the commodity or freight is being procured.

(4) If the contracting officer determines that action may be appropriate under paragraph (a)(3) of this section, prior to the acceptance of any applicable offer, the contracting officer shall provide to the HCA or Designee and to USAID, a written request to obtain commodities and freight in a manner other than on a lowest landed cost basis. This request shall include a statement of the reasons for not using lowest landed cost basis. The HCA or Designee one level above the contracting officer, with the concurrence of USAID, shall, on an expedited basis, either accept or reject this request and shall document this determination in writing and provide a copy to USAID.

(b) *Freight shipping and rates.* (1) In determining lowest-landed cost as specified in paragraph (a) of this section, USDA shall use vessel rates offered in response to solicitations issued by USAID or grantee organizations receiving commodities under 7 U.S.C. 1721 *et seq.*

(2) USAID may require, or direct a grantee organization to require, an ocean carrier to submit offers electronically through a Web-based system maintained by USDA. If electronic submissions are required, USDA may, at its discretion, accept corrections to such submissions that are submitted in a written form other than by use of such Web-based system.

(c) *Delivery date.* The contracting officer shall consider total transit time, as it relates to a final delivery date, in order to satisfy program requirements for Title II of Public Law 83–480.

(d) *Multiple awards or delivery points.* (1) If more than one offer for the sale of commodities is received or more than one delivery point has been designated in such offers, in order to achieve a combination of a freight rate and commodity award that produces the lowest landed cost for the delivery of the commodity to the foreign destination, the contracting officer shall evaluate offers submitted on a delivery point by delivery point basis; however, consideration shall be given to prioritized ocean transport service in determining lowest landed cost.

(2) The contracting officer may determine that extenuating circumstances preclude awards on the basis of lowest landed cost. However, in all such cases, commodities may be transported in compliance with cargo preference requirements as determined by USAID.

(3) The contracting officer shall notify USAID or, if applicable, the grantee organization, that its shipping agent will be notified of the vessel freight rate used in determining the commodity contract award. The grantee organization or USAID will be responsible for finalizing the charter or booking contract with the vessel representing the freight rate so used.

470.203 Cargo preference.

An agency having responsibility under this subpart shall administer its programs, with respect to this subpart, in accordance with regulations prescribed by the Secretary of Transportation.

PARTS 471 THROUGH 499— [RESERVED]

Donald Baker,

*Senior Procurement Executive (SPE), Director,
Office of Contracting and Procurement.*

[FR Doc. 2024–22463 Filed 10–4–24; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket Nos. 090206140–91081–03 and
120405260–4258–02; RTID 0648–XE337]

Revised Reporting Requirements Due to Catastrophic Conditions for Federal Seafood Dealers, Individual Fishing Quota Dealers, and Charter Vessels and Headboats in Portions of Florida and Georgia

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; determination of catastrophic conditions.

SUMMARY: In accordance with the regulations implementing the individual fishing quota (IFQ) program, Federal dealer reporting, and Federal charter vessel and headboat (for-hire vessel) reporting specific to the reef fish fishery in the Gulf of Mexico (Gulf), coastal migratory pelagic (CMP) fisheries in the Gulf and Atlantic, snapper-grouper fishery in the South Atlantic, and dolphin and wahoo fishery in the Atlantic, the Regional Administrator (RA), NMFS Southeast Region, has determined that Hurricane Helene has caused catastrophic conditions in the Gulf for certain Florida counties and in the Atlantic for certain Georgia counties. This temporary rule authorizes, in the affected area described in this temporary rule, any Federal dealer or for-hire electronic reporting program participant who does not have access to electronic reporting to delay reporting, and any IFQ dealer to use paper-based forms, if necessary, for basic required administrative functions, *e.g.*, landing transactions. This temporary rule is intended to facilitate continuation of IFQ and electronic reporting operations during the period of catastrophic conditions.

DATES: The RA is authorizing Federal dealers, for-hire electronic reporting program participants, and IFQ dealers in the affected area to use revised reporting methods from October 2, 2024, through November 1, 2024.

FOR FURTHER INFORMATION CONTACT: IFQ Customer Service, Britni Lavine, telephone: 866–425–7627, email: nmfs.ser.catchshare@noaa.gov. Federal dealer reporting, Fisheries Monitoring Branch, telephone: 305–361–4581. NMFS Southeast For-Hire Integrated Electronic Reporting Program: 1–833–707–1632.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP), prepared by the Gulf of Mexico Fishery Management Council (Gulf Council). The CMP fishery is managed under the FMP for CMP Resources in the Gulf of Mexico and Atlantic Region (CMP FMP), prepared by the Gulf Council and South Atlantic Fishery Management Council (South Atlantic Council). The snapper-grouper fishery in the South Atlantic is managed under the FMP for the Snapper-Grouper Fishery of the South Atlantic Region, prepared by the South Atlantic Council. The dolphin and wahoo fishery in the Atlantic is managed under the FMP for the Dolphin and Wahoo Fishery of the Atlantic, prepared by the South Atlantic Council. The Secretary implemented these FMPs through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The Generic Dealer Amendment established Federal dealer reporting requirements for federally permitted dealers in the Gulf and South Atlantic (79 FR 19490, April 9, 2014). The Headboat Reporting Framework Action established the Southeast Region Headboat Survey (SRHS) electronic reporting program (79 FR 6097, February 3, 2014). The final rule implementing the South Atlantic For-Hire Reporting Amendment included reporting requirements for South Atlantic snapper-grouper, Atlantic dolphin and wahoo, and CMP owners and operators of South Atlantic and applicable Atlantic for-hire vessels (85 FR 10331, February 24, 2020). Amendment 26 to the Reef Fish FMP established an IFQ program for the commercial red snapper component of the Gulf reef fish fishery (71 FR 67447, November 22, 2006). Amendment 29 to the Reef Fish FMP established an IFQ program for the commercial grouper and tilefish components of the Gulf reef fish fishery (74 FR 44732, August 31, 2009). Regulations implementing these Gulf and South Atlantic dealer reporting requirements, IFQ programs, and for-hire reporting requirements require that Federal dealers, IFQ dealers, and for-hire reporting program participants have access to a computer and internet. However, these regulations also specify that during catastrophic conditions, as determined by the RA, the RA may waive or modify the reporting time requirements for Federal dealers and authorize IFQ dealers to use paper-

based forms to complete administrative functions for the duration of the catastrophic conditions. The RA must determine that catastrophic conditions exist, specify the duration of the catastrophic conditions, and specify which participants or geographic areas are deemed affected.

Hurricane Helene made landfall in the U.S. in Taylor County, Florida, in the Gulf as a Category 4 hurricane on September 26, 2024. Strong winds and flooding from this hurricane impacted communities along coastal Florida in the Gulf and coastal Georgia in the South Atlantic. This resulted in power outages and damage to homes, businesses, and infrastructure. As a result, the RA has determined that catastrophic conditions exist in the Gulf for the Florida counties of Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco, and Pinellas. For the South Atlantic, the RA has determined that catastrophic conditions also exist for Georgia counties of Chatham, Bryan, Liberty, McIntosh, Glynn, and Camden.

Through this temporary rule, the RA is authorizing Federal dealers, SRHS program participants, and South Atlantic Federal for-hire operators to delay electronic reporting to NMFS and IFQ dealers in the affected area to use paper-based forms, from October 2, 2024, through November 1, 2024. NMFS will provide additional notification to affected dealers via NOAA Weather Radio, Fishery Bulletins, and other appropriate means. NMFS will continue to monitor and re-evaluate the areas and duration of the catastrophic conditions, as necessary.

Dealers may delay electronic reporting of trip tickets to NMFS during catastrophic conditions. Dealers are to report all landings to NMFS as soon as possible. Assistance for Federal dealers in affected area is available from the NMFS Fisheries Monitoring Branch at 1-305-361-4581.

SRHS program participants may delay electronic reporting of logbooks to NMFS during catastrophic conditions. SRHS participants are to report all logbooks to NMFS as soon as possible.

South Atlantic Federal for-hire operators may delay electronic reporting of logbooks and "Did Not Fish" reports to NMFS during catastrophic conditions. South Atlantic Federal for-hire operators are to report all landings or Did Not Fish reports to NMFS as soon as possible. Assistance for Federal for-hire operators in the affected area is available from the NMFS Southeast For-Hire Integrated Electronic Reporting Program at 1-833-707-1632, Monday through Friday, between 8 a.m. and 4:30 p.m., Eastern Time. The electronic

systems for submitting information to NMFS will continue to be available to all Federal for-hire operators, and for-hire operators are encouraged to continue using these systems, if accessible.

NMFS previously provided Federal IFQ dealers with the necessary paper forms and instructions for submission in the event of catastrophic conditions. Paper forms are also available from the RA upon request. The electronic systems for submitting information to NMFS will continue to be available to all dealers, and dealers in the affected area are encouraged to continue using these systems, if accessible. The administrative program functions available to IFQ participants in the area affected by catastrophic conditions will be limited under the paper-based system. There will be no mechanism for transfers of IFQ shares or allocation under the paper-based system in effect during catastrophic conditions. Assistance in complying with the requirements of the paper-based system will be available via the NMFS Catch Share Support line, 1-866-425-7627 Monday through Friday, between 8 a.m. and 4:30 p.m., Eastern Time.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is consistent with the regulations in 50 CFR 622.5(c)(1)(iii), 622.21(a)(3)(iii) (2020), 622.22(a)(3)(iii) (2020), 622.26(b)(3), 622.176(b)(3), 622.271(b)(3), and 622.374(b)(3), which were issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest. Such procedures are unnecessary because the final rules implementing the Gulf IFQ programs, the Gulf and South Atlantic Federal dealer reporting requirements, and Gulf and South Atlantic for-hire vessel reporting requirements, and the SRHS reporting requirements have already been subject to notice and public comment. These rules authorize the RA to determine when catastrophic conditions exist, and which participants or geographic areas are deemed affected by catastrophic conditions. The final rules also authorize the RA to provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA Weather Radio, Fishery Bulletins, and other appropriate means. All that remains is to notify the

public that catastrophic conditions exist, that Federal dealers and may use paper forms, and that Federal dealers, South Atlantic for-hire permit holders, and SRHS participants may submit delayed reports. Such procedures are also contrary to the public interest because of the need to immediately implement this action because affected dealers continue to receive these species in the affected area and fishermen continue to operate, and need a means of completing their landing transactions and logbook reports. With the power outages and damages to infrastructure that have occurred in the affected area due to Hurricane Helene, numerous businesses are unable to complete landings transactions, fishing reports, and dealer reports electronically. In order to continue with their businesses, IFQ dealers need to be aware they can report using the paper forms, and Federal dealers, South Atlantic for-hire permit holders, and SRHS participants need to be aware that they can delay reporting.

For the aforementioned reasons, there is good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 2024.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-23072 Filed 10-2-24; 4:15 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220919-0193; RTID 0648-XE331]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category October Through November Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 100 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category October through November 2024 time period. With this transfer, the adjusted General category October through November time period subquota is 192.4 mt and the Reserve

category quota is 61.5 mt. This action is intended to provide further harvest opportunities for General category fishermen, based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic Tunas General category (commercial) permitted vessels and Atlantic Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective October 2, 2024, through November 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Larry Redd, Jr., (larry.redd@noaa.gov) and Ann Williamson (ann.williamson@noaa.gov) by email or by phone at 301-427-8503.

SUPPLEMENTARY INFORMATION: Atlantic BFT fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635. Section 635.27(a) divides the U.S. BFT quota, established by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act at 16 U.S.C. 1854(g)(1)(D) to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

As described in § 635.27(a), the current baseline U.S. BFT quota is 1,316.14 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The baseline quotas for the General and Reserve categories are 710.7 mt and 38.2 mt, respectively. The General category baseline quota is suballocated to different time periods. Relevant to this action, the baseline subquota for the October to November time period is 92.4 mt. To date, NMFS has published two actions that adjusted the Reserve category quota (89 FR 58074, July 17, 2024; 89 FR 77029, September 20,

2024). The current adjusted Reserve category quota is 161.5 mt.

Transfer From the Reserve Category to the October Through November 2024 Subquota

Under § 635.27(a)(8), NMFS has the authority to transfer quota among fishing categories or subcategories after considering the determination criteria provided under § 635.27(a)(7). This section focuses on the calculations involved in transferring quota from the Reserve category to the General category; the consideration of the determination criteria can be found below after this section.

As stated above, the baseline October through November time period subquota and adjusted Reserve quota are 92.4 mt and 161.5 mt, respectively. At this time after considering the relevant determination criteria (see below), NMFS is transferring 100 mt from the Reserve category to the General category October through November time period. This transfer will result in an adjusted October through November time period subquota of 192.4 mt (92.4 mt + 100 mt = 192.4 mt) and an adjusted Reserve category quota of 61.5 mt (161.5 mt – 100 mt = 61.5 mt). The General category quota is available for use by Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. The General category fishery will remain open until November 30, 2024, or until the adjusted General category quota is reached, whichever comes first.

Consideration of the Relevant Determination Criteria

NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer (§ 635.27(a)(7)). These criteria include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(7)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS considered the catches of the General category quota to date and the likelihood of closure of the General category if no adjustment is made (§ 635.27(a)(7)(ii)), as well as daily landing trends and the availability of BFT on fishing grounds (§ 635.27(a)(7)(ix)). The General category October through November time period has recently opened and based on projected daily landings rates, without a quota transfer at this time, NMFS would likely need to close the General category fishery shortly and participants would have to stop BFT fishing activities despite commercial-sized BFT remaining available in the areas where General category permitted vessels operate. This quota transfer would provide limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the General category to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(7)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS may adjust each time period's subquota based on overharvest or underharvest in the prior time period and may transfer subquota from one time period to another time period. By allowing for the current quota transfer, NMFS anticipates that the General category quota would be used before the end of the fishing year. Thus, this quota transfer would allow General category fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable opportunity to harvest the available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(7)(iv)) and the ability to account for all 2024 landings and dead discards (§ 635.27(a)(7)(xi)). In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS recently took such an action to carry over the allowable 134.1 mt of underharvest from 2023 to 2024 (89 FR 77029, September 20, 2024). NMFS anticipates having sufficient quota to account for landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations.

NMFS also considered the effects of the adjustment on BFT rebuilding and overfishing, and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(7)(v) and (vi)). This quota transfer would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations (established in Recommendation 22–10), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status such as rebuilding and avoiding overfishing, and effects on the stock. This quota transfer in line with the established management measures and stock status determinations. It is also important that NMFS limit landings to the quota both to adhere to the FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (e.g., fish caught at each age) that was assumed in the latest stock assessment, and this quota transfer is consistent with those objectives. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota. This consideration is based on the objectives of the 2006 Consolidated HMS FMP and its amendments, including achieving optimum yield on a continuing basis and allowing all permit categories a reasonable opportunity to harvest available BFT quota allocations (related to § 635.27(a)(7)(x)).

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Per § 635.5(b)(2)(i)(A), dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required per § 635.5(a)(4) to report their own catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing <https://hmspermits.noaa.gov> or by using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS

may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may access <https://hmspermits.noaa.gov>, for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act (16 U.S.C. 1885(d)) and regulations at 50 CFR part 635 and this action is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and opportunity to provide comment on this action, as notice and comment would be impracticable and contrary to the public interest for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason adjustments and quota transfers to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing prior notice and opportunity for public comment on this quota transfer to the General category for the remainder of 2024 is impracticable and contrary to the public interest as the General category fishery is currently underway. Based on General category catch rates, a delay in this action would likely result in closure of the General category fishery when the baseline quota is met, with attendant administrative costs and costs to the fishery. NMFS could not have proposed this action earlier, as it needed to consider updated landings data in deciding whether to transfer a portion of the Reserve category quota to the General category quota. A delay in implementing this quota transfer would preclude the fishery from harvesting BFT that are currently available on the fishing grounds and that might otherwise become unavailable during a delay. This action does not raise conservation and management concerns and would support effective management of the BFT fishery. Transferring quota from the Reserve category to the General category October through November time period does not affect the overall ICCAT-allocated U.S. BFT quota, and available data show the adjustment would have a minimal risk of exceeding the overall quota. NMFS

notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA finds that pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effective date.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 2, 2024.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–23129 Filed 10–2–24; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 240227–0061]

RTID 0648–XE359

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure; request for comments.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use the 2024 total allowable catch of Pacific cod allocated to catcher vessels using trawl gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 4, 2024, through 2400 hours, A.l.t., December 31, 2024. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 22, 2024.

ADDRESSES: You may submit comments on this document, identified by docket number NOAA–NMFS–2023–0133, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2023–0133 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), 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).

FOR FURTHER INFORMATION CONTACT:

Abby Jahn, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and in 50 CFR part 679.

NMFS closed directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA on September 1, 2024 (89 FR 72340, September 5, 2024). NMFS has determined that as of October 1, 2024, approximately 2,300 metric tons of Pacific cod remain in the 2024 Pacific cod apportionment for catcher vessels using trawl gear in the Central Regulatory Area of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2024 total allowable catch (TAC) of Pacific cod allocated to catcher vessels using trawl gear in the Central Regulatory Area of the GOA, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) the current catch of Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA and (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and

an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 1, 2024.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels catcher vessels using trawl gear in the Central Regulatory Area of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until October 22, 2024.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 2024.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–23086 Filed 10–2–24; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 89, No. 194

Monday, October 7, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2023–0493; FRL–12089–01–R5]

Air Plan Approval; Ohio; Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a September 28, 2023, State Implementation Plan (SIP) submittal from the Ohio Environmental Protection Agency (Ohio EPA). The SIP submittal consists of a source-specific limitation for a flexographic printing line cold cleaner at the Valgroup company's plastic extrusion plant in Findlay, Ohio. The source-specific limitation reflects the technological differences between the facility's new control unit and established cold cleaner requirements currently established in Ohio's SIP. Ohio EPA has determined that the source-specific limit for the cold cleaner is more stringent than existing cold cleaner limits in the Ohio SIP. The limitation is established through the Ohio SIP for control of emissions of volatile organic compounds (VOCs) from stationary sources and is listed as an enforceable condition in the facility's operating permit, issued by Ohio EPA on July 18, 2023.

DATES: Comments must be received on or before November 6, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2023–0493 at <https://www.regulations.gov>, or via email to langman.michael@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit electronically any

information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Air and Radiation Division (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, maietta.anthony@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

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

I. What is the background for this action?

The Ohio SIP contains VOC emissions control requirements for solvent metal cold cleaning (metal parts washing) at Title 3745, Chapter 21, Rule 09 of the Ohio Administrative Code (OAC 3745–21–09), more specifically at OAC 3745–21–09(O)(2). On December 27, 2022, Valgroup applied for a new cold cleaning unit at its Findlay facility to be added to its operating permit. Paragraphs OAC 3745–21–09(O)(2)(c)(i) and (ii) of the SIP require the installation of a freeboard that gives a freeboard ratio greater than or equal to 0.7, and a water cover with usage of a solvent that is heavier than water. However, Valgroup's new cold cleaner is not designed in such a way that these methods could apply to the equipment. In its December 27, 2022, request,

Valgroup indicated that installation of either device as described in paragraphs OAC 3745–21–09(O)(2)(c)(i) and (ii) was technically infeasible. Valgroup requested approval of the installation of a regenerative thermal oxidizer (RTO) to control its new cold cleaner, as allowed under paragraph OAC 3745–21–09(O)(2)(c)(iii) which indicates that “[o]ther systems of equivalent control . . . approved by the director” may be installed.

In an April 17, 2023, Equivalent Control Determination letter to Ohio EPA, Valgroup demonstrated that installation of the requested RTO would provide a greater control efficiency than available through OAC 3745–21–09(O)(2)(c)(i) and (ii). Upon review of the Equivalent Control Determination, Ohio EPA agreed with Valgroup's request. Ohio EPA made a draft permit-to-install available for public comment, with the option for a commenter to request a public hearing on the permit. The public comment and hearing request period was held from June 17 to July 17, 2023. No comments were received and no hearing was requested. Ohio EPA issued the final permit-to-install to Valgroup on July 18, 2023. The new permit, Ohio EPA permit number P0133504, establishes operating, recordkeeping, and reporting requirements for the new RTO emissions unit at the Findlay plant (Ohio facility ID 0332010121).

As required in the Ohio SIP for VOCs from stationary sources under OAC 3745–21–09(B)(2), in order to approve a source-specific control option under OAC 3745–21–09(O)(2)(c)(iii), the revision must be submitted to EPA and approved as a revision to the Ohio SIP. On September 28, 2023, Ohio EPA submitted a request for EPA to approve the source-specific terms and conditions from Valgroup's July 18, 2023, permit-to-install into the Ohio SIP, which contains the RTO and its operating, recordkeeping, and reporting requirements.

II. What is EPA's analysis of the source-specific VOC limit?

The cold cleaning unit is part of a flexographic printing line that Valgroup submitted a permit application to install in December 2022. The cold cleaner utilizes a solvent greater than 0.6 pounds per square inch absolute measured at one hundred degrees

Fahrenheit to clean parts of the flexographic printing line after use. The solvent vapor pressure requires Valgroup to comply with one of the three vapor control measures for cold cleaners outlined in Ohio's SIP at OAC 3745–21–09(O)(2)(c).

Typically, cold cleaners resemble a large top hinged-lid tank containing the solvent that metal parts are dipped into to be cleaned. The distance of the tank's side walls from the solvent surface to the top edge of the tank is called the freeboard. OAC 3749–21–09(O)(2)(c)(1) requires cold cleaners to have a 'freeboard ratio', defined as the freeboard height divided by the width of the solvent area, greater than or equal to 0.7. As indicated in EPA's Office of Air Quality Planning and Standards *Guidelines for Control of Volatile Organic Emissions from Solvent Metal Cleaning* (solvent metal cleaning control techniques guidelines or CTG), utilization of this freeboard ratio will result in a 25%–30% VOC control efficiency from the cold cleaning process. See EPA-450/2-77-022, November 1977.

The cold cleaner that Valgroup proposed to install is not designed as a top hinged-lid tank containing solvent. Instead, metal parts are loaded into the empty cleaner via a side door which is then closed. The solvent is held in a separate storage tank and pumped into the cleaner, washing the metal parts and draining back into the separate storage tank. Therefore, there is no volume of liquid solvent in the cold cleaner to form a freeboard ratio for Valgroup to comply with.

The second compliance option listed at OAC 3745–21–09(O)(2)(c)(2) requires the source to utilize a solvent that is heavier than water and then keep a water cover on top of the solvent. As indicated in EPA's *Compilation of Air Pollutant Emissions Factors from Stationary Sources* (AP-42), use of a water cover results in a 55%–69% VOC control efficiency. However, Valgroup's cold cleaner does not maintain a constant level of solvent in the wash chamber. As described above, the solvent is instead drained back into a separate storage tank. Additionally, in its December 27, 2022, request, Valgroup indicated that the solvent utilized in the cold cleaner is less dense than water. Therefore, there is no technically-feasible way for Valgroup's cold cleaner to comply with the water cover requirement at OAC 3745–21–09(O)(2)(c)(2).

The third control device compliance option for Valgroup's cold cleaner, at OAC 3745–21–09(O)(2)(c), is for "[o]ther systems of equivalent control . . .

approved by the director". In Valgroup's December 27, 2022, request, the company proposed an RTO that could meet an overall VOC destruction efficiency of 88%. The overall VOC destruction efficiency is based on 90% capture efficiency and 98% control efficiency between the inlet and outlet of the RTO. The 88% overall destruction efficiency exceeds the freeboard and water cover compliance options in OAC 3745–21–09(O)(2)(c). So long as Ohio requires the Valgroup cold cleaner RTO to meet a control efficiency equivalent to or better than the freeboard and water cover compliance options, the RTO is approvable into the Ohio SIP.

Ohio EPA reviewed the proposed RTO's specifications as part of its examination of Valgroup's December 27, 2022, request and in its July 18, 2023, permit-to-install for Valgroup. Ohio EPA listed the 88% overall destruction efficiency, 90% capture efficiency, and 98% control efficiency as terms and conditions for the unit in paragraphs C.2.b)(1), C.2.b)(1)d., C.2.b)(2), and C.2.b)(2)d. of the permit-to-install. The limit is more stringent than the freeboard and water cover compliance options outlined in 3745–21–09(O)(2)(c) and therefore is approvable into the Ohio SIP.

In addition to a VOC control requirement, the July 18, 2023, permit-to-install also contains recordkeeping and reporting requirements for the RTO. Paragraphs C.2.d) and C.2.d)(1) of the permit-to-install require Valgroup to maintain a daily log of operating time for the RTO and monitoring equipment and record all 3-hour periods of operation when the average combustion temperature in the RTO was more than 50 degrees Fahrenheit below the average combustion temperature measured during the unit's most recent compliance test. Until the unit has been compliance tested, the RTO must be operated and maintained in accordance with the manufacturer's instructions and operating manual. Paragraphs C.2.e) and C.2.e)(2) require Valgroup to submit quarterly summaries of the operating time and 3-hour average combustion temperatures of the RTO, on a set calendar date schedule. EPA has determined that the recordkeeping and reporting requirements for the RTO are appropriate compliance demonstration mechanisms to ensure that the VOC control requirements are being met, and that these compliance demonstration requirements are approvable into the Ohio SIP.

III. What action is EPA taking?

EPA is proposing to approve the addition of paragraphs C.2.b)(1),

C.2.b)(1)d., C.2.b)(2), C.2.b)(2)d., C.2.d), C.2.d)(1), C.2.e), and C.2.e)(2) as listed in the July 18, 2023, permit-to-install for the Valgroup company into the Ohio SIP.

IV. Incorporation by Reference

In this rulemaking, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference certain provisions of the Ohio Division of Air Pollution Control Permit-to-Install for Valgroup's Findlay, Ohio plastic extrusion plant, effective July 18, 2023, as described in section III of this preamble. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. 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.

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 rulemaking does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and

Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines 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.”

Ohio EPA did not evaluate EJ considerations as part of its SIP

submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. 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 EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

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

Dated: October 2, 2024.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2024–23140 Filed 10–4–24; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 89, No. 194

Monday, October 7, 2024

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.

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Annual Meeting

TIME AND DATE: 10 a.m.–12:30 p.m.
November 1, 2024

PLACE: Harrisburg Hilton and Towers.
One North Second Street, Harrisburg,
PA 17101/Virtually via MS Teams.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public: The primary purpose of this meeting is to (1) Review the independent auditors' report of the Commission's financial statements for fiscal year 2023–2024; (2) Review the Low-Level Radioactive Waste (LLRW) disposal information for 2023; (3) Consider a proposed revised budget for fiscal year 2024–2025 and a proposed budget for fiscal year 2025–2026; (4) Review the status of commercial LLRW disposal facilities and recent developments; (5) Review and Discuss proposed changes to the bylaws; and (6) Elect the Commission's Officers.

Portions Closed to the Public: Executive Session, if deemed necessary, will be announced at the meeting.

CONTACT PERSON FOR MORE INFORMATION: Rich Janati, Administrator of the Commission at 717.787.2480.

Rich Janati,

Administrator, Appalachian States Low-Level Radioactive Waste Commission.

[FR Doc. 2024–22126 Filed 10–4–24; 8:45 am]

BILLING CODE P

CIVIL RIGHTS COLD CASE RECORDS REVIEW BOARD

[Agency Docket Number: CRCCRRB–2025–0001–N]

Notice of Formal Determination on Records Release

AGENCY: Civil Rights Cold Case Records Review Board.

ACTION: Notice.

SUMMARY: The National Archives and Records Administration (NARA) provided 69 pages of records to the Civil Rights Cold Case Records Review Board related to a civil rights cold case incident to which the Review Board assigned the unique identifier 2023–001–001. NARA did not propose any postponements of disclosure. On October 1, 2024, the Review Board determined that the records should be publicly disclosed in the Civil Rights Cold Case Records Collection. By issuing this notice, the Review Board complies with section 7(c)(4) of the Civil Rights Cold Case Records Collection Act of 2018 that requires the Review Board to publish in the **Federal Register** its determinations on the disclosure or postponement of records in the Collection no more than 14 days after the date of its decision.

FOR FURTHER INFORMATION CONTACT: Stephannie Oriabure, Chief of Staff, Civil Rights Cold Case Records Review Board, 1800 F Street NW, Washington, DC 20405, (771) 221–0014, info@coldcaserecords.gov.

Authority: Pub. L. 115–426, 132 Stat. 5489 (44 U.S.C. 2107).

Dated: October 2, 2024.

Stephannie Oriabure,
Chief of Staff.

[FR Doc. 2024–23128 Filed 10–4–24; 8:45 am]

BILLING CODE 6820–SY–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the U.S. Virgin Islands Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual business meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules

and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the U.S. Virgin Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold two public meetings via Zoom. The purpose of these meetings is to discuss and vote on the Committee's final version of the project proposal and to potentially hear from subject-matter experts on the Committee's selected civil rights topic.

DATES:

- Thursday, October 24, 2024, from 11:00 a.m.–12:00 p.m. Atlantic Time
- Tuesday, November 12, 2024, from 11:00 a.m.–12:00 p.m. Atlantic Time

ADDRESSES: These meetings will be held via Zoom.

October 24th Meeting:

- *Registration Link (Audio/Visual):* <https://bit.ly/3XZ9rDX>
- *Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: 161 043 6598#

November 12th Meeting:

- *Registration Link (Audio/Visual):* <https://bit.ly/4dnFimk>
- *Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: 160 093 2791#

FOR FURTHER INFORMATION CONTACT:

David Barreras, Designated Federal Officer, at dbarreras@usccr.gov or 1–202–656–8937.

SUPPLEMENTARY INFORMATION: These Committee meetings are available to the public through the registration links above. Any interested members of the public may attend these meetings. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of each meeting will include a list of persons who are present. 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 is available by selecting “CC” in the meeting platform. To request additional accommodations, please email svillanueva@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 scheduled meeting. Written comments may be emailed to Sarah Villanueva at svillanueva@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1-202-656-8937.

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 the file sharing website, <https://bit.ly/3BrSCZO>. 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 svillanueva@usccr.gov.

Agenda

- I. Welcome and Roll Call
- II. Committee Discussion
- III. Public Comment
- IV. Next Steps
- V. Adjournment

Dated: October 2, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024-23121 Filed 10-4-24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Iowa Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement 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 Iowa Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public business meeting via Zoom on Thursday, October 17, 2024 from 3 p.m.-4 p.m. Central Time. The purpose of the meeting is for SAC members to debrief testimony and discuss next steps with the Committee.

DATES: Thursday, October 17, 2024, from 3 p.m.-4 p.m. Central Time.

ADDRESSES: The meeting will be held via Zoom.

October 17th Business Meeting

—Registration Link: https://www.zoomgov.com/webinar/register/WN_XL6XMg3aQuSRoQqiZRceiA
—Join by Phone (Audio Only) 1-833-435-1820 USA Toll Free: Meeting ID: 160 228 4537

FOR FURTHER INFORMATION CONTACT:

Mallory Trachtenberg, Designated Federal Officer, at mtrachtenberg@usccr.gov or 1-202-809-9618.

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. To request additional accommodations, please email Corrine Sanders, Support Specialist, at csanders@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 meeting. Written comments may be emailed to Mallory Trachtenberg, mtrachtenberg@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809-9618.

Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, Iowa 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 mtrachtenberg@usccr.gov.

Agenda

- I. Welcome and Roll Call
- II. Discussion: Testimony debrief
- III. Public Comment
- IV. Adjournment

During public comment, students who wish to respond to the Committee's study are welcome to share any comments. Questions the Committee is considering include:

- Are you aware of mental health services in your school?
- If you or someone you know needed mental health services, would you know who to go to in your school?
- Would you be comfortable accessing mental health services through your school? If not, why not?
- If you have used mental health services in the past, have you found them helpful? If not, why not?
- Is there anything else you would like the Iowa Advisory Committee to the US Commission on Civil Rights to know about your experience with accessing mental and behavioral healthcare in Iowa's K-12 schools?

Dated: October 2, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024-23108 Filed 10-4-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Domestic and International Client Export Services and Customized Forms Revision

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on July 29, 2024, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: International Trade Administration, Commerce.

Title: Domestic and International Clients Export Services & Customized Forms.

OMB Control Number: 0625-0143.

Form Number(s): None.

Type of Request: Renewal submission with revision to a currently approved collection.

Number of Respondents: 200,000.

Average Hours per Response: 10 minutes.

Burden Hours: 33,333 (annual).

Needs and Uses: The International Trade Administration's (ITA) Global Markets' U.S. Commercial Service (CS) is mandated by Congress to broaden and deepen the U.S. exporter base. ITA accomplishes this by providing counseling, programs and services to help U.S. organizations export and conduct business in overseas markets. This information collection package enables the CS to provide appropriate export services to U.S. exporters and international buyers.

ITA offers a variety of services to enable clients to begin exporting or to expand existing exporting efforts. Clients may learn about our services from business related entities such as the National Association of Manufacturers, Federal Express, State Economic Development offices, the internet or word of mouth. The CS provides a standard set of services to assist clients with identifying potential overseas partners, establishing meeting programs with appropriate overseas business contacts and providing due diligence reports on potential overseas business partners. The CS also provides other export-related services considered to be of a "customized nature" because they do not fit into the standard set of CS export services but are driven by unique business needs of individual clients.

Before the CS can provide export-related services to clients, such as assistance with identifying potential partners or providing due diligence, specific information is required to determine the client's business objectives and needs. For example, before a service can be provided to identify potential business partners, it is necessary to know whether the client would like a potential partner to have specific technical qualifications, coverage in a specific market, English or foreign language ability or warehousing requirements. This information collection is designed to elicit such data so that appropriate services can be proposed and conducted to most effectively meet the client's exporting goals. Without these forms the CS is unable to provide services when requested by clients.

The forms ask U.S. exporters standard questions about their company details, demographic information, export experience, information about the products or services they wish to export and exporting goals. A few questions are tailored to a specific program type and will vary slightly with each program. CS staff use this information to gain an understanding of client's needs and objectives so that they can provide appropriate and effective export

assistance tailored to an exporter's particular requirements.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; and Federal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Public Law 15 U.S.C. *et seq.* and 15 U.S.C. 171 *et seq.*

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the collection or the OMB Control Number 0625–0143.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–23075 Filed 10–4–24; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979, C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Continuation of Antidumping Duty Order and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that the revocation of the antidumping duty (AD) order and countervailing duty (CVD) order on certain crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China) would likely lead to the continuation or recurrence of dumping and net countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable September 20, 2024.

FOR FURTHER INFORMATION CONTACT: Jose Rivera (CVD) and Howard Smith (AD), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0842, or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2012, Commerce published in the **Federal Register** the **AD Order** and **CVD Order** on solar cells from China.¹ On February 1, 2024, Commerce initiated the second sunset review of the **Orders**,² pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that revocation of the **Orders** would likely lead to the continuation or recurrence of dumping and net countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of dumping and subsidy rates likely to prevail should the **Orders** be revoked.³

On September 20, 2024, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the **Orders** would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁴

Scope of the Orders

The merchandise covered by the **Orders** are crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully

¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012) (**CVD Order**); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 FR 73018 (December 7, 2012) (**AD Order**) (collectively, the **Orders**).

² See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 6499 (February 1, 2024).

³ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order*, 89 FR 48391 (June 6, 2024), and accompanying Issues and Decision Memorandum (IDM); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order*, 89 FR 48559 (June 7, 2024), and accompanying IDM.

⁴ See *Citation to ITC Notice*, 89 FR 78900 (September 20, 2024) (*ITC Final Determination*).

assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

The *Orders* covers crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of the *Orders*.

Excluded from the scope of the *Orders* are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of the *Orders* are crystalline silicon photovoltaic cells, not exceeding 10,000 mm² in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Additionally, excluded from the scope of the *Orders* are panels with surface area from 3,450 mm² to 33,782 mm² with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and 3.19 watts. For the purposes of this exclusion, no panel shall contain an internal battery or external computer peripheral ports.

Also excluded from the scope of the *Orders* are:

1. Off grid CSPV panels in rigid form with a glass cover, with the following characteristics:

(A) a total power output of 100 watts or less per panel;

(B) a maximum surface area of 8,000 cm² per panel;

(C) do not include a built-in inverter;

(D) must include a permanently connected wire that terminates in either an 8mm male barrel connector, or a two-port rectangular connector with two pins in square housings of different colors;

(E) must include visible parallel grid collector metallic wire lines every 1–4 millimeters across each solar cell; and

(F) must be in individual retail packaging (for purposes of this provision, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport); and

2. Off grid CSPV panels without a glass cover, with the following characteristics:

(A) a total power output of 100 watts or less per panel;

(B) a maximum surface area of 8,000 cm² per panel;

(C) do not include a built-in inverter;

(D) must include visible parallel grid collector metallic wire lines every 1–4 millimeters across each solar cell; and

(E) each panel is

1. permanently integrated into a consumer good;

2. encased in a laminated material without stitching, or

3. has all of the following characteristics: (i) the panel is encased in sewn fabric with visible stitching, (ii) includes a mesh zippered storage pocket, and (iii) includes a permanently attached wire that terminates in a female USB-A connector.

In addition, the following CSPV panels are excluded from the scope of the *Orders*:

(1) off-grid CSPV panels in rigid form with a glass cover, with each of the following physical characteristics, whether or not assembled into a fully completed off-grid hydropanel whose function is conversion of water vapor into liquid water:

(A) A total power output of no more than 80 watts per panel;

(B) A surface area of less than 5,000 square centimeters (cm²) per panel;

(C) Do not include a built-in inverter;

(D) Do not have a frame around the edges of the panel;

(E) Include a clear glass back panel; and

(F) Must include a permanently connected wire that terminates in a two-port rectangular connector.

Modules, laminates, and panels produced in a third-country from cells produced in China are covered by the *Orders*; however, modules, laminates, and panels produced in China from cells produced in a third-country are not covered by the *Orders*.

Additionally excluded from the scope of the *Order* are off-grid small portable

crystalline silicon photovoltaic panels, with or without a glass cover, with the following characteristics: (1) a total power output of 200 watts or less per panel; (2) a maximum surface area of 16,000 cm² per panel; (3) no built-in inverter; (4) an integrated handle or a handle attached to the package for ease of carry; (5) one or more integrated kickstands for easy installation or angle adjustment; and (6) a wire of not less than 3 meters either permanently connected or attached to the package that terminates in an 8mm diameter male barrel connector.

Also excluded from the scope of the *Orders* are off-grid crystalline silicon photovoltaic panels in rigid form with a glass cover, with each of the following physical characteristics, whether or not assembled into a fully completed off-grid hydropanel whose function is conversion of water vapor into liquid water:

(A) A total power output of no more than 180 watts per panel at 155 degrees Celsius;

(B) A surface area of less than 16,000 square centimeters (cm²) per panel;

(C) Include a keep-out area of approximately 1,200 cm² around the edges of the panel that does not contain solar cells;

(D) Do not include a built-in inverter;

(E) Do not have a frame around the edges of the panel;

(F) Include a clear glass back panel;

(G) Must include a permanently connected wire that terminates in a two-port rounded rectangular, sealed connector;

(H) Include a thermistor installed into the permanently connected wire before the two-port connector; and

(I) Include exposed positive and negative terminals at opposite ends of the panel, not enclosed in a junction box.

Merchandise covered by this *Order* is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 8501.71.0000, 8501.72.1000, 8501.72.2000, 8501.72.3000, 8501.72.9000, 8501.80.1000, 8501.80.2000, 8501.80.3000, 8501.80.9000, 8507.20.8010, 8507.20.8031, 8507.20.8041, 8507.20.8061, 8507.20.8091, 8541.42.0010, and 8541.43.0010. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the *Orders* are dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to

continuation or recurrence of dumping and net countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders*. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be September 20, 2024.⁵ Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are issued in accordance with sections 751(c) and 751(d)(2) of the Act, and published in accordance with section 777(i) of the Act and 19 CFR 351.218(f)(4).

Dated: October 1, 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. 2024–23073 Filed 10–4–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration [A–520–809]

Prestressed Concrete Wire Strand From the United Arab Emirates: Rescission of Antidumping Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty (AD) order on prestressed concrete wire strand (PC wire strand) from the United Arab Emirates (UAE), covering the period of review (POR) February 1, 2023, through January 31, 2024.

DATES: Applicable October 7, 2024.

FOR FURTHER INFORMATION CONTACT: Alex Cipolla, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4956.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2024, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order¹ on PC wire strand from the UAE, covering the POR.² On February 27, 2024, Essen Steel Industry L.L.C. (Essen) timely requested that Commerce conduct an administrative review.³ On April 9, 2024, Commerce initiated an administrative review of the *Order* covering the POR.⁴ In a letter filed to the record at the outset of this proceeding, Essen acknowledged that it had no entries during the POR, but requested that Commerce exercise its discretion to modify the POR to capture a single sale intended for entry during the POR, but which entered the United States on February 8, 2024.⁵

¹ See *Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, the Netherlands, Saudi Arabia, Taiwan, the Republic of Turkey, and the United Arab Emirates: Antidumping Duty Orders*, 86 FR 7703 (February 1, 2021) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List*, 89 FR 7366 (February 2, 2024).

³ See Essen's Letter, "Request for administrative review of antidumping order," dated February 27, 2024.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 24780 (April 9, 2024).

⁵ See Essen's Letter, "Notification and request for extension of POR by eight days," dated March 25, 2024.

On April 18, 2024, Commerce released to the record confirmation from U.S. Customs and Border Protection (CBP) that there were no entries of subject merchandise during the POR in a memorandum which notified parties of its intent to rescind this review in the absence of any suspended entries during the POR from Essen.⁶ In the Intent to Rescind Memorandum, Commerce provided all interested parties an opportunity to comment on the intent to rescind the review. No party to the proceeding provided comments on Commerce's intent to rescind the review. Subsequent to issuance of the Intent to Rescind Memorandum, pursuant to Essen's request for review of the same entry identified on the record of this proceeding, Commerce initiated a separate new shipper review covering the above-referenced sale.⁷

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of an AD order where it concludes that there were no suspended entries of subject merchandise during the POR.⁸ Normally, upon completion of an administrative review, the suspended entries are liquidated at the AD assessment rate for the review period.⁹ Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the calculated AD assessment rate for the review period.¹⁰ As noted above,

⁶ See Memorandum, "Notice of Intent to Rescind Review," dated May 30, 2024 (Intent to Rescind Memorandum).

⁷ See *Prestressed Concrete Steel Wire Strand from the United Arab Emirates: Initiation of Antidumping Duty New Shipper Review*, 89 FR 74887 (September 13, 2024).

⁸ See, e.g., *Certain Carbon and Alloy Steel Cut-to Length Plate from the Federal Republic of Germany: Rescission of Antidumping Administrative Review; 2020–2021*, 88 FR 4157 (January 24, 2023).

⁹ See 19 CFR 351.212(b)(1).

¹⁰ See, e.g., *Shanghai Sunbeauty Trading Co. v. United States*, 380 F. Supp. 3d 1328, 1335–36 (CIT 2019), at 12 (referring to section 751(a) of the Tariff Act of 1930, as amended (the Act), the CIT held: "While the statute does not explicitly require that an entry be suspended as a prerequisite for establishing entitlement to a review, it does explicitly state the determined rate will be used as the liquidation rate for the reviewed entries. This result can only obtain if the liquidation of entries has been suspended. . . ."; see also *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019*, 86 FR 36102, and accompanying Issues and Decision Memorandum at Comment 4; and *Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation: Notice of Rescission of Antidumping Duty Administrative Review*, 77 FR 65532 (October 29, 2012) (noting that "for an administrative review to be conducted, there must

Continued

⁵ See *ITC Final Determination*.

there were no suspended entries of subject merchandise from Essen during the POR. Accordingly, in the absence of suspended entries of subject merchandise during the POR, we are rescinding this administrative review for Essen in accordance with 19 CFR 351.213(d)(3).

Assessment

Commerce will instruct CBP to assess antidumping duties on all appropriate entries. Because Commerce is rescinding this review in its entirety, the entries to which this administrative review pertained 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, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register**.

Administrative Protective Order (APO)

This notice serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of the APO materials or conversion to judicial protective order is hereby requested. Failure to comply with regulations and terms of an APO is a violation, which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: October 2, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–23149 Filed 10–4–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE348]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Advisory Subpanel (HMSAS) and HMS Management Team (HMSMT) will hold an online meeting, which is open to the public.

DATES: The online meeting will be held Tuesday, October 22, 2024, from 9 a.m. to 12 p.m. or until business for the day is completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The purpose of this joint HMSAS–HMSMT online meeting is to discuss relevant topics on the Pacific Council's November meeting agenda to assist in the preparation of reports on those topics.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids

should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820–2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 2, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–23098 Filed 10–4–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE317]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will meet with the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Program Policy Board (Policy Board) and Summer Flounder, Scup, and Black Sea Bass Management Board.

DATES: The meeting will be held on Thursday, October 24, 2024, from 12 p.m. to 3 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: This meeting will be conducted in a hybrid format, with options for both in person and webinar participation. The meeting will be held at the Westin Annapolis, 100 Westgate Circle, Annapolis, MD; telephone: (888) 627–8994. Webinar registration details will be available on the Council's website at www.mafmc.org/meetings.

Council address: Mid-Atlantic Fishery Management Council, 800 N State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, www.mafmc.org also has details on the meeting location, the agenda, webinar information, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible).

Recreational Measures Setting Process Framework/Addenda

The Council will consider approval of a final range of alternatives for the Recreational Measures Setting Process Framework/Addenda. The Atlantic States Marine Fisheries Commission's Policy Board will consider approval of a draft addenda document for public hearings.

Summer Flounder Commercial Mesh Exemptions Framework/Addendum

The Council and the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Management Board will take final action on the Summer Flounder Commercial Mesh Exemptions Framework/Addendum.

Continuing and New Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal Council action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c), provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden at the Council Office, (302) 526-5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 2, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-23095 Filed 10-4-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XE339]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a hybrid meeting of its Scallop Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, October 24, 2024 at 9 a.m.

ADDRESSES:

Meeting address: This meeting will be held at Fairfield Inn & Suites/Waypoint Event Center, 185 MacArthur Dr., New Bedford, MA 02740; telephone: (617) 567-5678.

Webinar registration URL information: <https://nefmc-org.zoom.us/j/6tdu2vqzwsHdWY8rBl4lr-Pue6eJlLazYm>.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:**Agenda**

The Scallop Advisory Panel will meet to discuss: Framework Adjustment 39: Receive an update on plan development team (PDT) tasking and provide input on the range of potential access area and days-at-sea (DAS) allocations for the 2025 and 2026 fishing years. Framework 39 will set specifications including ABC/ACLs, days-at-sea, access area allocations, total allowable landings for the Northern Gulf of Maine (NGOM) management area, targets for General Category incidental catch, General Category access area trips, and set-asides for the observer and research programs for fishing year 2025 and default specifications for fishing year 2026. This action will also consider modifying the current seasonal flatfish closure in Closed Area II, and adjusting regulations to allow NGOM permitted vessels to possess scallops outside of the management unit. They will also receive an update on ongoing 2024 scallop work priorities. Other business will be discussed, if necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council

action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 2, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-23096 Filed 10-4-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 23-27]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-27, Policy Justification, and Sensitivity of Technology.

Dated: October 2, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

June 2, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-27, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of the Netherlands for defense articles and services estimated to cost \$110 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 23-27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the Netherlands

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	\$ 75 million
Other	35 million

TOTAL 110 million

Funding Source: National Funds.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
Up to eight (8) eight-cell MK 41
Vertical Launching Systems (VLS)
Baseline (B/L) VII Strike Length
Launcher Modules (either system or standalone)

Non-MDE:

Also included are spare parts;
handling equipment; transportation
test and support equipment;

software; engineering/technical assistance; personnel training and training equipment; documentation, publications, and technical data; U.S. Government and contractor technical assistance; and other related elements of logistics and program support.

(iv) *Military Department:* Navy (NE-P-LIG)

(v) *Prior Related Cases, if any:* NE-P-LFN, NE-P-LAB

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* June 2, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Netherlands—MK 41 Vertical Launching System (VLS)

The Government of the Netherlands has requested to buy up to eight (8) eight-cell MK 41 Vertical Launching Systems (VLS) Baseline (B/L) VII Strike Length Launcher Modules (either system or standalone). Also included are spare parts; handling equipment; transportation test and support equipment; software; engineering/technical assistance; personnel training and training equipment; documentation, publications, and technical data; U.S. Government and contractor technical assistance; and other related elements of logistics and program support. The total estimated program cost is \$110 million.

This proposed sale will support the foreign policy and national security objectives of the United States by improving the security of a NATO ally that is an important force for political stability and economic progress in Europe. It is vital to the U.S. national interest to assist the Netherlands in developing and maintaining a strong and ready self-defense capability.

The proposed sale will provide a defensive capability for the Netherlands while enhancing interoperability with U.S. and other allied forces. The Royal Netherlands Navy intends to use the MK 41 VLS B/L VII strike length launcher modules for their new ship class. These modules are intended for ESSM BLK1 and SM-2 capabilities in support of ongoing and emergent operational needs. The Netherlands has previously purchased MK 41 VLS capability and actively uses it on their current ship classes. The Netherlands will have no

difficulty absorbing this equipment and support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Lockheed Martin Corporation, Bethesda, MD. There are no known offset agreements proposed in connection with this potential sale.

Implementation of the proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Netherlands. However, U.S. Government or contractor personnel in-country visits will be required on a temporary basis in conjunction with program technical oversight and support requirements.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Mk 41 Vertical Launch System (VLS) is a fixed, vertical, multi-missile launching system with the capability to store and launch multiple missile variants depending on the warfighting mission, including the Evolved Sea Sparrow Missile (ESSM), Standard Missile (SM), and Tomahawk Cruise Missiles. This proposed sale would provide tactical VLS capability for the ESSM and SM. The MK 41 VLS is a modular below-deck configuration with each module consisting of 8 missile cells with an associated gas management and deluge system.

2. The highest level of classification of defense articles, components, and services included in this potential sale is CONFIDENTIAL.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used

to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the Netherlands can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal are authorized for release and export to the Government of the Netherlands.

[FR Doc. 2024–23119 Filed 10–4–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–0G]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

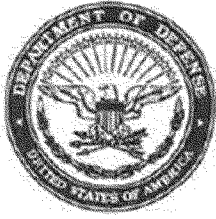
Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–0G.

Dated: October 2, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

June 8, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 23-0G. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 20-74 dated December 11, 2020.

Sincerely,

A handwritten signature in black ink, reading "James A. Hursch", is positioned above the printed name and title.

James A. Hursch
Director

Enclosure:

1. Transmittal

Transmittal No. 23-0G

REPORT OF ENHANCEMENT OR
UPGRADE OF SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C), AECA)

(i) *Purchaser:* Taipei Economic and
Cultural Representative Office in the
United States (TECRO)

(ii) *Sec. 36(b)(1), AECA Transmittal*
No.: 20-74

Date: December 11, 2020

Military Department: Air Force

(iii) *Description:* On December 11,
2020, Congress was notified by
congressional certification transmittal
number 20-74 of the possible sale,
under Section 36(b)(1) of the Arms
Export Control Act, of four (4) Weapons-
Ready MQ-9B Unmanned Aircraft

Systems (UAS); two (2) Fixed Ground
Control Stations; two (2) Mobile Ground
Control Stations; and fourteen (14)
Embedded Global Positioning System/
Inertial Navigations Systems (EGI) with
Selective Availability Anti-Spoofing
Module (SAASM) (12 installed, 2
spares). Also included were MX-20
Multi-Spectral Targeting Systems and
spares; SeaVue Maritime Multi-Role
Patrol Radars; SAGE 750 Electronic
Surveillance Measures (ESM) Systems;
C-Band Line-of-Sight (LOS) Ground
Data Terminals; Ku-Band SATCOM GA-
ASI Transportable Earth Stations
(GATES); AN/DPX-7 Identification
Friend or Foe (IFF) Transponders;
Honeywell TPE-331-10GD Turboprop
Engines; M6000 UHF/VHF Radios; KIV-

77 Mode 5 IFF cryptographic appliques;
AN/PYQ-10C Simple Key Loaders;
secure communications, cryptographic,
and IFF equipment; initial spare and
repair parts; hard points, power, and
data connections for weapons
integration; support and test equipment;
publications and technical
documentation; personnel training and
training equipment; U.S. Government
and contractor engineering, technical,
and logistics support services; and other
related elements of logistical and
program support. The total estimated
program cost was \$600 million. Major
Defense Equipment (MDE) constituted
\$153 million of this total.

This transmittal notifies the inclusion
of the following MDE items: an

additional two (2) Embedded Global Positioning System/Inertial Navigation System (GPS/INS) (EGI) with SAASM or M-code capability; and six (6) AN/APY-8 Lynx Synthetic Aperture Radar (SAR) and Ground Moving Target Indicator (GMTI) systems. Also included are Sierra Nevada Corporation (SNC) 4500 Electronic Intelligence (ELINT) Systems; Remotely Operated Video Enhanced Receiver (ROVER) 6Sx systems and Video Dissemination Links (VDL); Digital Datalink Encryptors; Automatic Information System Transponders; KOR-24A tactical airborne radios; and portable pre/post-flight equipment; as well as additional units of the following: MX-20 Multi-Spectral Targeting Systems; SeaVue Maritime Multi-Role patrol radars; SAGE 750 Electronic Surveillance Measures (ESM) systems; C-Band Line-of-Sight (LOS) ground data terminals; Honeywell TPE-331-10GD turboprop engines; M6000 UHF/VHF radios; cryptographic and IFF equipment; and Simple Key Loaders. This transmittal further notifies the following non-MDE items that were inadvertently omitted from the original notification: Due Regard Radars (DRR); and KY-100M narrowband/wideband cryptographic devices. The estimated total value of the additional items is \$152 million. The total estimated MDE value will increase by \$14 million to \$167 million. The estimated total case value will increase to \$752 million.

(iv) *Significance*: The proposed sale will improve the recipient's capability to meet current and future threats by providing timely Intelligence, Surveillance, and Reconnaissance (ISR), target acquisition, and counter-land, counter-sea, and anti-submarine strike capabilities for its security and defense.

(v) *Justification*: This proposed sale serves U.S. national, economic, and security interests by supporting the recipient's continuing efforts to modernize its armed forces and to maintain a credible defensive capability. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

(vi) *Sensitivity of Technology*:

The Embedded Global Positioning System/Inertial Navigation System (GPS/INS) (EGI) with Selective Availability Anti-Spoofing Module (SAASM)—or M-Code receiver when available—and Precise Positioning Service (PPS) is a self-contained

navigation system that provides information on the following: acceleration, velocity, position, attitude, platform azimuth, magnetic and true heading, altitude, body angular rates, time tags, and coordinated universal time (UTC) synchronized time. SAASM or M-Code enables the GPS receiver access to the encrypted P(Y) code or M code signal, providing protection against active spoofing attacks.

The AN/APY-8 Lynx Synthetic Aperture Radar (SAR) and Ground Moving Target Indicator (GMTI) system provides all-weather surveillance, tracking and targeting for military and commercial customers from manned and unmanned vehicles.

The Due Regard Radar (DRR) is a collision avoidance air-to-air radar comprised of a two-panel Active Electronically Scanned Array (AESA) antenna and a Radar Electronics Assembly (REA) that give the UAS pilot the ability to detect and track aircraft across the same Field-of-View (FOV) as a manned aircraft. AESA technology allows the DRR to track multiple targets while simultaneously continuing to scan for new aircraft.

The KY-100Ms provide encryption to enable secure voice communications over the MQ-9B's radios.

The SNC 4500E ELINT system is used to detect, identify, and locate various radar emitters and provide the collected data to operational users for further analysis and exploitation.

The L3 Harris ROVER 6Sx/6Si transceiver provides real-time, full-motion video (FMV) and other network data for situational awareness, targeting, battle damage assessment, surveillance, relay, convoy over-watch operations and other situations where eyes-on-target are required. It provides expanded frequencies and additional processing resources from previous ROVER versions, allowing increased levels of collaboration and interoperability with numerous manned and unmanned airborne platforms.

The Automatic Identification System (AIS) Transponder provides the ability to track & identify AIS-equipped maritime vessels over VHF.

The Digital Datalink Encryptors provide NSA Type-1 encryption for each High Data Rate (HDR) datalink. The MQ-9B system utilizes multiple independent datalinks to provide communications between the Ground Control Station and the aircraft.

The KOR-24A Small Tactical Terminal (STT) is a two channel,

software defined, small form factor Link 16 radio. The STT provides high assurance secure communications.

The Portable Pre-flight/Post-flight Equipment (P3E) is used by the ground crew at the MQ-9B operating sites to interface with the aircraft for performing maintenance functions. The P3E is a ruggedized computer assembly that interfaces directly with the aircraft via a cable and provides functionality for conducting pre and post-flight checks, and to establish the aircraft on the SATCOM datalink for handover to the flight crew in the Ground Control Station.

The Sensitivity of Technology Statement contained in the original notification applies to additional items reported here.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress*: June 8, 2023

[FR Doc. 2024-23112 Filed 10-4-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23-35]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

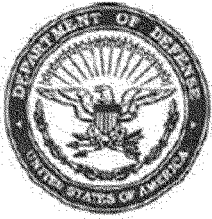
Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrgmgt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-35, Policy Justification, and Sensitivity of Technology.

Dated: October 2, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

May 24, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-35, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Ukraine for defense articles and services estimated to cost \$285 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 23-35

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Ukraine

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	\$30 million
Other	\$255 million
TOTAL	\$285 million

Funding Source: National Funds.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* The Government of Ukraine has requested to buy the National Advanced Surface-to-Air Missile System (NASAMS), that includes:

Major Defense Equipment (MDE):
One (1) AN/MPQ-64F1 Sentinel Radar

Non-MDE:

Also included are a Fire Distribution Center (FDC); canister launchers, secure communications, GPS receivers, code loaders, and cable sets; tool kits; test equipment; support equipment; prime movers; generators; technical documentation; spare parts; U.S. Government and contractor technical support; and other related elements of logistics and program support.

(iv) *Military Department: Army (JU–B–UAC)*

(v) *Prior Related Cases, if any: None*

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None*

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex*

(viii) *Date Report Delivered to Congress: May 24, 2023*

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Ukraine—National Advanced Surface-to-Air Missile System (NASAMS)

The Government of Ukraine has requested to buy the National Advanced Surface-to-Air Missile System (NASAMS), that includes: one (1) AN/MPQ–64F1 Sentinel Radar. Also included are a Fire Distribution Center (FDC); canister launchers, secure communications, GPS receivers, code loaders, and cable sets; tool kits; test equipment; support equipment; prime movers; generators; technical documentation; spare parts; U.S. Government and contractor technical support; and other related elements of logistics and program support. The total estimated cost is \$285 million.

This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a partner country that is a force for political stability and economic progress in Europe.

Ukraine has an urgent need to increase its capabilities to defend against Russian missile strikes and aircraft. Acquiring and effectively deploying this capability will enhance Ukraine's ability to defend its people and protect critical national infrastructure.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missiles and Defense, Tucson, AZ. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Ukraine.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–35

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. National Advanced Surface-to-Air Missile System (NASAMS) Medium Range Air Defense System (MRADS) Description. This is a System of Systems (SOS) consisting of the Sentinel Radar, the Fire Distribution Center (FDC), the AIM–120 Advanced Medium Range Air-to-Air Missile (AMRAAM), the AIM–120 Extended Range Missile (AMRAAM–ER), and the AIM–9X Missile. The NASAMS MRADS is designed for mid-range air defense and can be deployed to engage fixed wing and rotary wing aircraft, cruise missiles, and unmanned aerial systems (UASs). The NASAMS MRADS is not a Program of Record (POR) for the U.S. Department of Defense, but the SOS architecture does consist of several PORs: the U.S. Army's AN/MPQ–64 Sentinel radar, the U.S. Air Force's AIM–120 AMRAAM missile, and the U.S. Navy's AIM–9X Missile. The NASAMS is comprised of both U.S.- and Norwegian-manufactured components. Norwegian components will be procured by the Raytheon Company. Norwegian involvement will be managed by Raytheon using export authorizations received from the U.S. Department of State.

2. NASAMS Fire Unit (FU). Consists of one fire distribution center (FDC); one AN/MPQ–64F1 surveillance, acquisition, and tracking radar; three truck-mounted Canister Launchers (LCHR); and the High Mobility Launcher (HML).

3. Fire Distribution Center (FDC). The command & control entity, FDC, is the major operator interface in NASAMS. It provides all command-and-control functionality necessary to effectively conduct Air Defense missions, both in a stand-alone configuration as well as in a netted configuration integrated with other units. The FDC interfaces and controls the AN/MPQ–64F1 Sentinel radar and the Canister and High Mobility Launchers. The FDC also interfaces (voice and data) to the national command and control structure.

4. AN/MPQ–64F1 Sentinel Radar. This is the organic mobile Air Defense acquisition and tracking sensor for the United States Army. Sentinel provides persistent air surveillance and fire control quality data through command-and-control systems to defeat UAS, cruise missiles, and fixed-wing and rotary-wing aircraft threats.

5. Canister Launcher (CLS). Purpose is to transport, aim, and fire the U.S. Air Force AMRAAM, AMRAAM–ER, and the U.S. Navy AIM–9X Sidewinder missiles. Under the remote control of the FDC, the launcher permits rapid launching of one or more missiles against single or multiple targets and can support 6 engagements simultaneously. The launcher provides 360-degree, all weather, day and night, missile launch capability.

6. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

7. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

8. A determination has been made that Ukraine can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

9. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Ukraine.

[FR Doc. 2024–23109 Filed 10–4–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–01]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

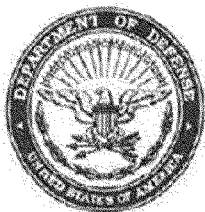
FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–01.

Dated: October 2, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

May 19, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 23-01. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 11-05 of February 1, 2011.

Sincerely,

A handwritten signature in dark ink, appearing to read "James A. Hursch".

James A. Hursch
Director

Enclosure:

1. Transmittal

Transmittal No. 23-01

*REPORT OF ENHANCEMENT OR
UPGRADE OF SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C), AECA)*

(i) *Purchaser:* Government of
Australia

(ii) *Sec. 36(b)(1), AECA Transmittal
No.:* 11-05

Date: February 1, 2011

Military Department: Navy

(iii) *Description:* On February 1, 2011,
Congress was notified by congressional

certification transmittal number 11-05
of the possible sale under Section
36(b)(1) of the Arms Export Control Act
of the Government of Australia's request
for ten year Through-Life-Support (TLS)
for Australia's fleet of twenty-four (24)
MH-60R helicopters. The sustainment
effort included spare and repair parts
provisioning, support and test
equipment, publications and technical
documentation, U.S. Government and
contractor engineering, technical and
logistics support services, and other

related elements of logistics support.
The estimated cost was \$1.6 billion,
with no Major Defense Equipment
(MDE).

On July 10, 2018, Congress was
notified by congressional certification
transmittal number 18-0A of the
extension of the sustainment support
will include additional spare parts
through June 2028 as requested by
Australia. There was no increase in
MDE cost. The case value increased
from \$1.6 billion to \$2.8 billion.

On June 15, 2020, Congress was notified by congressional certification transmittal number 0H-20 of the addition of the following MDE: three (3) airborne Embedded GPS/INS (EGI) with GPS security devices and four (4) T700-GE-401C turbo engines. This equipment resulted in a net increase in MDE cost of \$5 million and a corresponding decrease in the non-MDE value by \$5 million. The total estimated cost remained \$2.8 billion.

This transmittal notifies Australia's request for continued sustainment and support services for its MH-60R helicopters. No additional MDE is being added and there is no increase in MDE cost. The total estimated cost will increase to \$4.3 billion.

(iv) *Significance*: This proposed sale will improve Australia's capability to perform anti-surface and antisubmarine warfare missions as well as secondary missions, including vertical replenishment, search and rescue, and communications relay. Australia will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense.

(v) *Justification*: This proposed sale supports the foreign policy and national security objectives of the United States by improving the security of a major non-NATO ally that is a key partner of the United States in ensuring peace and stability around the world.

(vi) *Sensitivity of Technology*: The Sensitivity of Technology Statement contained in the original notification applies to items reported here.

The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress*: May 19, 2023

[FR Doc. 2024-23111 Filed 10-4-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23-13]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This

36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-13, and Policy Justification.

Dated: October 2, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.


DEFENSE SECURITY COOPERATION AGENCY

 2800 Defense Pentagon
 Washington, DC 20301-2800

JUN 13 2023

The Honorable Kevin McCarthy
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-13 concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Kuwait for defense articles and services estimated to cost \$1.8 billion. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Regional Balance (Classified document provided under separate cover)

Transmittal No. 23-13

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Kuwait

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	\$ 0
Other	\$1.8 billion

TOTAL	\$1.8 billion

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

None

Non-MDE:

Continuation of contractor engineering technical services; contractor maintenance services; Hush House (an enclosed, noise-suppressed aircraft jet engine testing facility) support services; and Liaison Office Support for the

Government of Kuwait's F/A-18 C/D/E/F program, to include: F/A-18 avionics software upgrades; engine component improvements; ground support equipment; engine and aircraft spares and repair parts; publications and technical documentation; Engineering Change Proposals (ECP); U.S. Government and contractor programmatic, financial, and logistics support; maintenance and engineering support; F404/F414 engine and

engine test cell support; and other related elements of logistical and program support.

(iv) *Military Department*: Navy (KU-P-GHY)

(v) *Prior Related Cases, if any*: KU-P-GGX, KU-P-GHI, KU-P-GHJ, KU-P-SBG

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: None

(viii) *Date Report Delivered to Congress*: June 13, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait—Follow-On Technical Support

The Government of Kuwait has requested to buy continuation of contractor engineering technical services; contractor maintenance services; Hush House (an enclosed, noise-suppressed aircraft jet engine testing facility) support services; and Liaison Office Support for the Government of Kuwait's F/A-18 C/D/E/F program, to include: F/A-18 avionics software upgrades; engine component improvements; ground support equipment; engine and aircraft spares and repair parts; publications and technical documentation; Engineering Change Proposals (ECP); U.S. Government and contractor programmatic, financial, and logistics support; maintenance and engineering support; F404/F414 engine and engine test cell support; and other related elements of logistical and program support. The estimated cost is \$1.8 billion.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a Major Non-NATO ally that has been an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Kuwait's ability to meet current and future regional threats. Kuwait will have no difficulty absorbing this support and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Sigmatech, Inc., Huntsville, AL; Kay and Associates, Inc., Buffalo Grove, IL; Kellogg, Brown, and Root, Houston, TX; L3 Technologies, Melbourne, FL; The Boeing Company, St. Louis, MO; General Electric, Lynn, MA; Industrial

Financial Services, Ottawa, ON; and Lockheed Martin, Orlando, FL. Additional principal contractors will be determined by a competitive contractual award process. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of seven hundred thirty-five (735) U.S. Government and contractor representatives to Kuwait for a period of three years to establish and maintain operational capability.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2024-23120 Filed 10-4-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Department of Defense (DoD).

ACTION: Rescindment of system of records notices (SORNs).

SUMMARY: In accordance with the Privacy Act of 1974, the DoD is providing notice to rescind 26 Privacy Act SORNs. A description of these systems can be found in the **SUPPLEMENTARY INFORMATION** section.

DATES: The rescindment of these SORNs is effective October 7, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Rahwa Keleta, Privacy and Civil Liberties Directorate, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350-1700, *OSD.DPCLTD@mail.mil*, (703) 571-0070.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the DoD is removing 26 Privacy Act SORNs from its inventory. Upon review of its inventory, DoD determined it no longer needs or uses these systems of records because the records are covered by other SORNs; therefore, DoD is retiring the following:

These eight systems of records [items (a) through (h)] are being rescinded because the records are now maintained as part of the DoD-wide system of records titled DoD-0020, Military

Human Resource Records, published in the **Federal Register** on May 14, 2024 (89 FR 42459).

(a) The Department of the Navy system of records N01070-3, Navy Military Personnel Records System (April 15, 2010, 75 FR 19627) was established to assist officials and employees of the Navy in the management, supervision and administration of Navy personnel (officer and enlisted) and the operations of related personnel affairs and functions.

(b) The Department of the Navy system of records N01080-1, Enlisted Master File Automated Systems, (June 7, 2013, 78 FR 34354) was established to assist in the administration, management, and supervision of Navy enlisted personnel and the operation of personnel affairs and functions.

(c) The Department of the Navy system of records N01080-2, Officer Master File Automated Systems (November 1, 2013, 78 FR 65620) was established to assist officials and employees of the Navy in their official duties related to the management, supervision, and administration of both active duty and retired naval officers, and in the operation of personnel affairs and functions.

(d) The Defense Logistics Agency system of records S310.07, Military Online Personnel System (March 21, 2013, 78 FR 17385) was established to manage, administer, and document the service member's assignment; to provide career advice to service members; and to advise primary level field activity Commanders and the Director of incidents. The data is also used for reports on force effectiveness, contingency planning, training requirements, and manpower deficiencies.

(e) The Defense Logistics Agency system of records S200.30, Reserve Affairs Records Collection (June 10, 2010, 75 FR 32915) was established to provide background information on individuals assigned to DLA and to document their assignment. Data is used in preparation of personnel actions such as reassignments, classification actions, promotions, scheduling, and verification of active duty and inactive duty training. The data is also used for management and statistical reports and studies.

(f) The Department of the Air Force system of records F036 AF PC C, Military Personnel Records System (October 13, 2000, 65 FR 60916) was established to maintain actions/processes related to procurement, education and training, classification, assignment, career development,

evaluation, promotion, compensation, sustenance, separation and retirement.

(g) The Department of the Air Force system of records F036 AF PC Q, Personnel Data System (PDS) (June 11, 1997, 62 FR 31793) was established as a centralized personnel management system in an environment that is widely dispersed geographically and encompasses a population that is diverse in terms of qualifications, experience, military status and needs.

(h) The Department of the Air Force system of records F036 AFPC E, Temporary Disability Retirement List (TDRL) Case Files (March 05, 2013, 78 FR 14288) was established to maintain oversight of Air Force personnel placed on the Temporary Disability Retirement List (TDRL).

These two systems of records [items (i) through (j)] are being rescinded because the records are now maintained as part of the DoD-wide system of records titled DoD-0015, Enterprise Identity, Credential, and Access Management (ICAM) Records, published in the **Federal Register** on December 16, 2022 (87 FR 77085).

(i) The Defense Finance and Accounting Service (DFAS) system of records T5210, Account Management Provisioning System (AMPS) (October 17, 2014, 79 FR 62431) was established to maintain information operations to control and track access to controlled networks, computer systems, and databases. The records may also be used by law enforcement officials to identify the occurrence of and assist in the prevention of computer misuse and/or crime. Statistical data, with all personal identifiers removed, may be used by management for system efficiency, workload calculation, or reporting purposes.

(j) The Defense Information System Agency (DISA) system of records KWHC.07, Agency Access/Pass File System (February 22, 1993, 58 FR 10562) was established to record names, signatures and identity of those authorized access. Used to obtain and grant clearance or extension of clearance for access to classified information, equipment, sites or containers. Used to prevent unauthorized access or disclosure of classified material or information.

These three systems of records [items (k) through (m)] are rescinded because the records are now maintained as a part of the DoD-wide system of records titled DoD-0019, Information Technology Access and Audit Records (ITAAR) published in the **Federal Register** on September 1, 2023 (88 FR 60442).

(k) The Defense Contract Audit Agency system of records RDCAA

590.14, RDCAA Access Request Records (October 01, 2008, 73 FR 57069) was established to control and track access to DCAA-controlled networks, computer systems, and databases. The records may also be used by law enforcement officials to identify the occurrence of and assist in the prevention of computer misuse and/or crime.

(l) The Defense Logistics Agency system of records S500.55, Information Technology Access and Control Records (November 19, 2014, 79 FR 68873) was established to control and track access to DLA-controlled networks, computer systems, and databases. The records may also be used by law enforcement officials to identify the occurrence of and assist in the prevention of computer misuse and/or crime.

(m) The Office of the Secretary, DoD Joint Staff system of records DWHSC01, Enterprise Support Portal (ESP) (November 05, 2015, 80 FR 68517) was established to assist OSD Components in organizational management tasks, manpower-related tasks, and general administrative tasks related to employees by retrieving information from the authoritative sources and storing administrative information within the Enterprise Support Portal. To process network/system account requests, IT service/helpdesk requests, and facilities requests.

These three systems of records [items (n) through (p)] are rescinded because the records are now maintained as a part of the DoD-wide system of records titled DoD-0005, Defense Training Records, published in the **Federal Register** on December 28, 2020 (85 FR 84316).

(n) The Department of the Air Force system of records F035 SAFPA C, Graduates of Air Force Short Course in Communication (Oklahoma University) (June 11, 1997, 62 FR 31793) was established to provide the Academic Detachment Liaison Non-Commissioned Officer in Charge and the Chief, Office for Plans and Resources, Secretary of the Air Force Office of Public Affairs (SAF/PAX) with historical background on the conduct of the course; serves as a ready reference for students to verify or resolve questions concerning their attendance at the Short Course.

(o) The Department of the Air Force system of records F033 AFSPC C, AF e-Learning System (July 26, 2012, 77 FR 43816) was established to provide interactive, self-paced, web-based training and reference material anytime, anywhere to user desktops to keep Air Force personnel skilled in the technology and knowledge they need to carry out their missions. It is used as a management tool in support of Air

Force information technology training requirements.

(p) The Department of the Air Force system of records F036 AFOSI E, Command Learning Management System (October 21, 2010, 75 FR 65007) was established to identify, monitor, and schedule Air Force and AFOSI mandated training. The system maintains individuals training history and is a repository for historical documentation such as certificates and transcripts.

These two systems of records [items (q) through (r)] are rescinded because the records are now maintained as a part of the DoD-wide system of records titled DoD-0022, Defense Debt Management Records, published in the **Federal Register** on June 14, 2024 (89 FR 50581).

(q) The Department of the Navy system of records MJA000005, Financial Assistance/Indebtedness/Credit Inquiry Files (August 17, 1999, 64 FR 44698) was established to provide a record of Marines identified as owing debts or having need for financial aid for use in processing correspondence relating to financial assistance, credit inquiry or indebtedness.

(r) The Department of the Navy system of records N07200-1, Navy Morale, Welfare, and Recreation Debtors List (January 29, 2007, 72 FR 3983) was established to maintain an automated tracking and accounting system for individuals indebted to the Department of the Navy's Morale, Welfare and Recreation (MWR) facilities for the purpose of collecting debts.

These two systems of records [items (s) through (t)] are rescinded because the records are now maintained as a part of the DoD-wide system of records titled DoD-0017, Privacy and Civil Liberties Complaints and Correspondence Records, published in the **Federal Register** on October 3, 2023 (88 FR 68114).

(s) The Defense Logistics Agency system of records S180.10, Congressional, Executive, and Political Inquiry Records, (October 20, 2011, 76 FR 65185) was established to reply to inquiries and to determine the need for and course of action to be taken for resolution.

(t) The Department of the Air Force system of records F033 SAFLL A, Congressional/Executive Inquiries, (November 10, 2005, 70 FR 68408) was established to use as a reference base in the case of similar inquiries from other Members of Congress, on behalf of the same Air Force issue and/or follow-up by the same Member. Information may also be used by appropriate Air Force offices as a basis for corrective action and for statistical purposes.

The following individual system of records notices [items (u) through (z)] are being rescinded for the reasons stated in each paragraph below.

(u) The Department of the Air Force system of records F044 AF SG R, Reporting of Medical Conditions of Public Health and Military Significance (June 16, 2003, 68 FR 35646) was established to be used for ongoing public health surveillance, which is the systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation, and evaluation of public health practice within the Air Force. The Air Force is rescinding F044 AF SG R because the records are now maintained as part of the DoD-wide system of records titled Defense Accountability and Assessment Records, DoD-0012 published in the **Federal Register** on December 9, 2022, 87 FR 77088.

(v) The Department of the Air Force system of records system of records F044 AF SG T, Suicide Event Surveillance System (SESS) (June 16, 2003, 68 FR 35646) was established to be used for direct reporting of suicide events and ongoing public health surveillance, which is the systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation, evaluation and prevention within the Air Force. The Air Force is rescinding F044 AF SG T because the records are maintained as part of as a part of the DoD-wide system of records titled EDHA 20 DoD, Department of Defense Suicide Event Report (DoDSER) System published in the **Federal Register** on April 15, 2016 (81 FR 22240).

(w) The Defense Finance and Accounting Service (DFAS) system of records T7205a, Defense Business Management System (DBMS) (March 12, 2014, 79 FR 14010) was established to provide a means of reporting all costs entering the general ledger; account for appropriated funds; provide a means of reconciling financial records; and for the preparation of most financial reports. The DFAS is rescinding T7205a because the records are maintained as part of S890.11, Defense Agencies Initiative (DAI), published in the **Federal Register** on June 3, 2019 (84 FR 25537).

(x) The Office of the Secretary, DoD/ Joint Staff system of records T7335e, Defense Working Capital Fund System (DWAS) (January 28, 2013, 78 FR 5784) was established as the financial system of record and the single source for consolidated financial information for the General and Working Capital Funds. The DFAS is rescinding T7335e because the system was decommissioned and the records are now maintained as part of the N07220-1, Navy Standard Integrated Personnel System (NSIPS) published in the **Federal Register** on November 29, 2012 (77 FR 71185).

(y) The Department of the Navy system of records N05802-1, Fiduciary Affairs Records (February 22, 1993, 58 FR 10772) was established to provide nonjudicial financial management of military pay and allowances payable to active duty, fleet reserve, and retired Navy and Marine Corps members for the period during which they are medically determined to be mentally incapable of managing their financial affairs. The Navy is rescinding N05802-1 because

the records are now maintained as part of the T7347B, Defense Military Retiree and Annuity Pay System Records published in the **Federal Register** on January 07, 2009, 74 FR 696.

(z) The Department of the Air Force system of records system of records F033 CVAE A, Secretary of the Air Force Historical Records (June 11, 1997, 62 FR 31793) was established for research by Air Force Historian, other government agencies and private institutions. The Air Force is rescinding F033 CVAE A because the records are now maintained as part of the DoD-wide system of records titled DoD Historical Records, DoD-0014 published in the **Federal Register** on September 2, 2022 (87 FR 77085).

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Privacy and Civil Liberties Directorate website at <https://dpcl.d.defense.gov>.

II. Privacy Act

Under the Privacy Act, a “system of records” is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or alien lawfully admitted for permanent residence.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A-108, DoD has provided a report of this SORN bulk rescindment to OMB and Congress.

System name	Number	History
(a) Navy Military Personnel Record System	N01070-3	April 15, 2010, 75 FR 19627.
(b) Enlisted Master File Automated Systems	N01080-1	June 7, 2013, 78 FR 34354; September 21, 2006, 71 FR 55173.
(c) Officer Master File Automated Systems	N01080-2	November 1, 2013, 78 FR 65620; September 21, 2006, 71 FR 55172.
(d) Military Online Personnel System	S310.07	March 2013, 78 FR 17385; March 4, 2011, 76 FR 12078.
(e) Reserve Affairs Records Collection	S200.30	June 10, 2010, 75 FR 32915.
(f) Military Personnel Records System	F036 AF PC C	October 13, 2000, 65 FR 60916.
(g) Personnel Data System (PDS)	F036 AF PC Q	June 11, 1997, 62 FR 31793.
(h) Temporary Disability Retirement List (TDRL) Case Files ...	F036 AFPC E	March 05, 2013, 78 FR 14288.
(i) Account Management Provisioning System (AMPS)	T5210	October 17, 2014, 79 FR 62431.
(j) Agency Access/Pass File System	KWHC.07	November 19, 2014, 79 FR 68873.
(k) Access Request Records	RDCAA 590.14	December 31, 2008, 73 FR 80377.
(l) Information Technology Access and Control Records	S500.55	November 19, 2014, 79 FR 68873; April 05, 2013, 78 FR 14283; December 2, 2008, 73 FR 73247.
(m) Enterprise Support Portal (ESP)	DWHS C01	November 05, 2015, 80 FR 68517; March 5 2013, 78 FR 14275.
(n) Graduates of Air Force Short Course in Communication (Oklahoma University).	F035 SAFPA C	June 11, 1997, 62 FR 31793.
(o) AF e-learning System	F033 AFSPC C	July 26, 2012, 77 FR 43816; December 8, 2008, 73 FR 74471.
(p) Command Learning Management System	F036 AFOSI E	October 21, 2010, 75 FR 65007.
(q) Financial Assistance/Indebtedness/Credit Inquiry Files—Debt file.	MJA00005	August 17, 1999, 64 FR 44698.
(r) Navy Morale, Welfare, and Recreation Debtors List	N07200-1	January 29, 2007, 72 FR 3989.

System name	Number	History
(s) Congressional, Executive, and Political Inquiry Records	S180.10	October 20, 2011, 76 FR 65186.
(t) Congressional/Executive Inquiries	F033 SAFLL A	November 10, 2005, 70 FR 68408.
(u) Reporting of Medical Conditions of Public Health and Mili- tary Significance.	F044 AF SG R	June 16, 2003, 68 FR 35646.
(v) Suicide Event Surveillance System (SESS)	F044 AF SG T	June 16, 2003, 68 FR 35650.
(w) Defense Business Management System (DBMS)	T7205a	March 12, 2014, 79 FR 14010; July 10, 2009, 74 FR 33215.
(x) Defense Working Capital Fund System (DWAS)	T7335e	January 28, 2013, 78 FR 5784; August 13, 2007, 72 FR 45231.
(y) Fiduciary Affairs Records—T7347B	N05802–1	February 22, 1993, 58 FR 10772.
(z) Secretary of the Air Force Historical Records	F033 CVAE A	June 11, 1997, 62 FR 31793.

Dated: October 1, 2024.
Aaron T. Siegel,
*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*
[FR Doc. 2024–23071 Filed 10–4–24; 8:45 am]
BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION
[Docket No.: ED–2024–SCC–0125]
**Agency Information Collection
Activities; Comment Request; Income
Based Repayment—Notifications**
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 December 6, 2024.
ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2024–SCC–0125. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance

Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202–1200.
FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 570–8414.
SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public’s reporting burden. It also helps the public understand the Department’s information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.
Title of Collection: Income Based Repayment—Notifications.
OMB Control Number: 1845–0114.
Type of Review: Extension without change of a currently approved ICR.
Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.
Total Estimated Number of Annual Responses: 958,240.
Total Estimated Number of Annual Burden Hours: 76,665.

Abstract: The Higher Education Act of 1965, as amended (HEA), established the Federal Family Education Loan (FFEL) Program under Title IV, Part B, Section 493C [20 U.S.C. 1098e] of the HEA authorizes income-based repayment for Part B borrowers who have a partial financial hardship. The regulations in 34 CFR 682.215(e)(2) require notifications to borrowers from the loan holders once a borrower establishes a partial financial hardship and is placed in an income-based repayment (IBR) plan by the loan holder. The regulations identify information the loan holder must provide to the borrower to continue to participate in an IBR plan. This is a request for extension without change of the current information collection 1845–0114.
Dated: October 1, 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. 2024–23051 Filed 10–4–24; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY
**Industrial Technology Innovation
Advisory Committee**
AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.
ACTION: Notice of open meeting.
SUMMARY: This notice announces an open in-person meeting of the Industrial Technology Innovation Advisory Committee (ITIAC). The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.
DATES:
Tuesday, October 29, 2024: 9:00 a.m.–5:00 p.m. EDT.
Wednesday, October 30, 2024: 9:00 a.m.–1:00 p.m. EDT.

ADDRESSES: This meeting will be held in person for ITIAC members at U.S. Department of Energy headquarters in Washington, DC: 1000 Independence Ave. SW, Washington, DC 20024, with the option of virtual attendance. Members of the public are encouraged to participate virtually, as physical space to attend onsite is limited to members. The ITIAC website will contain announcements about the meeting, including instructions for registering to attend: <https://www.energy.gov/eere/iedo/industrial-technology-innovation-advisory-committee>.

FOR FURTHER INFORMATION CONTACT: Dr. Zachary Pritchard, Industrial Efficiency and Decarbonization Office, U.S. Department of Energy, Washington, DC 20585; Telephone: (202) 246-4145 or Email: ITIAC@ee.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Industrial Technology Innovation Advisory Committee (Committee) was established pursuant to the Energy Independence and Security Act (EISA) of 2007 as amended by Public Law 116-260, and in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 10. The Committee is established to advise the Secretary of Energy (Secretary) with respect to the Industrial Emissions Reductions Technology Development Program (the program) by identifying and evaluating any technologies being developed by the private sector relating to the focus areas described in section 454(c) of the EISA; identifying technology gaps in the private sector or other Federal agencies in those focus areas, and making recommendations on how to address those gaps; surveying and analyzing factors that prevent the adoption of emissions reduction technologies by the private sector; and recommending technology screening criteria for technology developed under the program to encourage adoption of the technology by the private sector.

Purpose of Meeting: ITIAC will hold this meeting to continue its work toward developing a strategic plan on how to achieve the goals of the Industrial Emissions Reductions Technology Development Program, consistent with the purposes of the program described in section 454(b)(1) of the EISA, and progress towards the first Committee report.

Tentative Agenda:

- Call to Order, Introductions, Review of the Agenda
- DOE Presentations Requested by Committee

- Subcommittee Progress Updates
- Discussion on Next Steps
- Public Comment Period and Closing Remarks
- Adjourn

All attendees are requested to register in advance. The ITIAC website will be updated with instructions and links to register for the meeting: <https://www.energy.gov/eere/iedo/industrial-technology-innovation-advisory-committee>.

Public Participation: The ITIAC welcomes the attendance of the public at its meetings. Individuals who wish to offer public comments at the ITIAC meeting may do so, but must register in advance by 5:00 p.m. Eastern time on Friday, October 25, 2024, by sending a written request identified by “ITIAC October 2024 Meeting,” to Dr. Zachary Pritchard at ITIAC@ee.doe.gov. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the ITIAC, is invited to send a written statement identified by “ITIAC October 2024 Meeting—Written Statement,” to Dr. Zachary Pritchard at ITIAC@ee.doe.gov.

Minutes: Minutes will be posted on the ITIAC website: <https://www.energy.gov/eere/iedo/industrial-technology-innovation-advisory-committee>. They can also be obtained by contacting ITIAC@ee.doe.gov.

Signing Authority: This document of the Department of Energy was signed on October 1, 2024, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on October 2, 2024.

Jennifer Hartzell,

*Alternate Federal Register Liaison Officer,
U.S. Department of Energy.*

[FR Doc. 2024-23123 Filed 10-4-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[Case Number 2024-008; EERE-2024-BT-PET-0008]

Energy Conservation Program: Notice of Application from E.L. Foust Co. for a Small Business Exemption From the Department of Energy’s Air Cleaner Energy Conservation Standards

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

ACTION: Notice of application for a small business exemption and request for public comment.

SUMMARY: This notice announces the receipt of and publishes an application for a small business exemption submitted by E.L. Foust Co. (“ELF”) requesting an exemption from the U.S. Department of Energy (“DOE”) air cleaner energy conservation standards. Specifically, ELF requests a two-year exemption from the applicable energy conservation standards. DOE is publishing the nonconfidential portion of ELF’s application and is soliciting comments, data, and information concerning the application.

DATES: Written comments and information are requested and will be accepted on or before December 6, 2024.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at www.regulations.gov under docket number EERE-2024-BT-PET-0008. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2024-BT-PET-0008, by any of the following methods:

(1) *Email:* ELFoust2024PET0008@ee.doe.gov. Include the case number Case No. 2024-008 in the subject line of the message.

(2) *Postal Mail and Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, Case No. 2024-003, 1000 Independence Avenue SW, Washington, DC 20585-0121. If possible, please submit all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.

No telefacsimiles (“faxes”) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is

held), comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at www.regulations.gov/docket/EERE-2024-BT-PET-0008. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. Troy Watson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (240) 449-9387. Email: ApplianceStandardsQuestions@ee.doe.gov.

Ms. Ani Esenyan, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-4798. Email: ani.esenyan@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Authority

The Energy Policy and Conservation Act, Public Law 94-163, as amended (“EPCA”),¹ authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291-6317) Title III, Part B of EPCA² established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include air cleaners, the subject of this document. (42 U.S.C. 6292(a)(20))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and

reports from manufacturers (42 U.S.C. 6296).

Under 42 U.S.C. 6295(t), DOE may grant a temporary exemption from an applicable energy conservation standard to a manufacturer if DOE finds that the annual gross revenues of such manufacturer from all its operations (including the manufacture and sale of covered products) does not exceed \$8,000,000 for the 12-month period preceding the date of the application. In making this finding, DOE must account for the annual gross revenues of any other person who controls, is controlled by, or is under common control with, such manufacturer (42 U.S.C. 6295(t)(1)). The Secretary may not grant an exemption with respect to any type (or class) of covered product subject to an energy conservation standard unless the Secretary finds, after obtaining the written views of the Attorney General, that a failure to allow an exemption would likely result in a lessening of competition. (42 U.S.C. 6295(t)(2))

Subpart E of 10 CFR part 430 specifies further information regarding the purpose and process for considering applications for small business exemptions under 42 U.S.C. 6295(t). Among these requirements, 10 CFR 430.52(b) specifies that an application shall be in writing and shall include the following:

- (1) Name and mailing address of applicant;
- (2) Whether the applicant controls, is controlled by, or is under common control with another manufacturer, and if so, the nature of that control relationship;
- (3) The text or substance of the standard or portion thereof for which the exemption is sought and the length of time desired for the exemption;
- (4) Information showing the annual gross revenue of the applicant for the preceding 12-month period from all of its operations (including the manufacture and sale of covered products);
- (5) Information to show that failure to grant an exemption is likely to result in a lessening of competition;
- (6) Such other information, if any, believed to be pertinent by the petitioner; and
- (7) Such other information as the Secretary may require.

II. Background

In a final determination published on July 15, 2022 (“2022 Final Determination”), DOE determined that classifying air cleaners as a covered product is necessary or appropriate to carry out the purposes of EPCA, and that the average U.S. household energy

use for air cleaners is likely to exceed 100 kWh/yr. 87 FR 42297. In that 2022 Final Determination, DOE defined air cleaners as “a product for improving indoor air quality, other than a central air conditioner, room air conditioner, portable air conditioner, dehumidifier, or furnace, that is an electrically-powered, self-contained, mechanically encased assembly that contains means to remove, destroy, or deactivate particulates, VOCs, and/or microorganisms from the air. It excludes products that operate solely by means of ultraviolet light without a fan for air circulation.” 10 CFR 430.2.

On March 6, 2023, DOE published a test procedure final rule which established a definition and test procedure for conventional room air cleaners. 88 FR 14014. DOE defines conventional room air cleaner as an air cleaner that: (1) is a portable or wall mounted (fixed) unit, excluding ceiling mounted unit, that plugs into an electrical outlet; (2) operates with a fan for air circulation; and (3) contains means to remove, destroy, and/or deactivate particulates. 10 CFR 430.2.

On August 23, 2022, DOE received a Joint Proposal from a group of joint stakeholders representing manufacturers, efficiency advocates, and consumer groups, regarding energy conservation standards and related test procedures for air cleaners.³ The Joint Proposal specified two tiers of standard levels, with proposed compliance dates of December 31, 2023 (hereafter “Tier 1 standards”), and December 31, 2025 (hereafter “Tier 2 standards”), respectively. On April 11, 2023, DOE published a direct final rule adopting the standards and compliance dates from the Joint Proposal. These standards apply to products manufactured in, or imported into, the United States starting on December 31, 2023, for the Tier 1 standards and on December 31, 2025, for the Tier 2 standards. 88 FR 21752.

III. E.L. Foust Co. Application for a Small Business Exemption

On May 27, 2024,⁴ E.L. Foust Co. (“ELF”) submitted an application, pursuant to subpart E of 10 CFR part 430, requesting a small business exemption from the energy conservation standards at 10 CFR 430.32(ee). As discussed previously, there are two tiers of standards for air cleaners. Compliance with the Tier 2 standards is not required until December 31, 2025, which is the date on which the

³ The joint stakeholders did not include E.L. Foust Co.

⁴ The date in ELF’s application is specified as May 26, 2024, but the application was received by DOE via email on May 27, 2024.

¹ All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116-260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A-1 of EPCA.

² For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

requested exemption from the December 31, 2023 Tier 1 standards would expire, if granted. As such, DOE is not considering an exemption for ELF for the Tier 2 standards at this time. To request an exemption from the Tier 2 standards, ELF will need to submit a separate application after this current application process is resolved with the current financial information available at that time and information regarding impacts on competition with respect to the Tier 2 standards.

ELF is asking for an exemption on the basis of its status as a small business. According to ELF, failure to receive a small business exemption would likely result in a lessening of competition in the market for air cleaners. ELF requested that the exemption apply for two years.

In its application, ELF referred to the market for air cleaners intended for people with multiple chemical sensitivity. Specifically, ELF stated that its air purifiers are built with zero plastic or glue to eliminate VOCs, and they offer particulate filtration. ELF claimed that larger companies do not offer these types of air cleaners, and estimated that five manufacturers, including ELF, specifically serve the market by not using plastics and glues in their air cleaners and by providing substantial gas phase filtration media. ELF stated that three of these manufacturers are based in the United States and that if DOE does not grant ELF an exemption, the market would be reduced to two U.S. manufacturers. ELF stated that the effects of the rule on those manufacturers is not known. ELF also stated that less competition in the non-plastic air cleaner market would accelerate the loss of non-plastic air cleaners and those products would become more expensive to consumers.

DOE has provided ELF's application for exemption, removing any confidential information, at the end of this notice and in the docket for this proceeding.

IV. Consultations With Other Agencies

The notice of ELF's application for exemption will be transmitted to the Attorney General by the Secretary along with: (a) a statement of the facts and of the reasons for the exemption, and (b) copies of all documents submitted. 10 CFR 430.54.

V. Request for Comments

Through this notice, DOE announces receipt of ELF's application for a small business exemption from the air cleaner energy conservation standards found in 10 CFR 430.32(ee), pursuant to subpart E of 10 CFR part 430. DOE is interested

in feedback regarding whether the lack of an exemption would likely result in a lessening of competition. DOE invites all interested parties to submit in writing by December 6, 2024, comments and information on all aspects of the application.

1. Topics on Which DOE Seeks Comment

ELF has not provided information regarding specific basic models that would be exempted from DOE's air cleaner energy conservation standards. Based on a review of ELF's website and marketing materials, the company offers two model lines of air cleaners—the 160 series and the 400 series.⁵ The 160 series appears to be offered in three configurations, each with two particulate filter options. The 400 series includes steel frame HEPA filters. Both the 160 series and 400 series offer multiple carbon options for gas filtration. ELF has not provided information on the performance of these model lines and configurations with respect to DOE's test procedure and energy conservation standards for air cleaners.

DOE requests comment on whether a failure to allow an exemption to ELF from the Tier 1 standards would likely result in a lessening of competition. Specifically, DOE seeks information regarding the market for air cleaners serving the market for consumers with multiple chemical sensitivity, the availability of air cleaners constructed without plastics or glues, and the other manufacturers offering products serving this market. DOE requests information regarding the model lines offered by ELF and whether any similar models are available from other manufacturers that provide a similar function. DOE also requests comment on the claims made by ELF in their application, as summarized in section III of this document.

2. Process for Submitting Comments

Submitting comments via www.regulations.gov. The www.regulations.gov web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this

⁵ See <https://foustco.com/all-products/air-purifiers/>.

information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to www.regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information ("CBI")). Comments submitted through www.regulations.gov cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through www.regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that www.regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail.

Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to www.regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not

necessary to submit printed copies. Faxes will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Signing Authority

This document of the Department of Energy was signed on September 30, 2024, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 2, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

ELF's Letter (Received May 27, 2024)

This document uses XXX to replace information that was CONFIDENTIAL information that was exempt from the mandatory public disclosure requirements of the Freedom of Information Act under 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information.

E.L. Foust Co.

P.O. Box 172

Mineral Point WI 53565

May 26, 2024

U.S. Department of Energy, Small Business Exemptions, Appliance Efficiency Standards

Assistant Secretary for Conservation and Renewable Energy

Forrestal Building

1000 Independence Ave. SW

Washington, DC 20585

Sent via email to: lucas.adin@ee.doe.gov,
troy.watson@ee.doe.gov.

Re: Application for Small Business Exemption per 10 CFR 430 subpart E to the applicable provisions of the Energy Conservation Program: Energy Conservation Standards for Air Cleaners published on April 11, 2023, at 88 FR 21752 and codified at 10 CFR 430.32(ee).

Dear Secretary,

On behalf of E.L. Foust Co (ELF), and pursuant to 10 CFR 430 subpart E, I write to apply for an exemption for two years to the applicable provisions of the Energy Conservation Program: Energy Conservation Standards for Air Cleaners, published on April 11, 2023, at 88 FR 21752 and codified at 10 CFR 430.32(ee).

ELF air purifiers were initially manufactured for people who suffer from Multiple Chemical Sensitivity (MCS) and that customer base still makes up a considerable portion of our customers. Our air purifiers are built with zero plastic or glue to eliminate VOCs. Within the last ten years, we started adding particulate filtration as an option. Many of our customers consider our air purifiers to be medical equipment. Some end up in the E.R. when they are exposed to the fumes or odors that affect them. Larger companies do not offer the equipment they need. Many cannot tolerate the plastic the larger companies use for their air purifier housings. Simply searching for discussion groups on MCS will reveal the daily challenges they face.

There are about five manufacturers, including E.L. Foust, that specifically serve the MCS market by not using plastics and glues in their air purifier products as well as providing substantial gas phase filtration media to provide effective filtration for months. Three of those manufacturers are based in the USA. Failure to grant an exemption will prevent E.L. Foust Co. from serving the MCS market and competition will be reduced to two USA-based manufacturers serving that market. The effects of the rule on those manufacturers is not known.

MCS customers are being marginalized by manufacturers who market air purifiers to them that are made with plastic that many find makes their condition worse as the plastic off-gases VOCs. As plastic is much cheaper than steel, the economic benefits to make plastic air purifiers will push purifiers that do not contain plastic and glues from the market. Less competition in the non-plastic MCS market will accelerate the loss of non-plastic air purifiers as competition will not need to be a qualifying factor if there is no competition or the non-plastic air purifier will become much more expensive. This will leave many MCS customers without a way to treat their symptoms.

The total gross revenue from the latest tax return is XXX. See attachments.

Please contact me with any questions, concerns, or requests for more information.

Sincerely,

Robert Oberhauser

President

E.L. Foust Co.

608-987-4800

bob@foustco.com

[FR Doc. 2024-23093 Filed 10-4-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology (PCAST)

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of an open hybrid meeting.

SUMMARY: This notice announces an open hybrid meeting of the President's Council of Advisors on Science and Technology (PCAST). The Federal Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, November 1, 2024; 10 a.m. to 2:30 p.m. Eastern Time.

ADDRESSES: Information for viewing the livestream of the meeting can be found on the PCAST website closer to the meeting date at: www.whitehouse.gov/PCAST/meetings. Additionally, limited space is available to attend the PCAST meeting in person which will be held at the National Academy of Sciences, 2101 Constitution Avenue NW, Washington, DC. To register to attend in-person, email registrar@cmpinc.net.

FOR FURTHER INFORMATION CONTACT: Dr. Melissa A. Edwards, Designated Federal Officer, PCAST, email: PCAST@ostp.eop.gov; telephone: 202-881-9018.

SUPPLEMENTARY INFORMATION: PCAST is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to them from the White House,

cabinet departments, and other Federal agencies. See the Executive order at [whitehouse.gov](https://www.whitehouse.gov). PCAST is consulted on and provides analyses and recommendations concerning a wide range of issues where understanding of science, technology, and innovation may bear on the policy choices before the President. The Designated Federal Officer is Dr. Melissa A. Edwards. Information about PCAST can be found at: www.whitehouse.gov/PCAST.

Tentative Agenda

PCAST may discuss and consider for approval one or more reports on topics such as the Networking and Information Technology Research and Development program, social science, and/or groundwater. Additional information and the meeting agenda, including any changes that arise, will be posted on the PCAST website at: www.whitehouse.gov/PCAST/meetings.

Public Participation: The open sessions are open to the public. The meeting will be held in a hybrid manner for members of the public. It is the policy of PCAST to accept written public comments no longer than 10 pages and to accommodate oral public comments whenever possible. PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at PCAST@ostp.eop.gov, no later than 12 p.m. Eastern Time on October 25, 2024. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 10 minutes. If more speakers register than there is space available on the agenda, PCAST will select speakers on a first-come, first-served basis from those who registered. Those not able to present oral comments may file written comments with the council.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST@ostp.eop.gov no later than 12 p.m. Eastern Time on October 25, 2024, so that the comments can be made available to PCAST members for their consideration prior to this meeting.

PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST website at: www.whitehouse.gov/PCAST/meetings.

Minutes: Minutes will be available within 45 days at: www.whitehouse.gov/PCAST/meetings.

Signing Authority: This document of the Department of Energy was signed on October 2, 2024, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 2, 2024.

Jennifer Hartzell,

Alternate Federal Register Liaison Officer,
U.S. Department of Energy.

[FR Doc. 2024-23152 Filed 10-4-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7189-015]

Green Lake Water Power Company; Notice of Revised Procedural Schedule for Environmental Assessment for the Proposed Project Relicense

On March 31, 2022, Green Lake Water Power Company (Green Lake Power) filed an application for a subsequent license to continue to operate and maintain the 425-kilowatt Green Lake Hydroelectric Project No. 7189 (Green Lake Project). On May 31, 2023, Commission staff issued a notice of intent to prepare an environmental assessment (EA) to evaluate the effects of relicensing the Green Lake Project. The notice included an anticipated schedule for issuing the EA. By notices issued April 11, 2024, and June 4, 2024, staff revised the procedural schedule for completing the EA.

On July 15, 2024, Commission staff requested additional information related to Green Lake Power's fall reservoir drawdown proposal and associated

revisions to Exhibits A and E, filed on April 22, 2024. On September 16, 2024, Green Lake Power filed the requested additional information. In order for staff to fully consider the information filed by Green Lake Power, the procedural schedule for completing the EA is being revised as follows. Further revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue EA	January 2025

Any questions regarding this notice may be directed to Amanda Gill at (202) 502-6773, or by email at amanda.gill@ferc.gov.

Dated: September 30, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-23055 Filed 10-4-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974; System of Records

AGENCY: Federal Energy Regulatory Commission (FERC), DOE.

ACTION: Rescindment of a system of records notice.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A-108, the Federal Energy Regulatory Commission (Commission or FERC) proposes to rescind an existing system of records notice (SORN). Specifically, the following SORN is being proposed for rescindment "*Commission Employee Suggestions File (FERC-20)*". The basis for rescindment is explained below.

DATES: Comments on this rescindment notice must be received no later than 30 days after the date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by FERC, the rescindment will become effective a minimum of 30 days after the date of publication in the **Federal Register**. If FERC receives public comments, FERC shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted in writing to Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 or electronically to privacy@ferc.gov.

Comments should indicate that they are submitted in response to “*Commission Employee Suggestions File (FERC–20)*.”

FOR FURTHER INFORMATION CONTACT:

Mittal Desai, Chief Information Officer & Senior Agency Official for Privacy, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, privacy@ferc.gov, (202) 502–6432.

SUPPLEMENTARY INFORMATION:

Commission Employee Suggestions File (FERC–20) was identified for rescindment from FERC’s Privacy Act systems of records inventory because the records are not Privacy Act records. Mere maintenance of personal information about an individual is not enough to create Privacy Act system of records. To satisfy the elements of a system of records, there must be (1) group of records; (2) under the control of a Government agency; and (3) those records must be retrieved by a personal identifier. Under the Privacy Act, a record is defined as “any item, collection, or grouping of information about an individual that is maintained by an agency.” FERC accepts employee suggestions ad hoc during meetings or through communication with the Workforce Relations Division. The Commission is rescinding this System of Records Notice because the Program collects no individual identifiers on which searches are conducted, thereby making a System of Records Notice unnecessary.

SYSTEM NAME AND NUMBER:

Commission Employee Suggestions File (FERC–20).

HISTORY:

65 FR 21746 (April 24, 2000).

Dated: September 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23049 Filed 10–4–24; 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: RP24–1094–000.

Applicants: Eastern Shore Natural Gas Company.

Description: 4(d) Rate Filing: Negotiated Rate Filing—CUC–DE to be effective 11/1/2024.

Filed Date: 9/27/24.

Accession Number: 20240927–5061.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: RP24–1095–000.

Applicants: WBI Energy

Transmission, Inc.

Description: 2024 Penalty Revenue

Crediting Report of WBI Energy

Transmission, Inc.

Filed Date: 9/27/24.

Accession Number: 20240927–5076.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: RP24–1096–000.

Applicants: Transcontinental Gas

Pipe Line Company, LLC.

Description: 4(d) Rate Filing: DPEs—REA Project In-Svc to be effective 10/28/2024.

Filed Date: 9/27/24.

Accession Number: 20240927–5094.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: RP24–1097–000.

Applicants: Tuscarora Gas

Transmission Company.

Description: Compliance filing: 2024

Fuel and Line Loss Report to be

effective N/A.

Filed Date: 9/27/24.

Accession Number: 20240927–5108.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: RP24–1098–000.

Applicants: El Paso Natural Gas

Company, L.L.C.

Description: 4(d) Rate Filing: Non-

Conforming Agreement Filing (Saavi JP

Morgan 2024) to be effective 10/1/2024.

Filed Date: 9/27/24.

Accession Number: 20240927–5146.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: RP24–1099–000.

Applicants: Tennessee Gas Pipeline

Company, L.L.C.

Description: 4(d) Rate Filing: CIMA

ENERGY, LP—SP422575/SP396875 to

be effective 10/1/2024.

Filed Date: 9/27/24.

Accession Number: 20240927–5154.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: RP24–1100–000.

Applicants: El Paso Natural Gas

Company, L.L.C.

Description: 4(d) Rate Filing: Non-

Conforming Agreement Filing (Mieco

2024) to be effective 11/1/2024.

Filed Date: 9/27/24.

Accession Number: 20240927–5159.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: RP24–1101–000.

Applicants: Enable Gas Transmission,

LLC.

Description: 4(d) Rate Filing: Fuel

Tracker Filing—Effective November 1,

2024 to be effective 11/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5062.

Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: RP24–1102–000.

Applicants: Enable Mississippi River Transmission, LLC.

Description: 4(d) Rate Filing: 2024 MRT Annual Fuel Filing to be effective 11/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5064.

Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: RP24–1103–000.

Applicants: Columbia Gas

Transmission, LLC.

Description: 4(d) Rate Filing: Columbia Gas Section 4 Rate Case (1 of 2) to be effective 11/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5069.

Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: RP24–1104–000.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: 4(d) Rate Filing: EGTS—2024 Annual EPCA to be effective 11/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5086.

Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: RP24–1105–000.

Applicants: Algonquin Gas

Transmission, LLC.

Description: 4(d) Rate Filing: Negotiated Rates—Eversource to Emera Energy eff 9–28–24 to be effective 9/28/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5090.

Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: RP24–1106–000.

Applicants: Adelphia Gateway, LLC.

Description: 4(d) Rate Filing: Adelphia Gateway General Section 4 Rate Case Filing to be effective 4/1/2025.

Filed Date: 9/30/24.

Accession Number: 20240930–5096.

Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: RP24–1107–000.

Applicants: Panhandle Eastern Pipe Line Company, LP.

Description: 4(d) Rate Filing: Fuel Filing on 9–30–24 to be effective 11/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5105.

Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: RP24–1108–000.

Applicants: Rover Pipeline LLC.

Description: 4(d) Rate Filing: Fuel Filing on 9–30–24 to be effective 11/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5106.

Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: RP24–1109–000.

Applicants: Trunkline Gas Company, LLC.

Description: 4(d) Rate Filing: Fuel Filing on 9–30–24 to be effective 11/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5108.

Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: RP24–1110–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: 4(d) Rate Filing: Negotiated Rate Agreements Update (Hartree 614700 610670 Oct 2024) to be effective 10/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5109.

Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: RP24–1111–000.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: 4(d) Rate Filing: EGTS—2024 Annual TCRA to be effective 11/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5123.

Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: RP24–1112–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco Oct 2024) to be effective 10/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5124.

Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: RP24–1113–000.

Applicants: Gulf Run Transmission, LLC.

Description: 4(d) Rate Filing: Interim Transporter's Use Filing—Effective 11–1–2024 to be effective 11/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5150.

Comment Date: 5 p.m. ET 10/15/24.

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: September 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23056 Filed 10–4–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC24–145–000]

Entergy Services, LLC; Notice of Filing

Take notice that on September 27, 2024, Entergy Services LLC on behalf of Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, Entergy Texas, Inc. and System Energy Resources, as well as on behalf of itself (Applicants) submitted a waiver request to the Chief Accountant of the Federal Energy Regulatory Commission (Commission or FERC) related to Account 165, Prepayments, of the Commission's Uniform System of Accounts, to allow Applicants to apply a \$100,000 materiality threshold for recording prepayments on its balance sheet. Applicants requests that this waiver is applied prospectively, for a period of ten years, ending December 31, 2034.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not

necessary to serve motions to intervene or protests on persons other than the Applicant.

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://ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy which must reference the Project docket number.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on October 21, 2024.

Dated: September 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23058 Filed 10–4–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–521–000]

Eastern Gas Transmission and Storage, Inc.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on September 20, 2024, Eastern Gas Transmission and Storage, Inc. (EGTS), 10700 Energy Way, Glen Allen, Virginia 23060, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, and 157.210 of the Commission's regulations under the Natural Gas Act (NGA), and EGTS's blanket certificate issued in Docket No. CP82–537–000, for authorization to complete its Gateway Extension Project (Project). Specifically, EGTS proposes to (1) construct a total of approximately 3.1 miles of 30-inch-diameter pipeline in multiple segments; (2) place in service a total of 8.4 miles of 30-inch-diameter pipeline segments

previously installed;¹ and (3) install aboveground pig launcher/receivers at two sites and other auxiliary facilities, all located in Doddridge County, West Virginia. The Project would allow EGTS to provide 90,000 Dth/d of firm incremental transportation capacity from production areas in West Virginia to markets in the Mid-Atlantic region. The estimated cost of the Project is \$34,380,000 all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<https://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.

Any questions concerning this request should be directed to Spencer D Trichell, Director, Environmental Projects and Certificates Eastern Gas Transmission and Storage, Inc., 10700 Energy Way, Glen Allen, Virginia 23060, or by email to Spencer.Trichell@bhegts.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on November 29, 2024. How to file protests, motions to

intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,² any person³ or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,⁴ and must be submitted by the protest deadline, which is November 29, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁵ and the regulations under the NGA⁶ by the intervention deadline for the project, which is November 29, 2024. As described further in Rule 214,

your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before November 29, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24-521-000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or⁷

⁷ Additionally, you may file your comments electronically by using the eComment feature,

¹ The existing pipeline segments were installed as part of EGT's Supply Header Project authorized in Docket Nos. CP15-555-000, et al. and subsequently vacated in Docket Nos. CP15-555-007, et al.

² 18 CFR 157.205.

³ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

⁴ 18 CFR 157.205(e).

⁵ 18 CFR 385.214.

⁶ 18 CFR 157.10.

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–521–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail at: Spencer D Trichell, Director, Environmental Projects and Certificates Eastern Gas Transmission and Storage, Inc., 10700 Energy Way, Glen Allen, Virginia 23060, or by email (with a link to the document) at Spencer.Trichell@bhegts.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.ferc.gov using the “eLibrary” link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Dated: September 30, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–23054 Filed 10–4–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2307–086]

Alaska Electric Light & Power Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, Commission staff reviewed Alaska Electric Light and Power Company's application for a non-capacity amendment of license of the Annex Creek and Salmon Creek Hydroelectric Project No. 2307, and have prepared an Environmental Assessment (EA) for the proposed amendment. The licensee proposes to replace the upper Salmon Creek penstock, which runs from the valvehouse to the abandoned upper powerhouse. The licensee would also replace penstock bridges over Salmon Creek that have not been recently rebuilt with new bridges to support the new penstock. The project is located on Annex and Salmon Creeks in the City and Borough of Juneau, Alaska. The project occupies Federal lands within the Tongass National Forest administered by the U.S. Forest Service.

The EA contains Commission staff's analysis of the potential environmental effects of the proposed amendment to the license, alternatives to the proposed action, and concludes that the proposed amendment, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

The EA may be viewed on the Commission's website at <http://www.ferc.gov> using the “eLibrary” link. Enter the docket number (P–2307) in the docket number field to access the document. For assistance, contact FERC Online Support at FercOnlineSupport@ferc.gov or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

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.

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.

For further information, contact Marybeth Gay at 202–502–6125 or Marybeth.Gay@ferc.gov.

Dated: September 30, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–23057 Filed 10–4–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL24–148–000]

Sierra Club, et al., v. PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on September 27, 2024, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e, 825e and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Sierra Club, Natural Resources Defense Council, Public Citizen, Sustainable FERC Project, and the Union of Concerned Scientists (Complainants) filed a complaint against PJM Interconnection, L.L.C. (PJM or Respondent). Complainants assert that PJM's capacity market auction rules are unjust and unreasonable because they fail to account for the resource adequacy contributions of Reliability Must Run units in the capacity auction. Complainants request that the Commission delay the upcoming 2026/2027 Base Residual Auction (BRA) for a limited time as needed for a revised tariff to be approved and implemented, or otherwise have the 2026/2027 BRA run subject to refund.

The Respondent's answer and all interventions, or protests must be filed on or before October 10, 2024, and should address the complaint regarding the treatment of RMR units as well as the request to delay the upcoming 2026/2027 BRA. Answers to Respondent's

answer and/or answers to protests must be filed on or before 5:00 p.m. Eastern Time on October 15, 2024.

The filings are accessible in the Commission's eLibrary system by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in the above proceeding 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: September 30, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-23046 Filed 10-4-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01-5-000]

Electronic Tariff Filings; Notice of Deployment of eTariff Test Sandbox

Take notice that on September 30, 2024, the test sandbox was deployed to permit the testing of eTariff filings using both the new compliance codes as described in the September 20, 2024, Notice¹ as well as the Version 2 XML schema as described in the June 11,

2024 Notice.² The test sandbox may be accessed by going to the current eTariff Sandbox page (<https://etariff.ferc.gov/TariffSandbox.aspx>) and clicking the Open Test Sandbox link at the top of the page. To access the test site directly go to <https://etariff.ferc.gov/TariffSandbox2.aspx>. eTariff files that include these features can only be tested in the Test Sandbox and not in the sandbox for the currently deployed version of eTariff.

As described in the September 20 and June 11 Notices, the test sandbox will allow eTariff filers to test filings using the new compliance categories as well as the inclusion of an applicant name and tariff records submitted in Microsoft Word and Excel formats.

Additionally, there have been three changes to the filing_type table.

1. Code 230—Complaint (ISOs/RTOs) has been changed to compliance_New_type.

2. The descriptions for Codes 40 and 45 have been changed to:

Code 40: Application for Confirmation and Approval (Other than BPA)—subdocket.

Code 45: Application for Confirmation and Approval (Other than BPA)—new docket.

Revised filing_type tables will be posted at the same eLibrary Accession Number as this Notice. Two marked versions are posted. The first showing all the changes from the existing filing_type table and the second indicating the three changes described above. After parties have an opportunity to test and no further change are necessary, the final tables will be posted with a targeted date of November 1, 2024.

Questions on these changes should be directed to: Michael Goldenberg at Michael.Goldenberg@ferc.gov or James Sarikas at James.Sarikas@ferc.gov.

Dated: September 30, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-23047 Filed 10-4-24; 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: EC24-124-000.

Applicants: Richland Township Solar, LLC, BCD 2024 Fund 4 Lessee, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Richland Township Solar, LLC, et al.

Filed Date: 9/26/24.

Accession Number: 20240926-5189.

Comment Date: 5 p.m. ET 10/17/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24-301-000.

Applicants: Blackford Solar Energy, LLC.

Description: Blackford Solar Energy, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/30/24.

Accession Number: 20240930-5065.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: EG24-302-000.

Applicants: Blackford Wind Energy, LLC.

Description: Blackford Wind Energy, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/30/24.

Accession Number: 20240930-5068.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: EG24-303-000.

Applicants: Kearsarge Riverpark I LLC.

Description: Kearsarge Riverpark I LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/30/24.

Accession Number: 20240930-5197.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: EG24-304-000.

Applicants: Rocking R Solar, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Rocking R Solar, LLC.

Filed Date: 9/30/24.

Accession Number: 20240930-5249.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: EG24-305-000.

Applicants: Speedway Solar, LLC.

Description: Speedway Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/30/24.

Accession Number: 20240930-5268.

Comment Date: 5 p.m. ET 10/21/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-2997-008;

ER10-1048-028; ER10-1143-027;

ER10-2172-031; ER10-3018-008;

ER10-3030-008.

Applicants: Potomac Electric Power Company, Delmarva Power & Light Company, Baltimore Gas and Electric Company, PECO Energy Company,

¹ Electronic Tariff Filings, Docket No. RM01-5-000 (Sept. 20, 2024), <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=6FFD7C34-1D8A-CD28-8BD5-92111D400000>.

² Electronic Tariff Filings, Docket No. RM01-5-000 (Jun. 11, 2024), <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=9182EDBA-3B38-CB62-9787-9008C6200000>.

Commonwealth Edison Company,
Atlantic City Electric Company.

Description: Notice of Non-Material
Change in Status of Atlantic City
Electric Company et al.

Filed Date: 9/27/24.

Accession Number: 20240927–5289.

Comment Date: 5 p.m. ET 10/18/24.

Docket Numbers: ER17–259–005.

Applicants: Darby Power, LLC.

Description: Compliance filing: Darby
Schedule 2 Informational Filing to be
effective 8/1/2018.

Filed Date: 9/30/24.

Accession Number: 20240930–5255.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER17–260–005.

Applicants: Gavin Power, LLC.

Description: Compliance filing: Gavin
Reactive Rate Informational Filing to be
effective 8/1/2018.

Filed Date: 9/30/24.

Accession Number: 20240930–5272.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER18–1182–011.

Applicants: System Energy Resources,
Inc.

Description: Compliance filing: SERI
Compliance (ER18–1182 et al.) to be
effective 6/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5242.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–2661–001.

Applicants: Rpower, LLC.

Description: Tariff Amendment:

Amendment to RPower, LLC

Application For Market Based Rate

Authority to be effective 10/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5174.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3138–000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2024–

09–27 Att. FF, CTA Reform to be

effective 11/27/2024.

Filed Date: 9/27/24.

Accession Number: 20240927–5286.

Comment Date: 5 p.m. ET 10/18/24.

Docket Numbers: ER24–3139–000.

Applicants: New England Power Pool

Participants Committee.

Description: 205(d) Rate Filing: Oct

2024 Membership Filing to be effective

9/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5058.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3140–000.

Applicants: PJM Interconnection,
L.L.C.

Description: 205(d) Rate Filing:
Original GIA Service Agreement No.
7374; AG1–040 to be effective 8/29/
2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5104.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3141–000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2024–

09–30 State Regulatory Authority for

the Council of the City of New Orleans

to be effective 11/30/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5116.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3142–000.

Applicants: Escalante Solar I, LLC.

Description: Initial rate filing: Filing

of Shared Facilities Agreement to be

effective 11/30/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5118.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3143–000.

Applicants: Escalante Solar II, LLC.

Description: Initial rate filing:

Certificate of Concurrence to be effective

11/30/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5130.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3144–000.

Applicants: Escalante Solar III, LLC.

Description: Initial rate filing:

Certificate of Concurrence to be effective

11/30/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5132.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3145–000.

Applicants: Arizona Public Service

Company.

Description: Tariff Amendment:

Service Agreement No. 419—Notice of

Cancellation to be effective 11/30/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5133.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3146–000.

Applicants: Blackford Solar Energy,

LLC.

Description: Baseline eTariff Filing:

Market-Based Rate Application to be

effective 11/30/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5161.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3147–000.

Applicants: PacifiCorp.

Description: 205(d) Rate Filing:

Construction Agreement Hurricane

JOOA (RS No. 789) to be effective 12/

30/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5163.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3148–000.

Applicants: Blackford Wind Energy,

LLC.

Description: Baseline eTariff Filing:
Market-Based Rate Application to be
effective 11/30/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5165.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3149–000.

Applicants: Hoosier Line Energy, LLC.

Description: Baseline eTariff Filing:

Market-Based Rate Application to be

effective 11/30/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5167.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3150–000.

Applicants: Rocking R Solar, LLC.

Description: Baseline eTariff Filing:

Application for Market-Based Rate

Authority to be effective 11/30/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5196.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3151–000.

Applicants: Speedway Solar, LLC.

Description: Baseline eTariff Filing:

Application for Market-Based Rate

Authority to be effective 11/30/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5200.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3152–000.

Applicants: PJM Interconnection,

L.L.C.

Description: 205(d) Rate Filing:

Amendment to ISA, Service Agreement

No. 6958; Queue No. AE2–256 to be

effective 11/30/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5208.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3153–000.

Applicants: The Connecticut Light

and Power Company.

Description: Baseline eTariff Filing:

The Connecticut Light and Power

Company Wholesale Distribution Tariff

to be effective 12/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5223.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3154–000.

Applicants: NSTAR Electric

Company.

Description: Baseline eTariff Filing:

NSTAR Electric Company Wholesale

Distribution Tariff to be effective 12/1/

2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5231.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3155–000.

Applicants: PJM Interconnection,

L.L.C.

Description: Tariff Amendment:

Notice of Cancellation—WMPA Service

Agreement No. 5992; Queue No. AE2–

055 to be effective 11/30/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5245.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3156–000.

Applicants: Caballero CA Storage, LLC.

Description: Baseline eTariff Filing: Application for Market Based Rate Authority to be effective 10/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5267.

Comment Date: 5 p.m. ET 10/21/24.

Docket Numbers: ER24–3157–000.

Applicants: Duke Energy Carolinas, LLC.

Description: 205(d) Rate Filing: DEC–PEMC SA No. 368 to be effective 11/1/2024.

Filed Date: 9/30/24.

Accession Number: 20240930–5271.

Comment Date: 5 p.m. ET 10/21/24.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES24–61–000.

Applicants: DTE Electric Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of DTE Electric Company.

Filed Date: 9/27/24.

Accession Number: 20240927–5292.

Comment Date: 5 p.m. ET 10/18/24.

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.

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: September 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23045 Filed 10–4–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2315–178]

Dominion Energy South Carolina, Inc.; Notice of Application for Non-Capacity Amendment Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No:* P–2315–178.

c. *Date Filed:* May 23, 2024, as supplemented on September 9, 2024.

d. *Applicant:* Dominion Energy South Carolina, Inc.

e. *Name of Project:* Neal Shoals Hydroelectric Project.

f. *Location:* The project is located on the Broad River in Union and Chester counties, South Carolina. The project occupies federal lands managed by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Raymond R. Ammarell; 220 Operation Way, Mail Code B223, Cayce, South Carolina 29033; and 803–271–7322.

i. *FERC Contact:* Elizabeth Moats, (202) 502–6632, Elizabeth.OsierMoats@ferc.gov.

j. *Cooperating Agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k. below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* October 30, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <https://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 <https://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, MD 20852. The first page of any filing should include the docket number P–2315–178. 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 Request:* The licensee proposes to replace the four existing turbines in the powerhouse with eight submersible turbine-generator units to be installed at the existing draft tube openings and construct a new substation and underground duct bank at the project. The licensee proposes to decouple the existing generators, which would no longer be needed, and decommission and abandon them in place. The licensee expects the project's generating capacity to increase from 4.4 MW to 5.6 MW and hydraulic capacity to decrease from 3,500 cfs to 3,160 cfs.

m. *Locations of the Application:* This filing may 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. 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. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *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, 385.211, 385.214, 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.

p. *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.

q. 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: September 30, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-23044 Filed 10-4-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24-522-000]

Equitrans, L.P.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on September 20, 2024, Equitrans, L.P. (Equitrans), 2200 Energy Drive, Canonsburg, Pennsylvania 15317, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA), and Equitrans' blanket certificate issued in Docket No. CP96-532-000, for authorization to abandon a farm tap delivery point on its H-152 Pipeline located in Allegheny County, Pennsylvania (Scotts Run Farm Tap Abandonment Project). Equitrans states that the project is necessary to address safety concerns related to stream erosion and ensure continuity of service on the remainder of its H-152 Pipeline. The estimated cost for the project is \$20,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<https://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.

Any questions concerning this request should be directed to Jennifer Brough, Partner, Sheppard, Mullin, Richter & Hampton LLP, Four Embarcadero Center, 17th Floor, San Francisco, CA 94111-4109; by phone (415) 434-9100; or by email jbrough@sheppardmullin.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5 p.m. Eastern Time on November 29, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by the protest deadline, which is November 29, 2024. A protest may also serve as a motion to intervene so long as the

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

³ 18 CFR 157.205(e).

protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is November 29, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before November 29, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24-522-000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or⁶

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24-522-000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail at: Jennifer Brough, Partner, Sheppard, Mullin, Richter & Hampton LLP, Four Embarcadero Center, 17th Floor, San Francisco, CA 94111-4109; or by email (with a link to the document) at jbrough@sheppardmullin.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link

⁶ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: September 30, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-23048 Filed 10-4-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL24-138-000]

CPV Maryland, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On September 30, 2024, the Commission issued an order in Docket No. EL24-138-000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether CPV Maryland, LLC's Rate Schedule is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *CPV Maryland, LLC*, 188 FERC ¶ 61,223 (2024).

The refund effective date in Docket No. EL24-138-000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL24-138-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2024), within 21 days of the date of issuance of the order.

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 (<https://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

last three digits in the docket number field to access the document. From FERC'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 FERC'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 strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <https://www.ferc.gov>. 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 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: September 30, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-23050 Filed 10-4-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12758-008]

BOST5 Hydroelectric LLC; Notice of Application for Non-Capacity Amendment of License Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type*: Non-capacity amendment of license.
- b. *Project No*: 12758-008.
- c. *Date Filed*: May 17, 2024.
- d. *Applicant*: BOST5 Hydroelectric LLC.
- e. *Name of Project*: Red River Lock and Dam No. 5 Hydroelectric Project.
- f. *Location*: The project is located at the U.S. Army Corps of Engineers' (Corps) Lock and Dam No. 5, on the Red River near the town of Ninock, in Bossier Parish, Louisiana.
- g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a-825r.
- h. *Applicant Contact*: Douglas Spaulding, Nelson Energy LLC, 1030 Tyrol Trail, Minneapolis, MN 55416, (612) 599-8493, doug@nelsonenergy.us.
- i. *FERC Contact*: Rebecca Martin, (202) 502-6012, Rebecca.Martin@ferc.gov.
- j. *Cooperating Agencies*: With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).
- k. *Deadline for filing comments, motions to intervene, and protests*: October 30, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <https://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, MD 20852. The first page of any filing should include the docket number 12758-008. 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 Request*: The licensee proposes certain design changes to the unconstructed project; however, the authorized installed capacity would remain as licensed. The licensee proposes to: (1) install five 5.63-megawatt (MW) Kaplan bulb turbine-generator units, instead of one 28.1-MW unit; (2) modify the powerhouse footprint from 301 feet long by 90 feet wide to 204 feet long by 153 feet wide; (3) shift the location of the Corps' recreation facilities the licensee is required to reconstruct from downstream to upstream of the dam; and (4) reduce the project's total hydraulic capacity from 18,486 cubic feet per second (cfs) to 17,650 cfs.

m. *Locations of the Application*: This filing may be viewed on the Commission's website at <https://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. You may also register online at <https://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. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *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, 385.211, 385.214, 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.

p. *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.

q. 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: September 30, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-23053 Filed 10-4-24; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-12289-01-OA]

Request for Nominations to the EPA Clean Air Scientific Advisory Committee (CASAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations of scientific experts to be considered for appointment to the Clean Air Scientific Advisory Committee (CASAC). Appointments will be made by the Administrator.

DATES: Nominations should be submitted in time to arrive no later than November 6, 2024.

FOR FURTHER INFORMATION CONTACT: For further information about the CASAC membership, appointment process, and schedule, please contact Mr. Aaron Yeow, DFO, by telephone at 202-564-2050, or by email at yeow.aaron@epa.gov.

SUPPLEMENTARY INFORMATION:

Background: The CASAC is a chartered Federal Advisory Committee, established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), to review air quality criteria and National Ambient Air Quality Standards (NAAQS) and recommend to the EPA Administrator any new NAAQS and revisions of existing criteria and standards as may be appropriate. The CASAC shall also: advise the EPA Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS; describe the research efforts necessary to provide the required information; advise the EPA Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and advise the EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such NAAQS. Members of the CASAC constitute a distinguished body of non-EPA scientists and engineers who are nationally and internationally recognized experts in their respective fields. Members are appointed by the EPA Administrator and serve for a two to three-year term as Special Government Employees who provide independent expert advice to the agency. Additional information is available at <https://casac.epa.gov>.

Expertise Sought for the CASAC: As required under the CAA section 109(d), the CASAC is composed of seven members, with at least one member of the National Academy of Sciences, one physician, and one person representing state air pollution control agencies. The SAB Staff Office is seeking nominations of experts to serve on the CASAC representing state air pollution control agencies. These scientists should have expertise in one or more of the following disciplines: air quality, biostatistics, ecology, environmental engineering, epidemiology, exposure assessment, medicine, risk assessment, and toxicology. The SAB Staff Office is especially interested in scientists with expertise described above who have knowledge and experience *relating to criteria pollutants (carbon monoxide, lead, nitrogen oxides, ozone, particulate matter, and sulfur oxides)*.

Selection Criteria for the CASAC: Nominees are selected based on their individual qualifications. Curriculum vitae should reflect the following:

- Demonstrated scientific credentials and disciplinary expertise in relevant fields;
- Willingness to commit time to the committee and demonstrated ability to work constructively and effectively on committees;
- Background and experiences that would help members contribute to the diversity of perspectives on the committee, *e.g.*, geographical, economic, social, cultural, educational backgrounds, professional affiliations, and other considerations;
- For the committee as a whole, consideration of the collective breadth and depth of scientific expertise; and a balance of scientific perspectives is important.

As the committee undertakes specific advisory activities, the SAB Staff Office will consider two additional criteria for each new activity: absence of financial conflicts of interest and absence of an appearance of a loss of impartiality.

How to Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to this advisory committee. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred) using the online nomination form under the "Nomination of Experts" category at the bottom of the CASAC home page at <https://casac.epa.gov>. To be considered, all nominations should include the information requested below. EPA values and welcomes diversity. All qualified candidates are

encouraged to apply regardless of sex, race, disability or ethnicity.

The following information should be provided on the nomination form: contact information for the person making the nomination; contact information for the nominee; and the disciplinary and specific areas of expertise of the nominee. Nominees will be contacted and asked to provide additional information, including a *curriculum vitae* and biographical sketch (indicating current position, educational background, research activities, sources of research funding for the last two years, and recent service on other national advisory committees or national professional organizations). To help the agency evaluate the effectiveness of its outreach efforts, please indicate how you learned of this nomination opportunity. Persons having questions about the nomination process or the public comment process described below, or who are unable to submit nominations through the CASAC website, should contact the DFO, as identified above. The DFO will acknowledge receipt of nominations and will invite the nominee to provide any additional information that the nominee feels would be useful in considering the nomination, such as availability to participate as a member of the committee; how the nominee's background, skills and experience would contribute to the diversity of the committee; and any questions the nominee has regarding membership. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff Office, will be posted in a List of Candidates on the CASAC website at <https://casac.epa.gov>. Public comments on each List of Candidates will be accepted for 21 days from the date the list is posted. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

Candidates may be asked to submit the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110-48). This confidential form is required for Special Government Employees (SGEs) and allows EPA to determine whether there is a statutory conflict between that person's public responsibilities as an SGE and private interests and activities, or the appearance of a loss of impartiality, as defined by Federal regulation. The form

may be viewed and downloaded through the "Ethics Requirements for Advisors" link on the CASAC home page at <https://casac.epa.gov>. This form should not be submitted as part of a nomination.

V. Khanna Johnston,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2024-23139 Filed 10-4-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-12315-01-R1]

Clean Air Act Operating Permit Program; Order on Petition for Objection to State Operating Permit for Turnkey Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an order dated August 16, 2024 denying a petition dated February 9, 2024 from Darlene Ball, Rep. Tony Caplan, Diana Carpinone, James Contois, Jacquelyn Elliott, John Hurley, Margaret Hurley, Katie Lajoie, Rebecca MacKenzie, Susan Richman, Nelia Sargent, Mary Schissel, Jon Swan, John Tuthill, Cynthia Walter, and Janet Ward. The petition requested that the EPA object to a Clean Air Act (CAA) Title V operating permit issued by the New Hampshire Department of Environmental Services (NH DES) to Turnkey Landfill located in 176 Rochester Neck Road, Rochester, New Hampshire.

FOR FURTHER INFORMATION CONTACT:

Andre Turner, EPA Region 1, (617) 918-1216, Turner.Andre@epa.gov. The final order and petition are available electronically at: <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

SUPPLEMENTARY INFORMATION: The EPA received a petition from Darlene Ball, Rep. Tony Caplan, Diana Carpinone, James Contois, Jacquelyn Elliott, John Hurley, Margaret Hurley, Katie Lajoie, Rebecca MacKenzie, Susan Richman, Nelia Sargent, Mary Schissel, Jon Swan, John Tuthill, Cynthia Walter, and Janet Ward dated February 9, 2024, requesting that the EPA object to the issuance of operating permit no. TV-0062, issued by NH DES to Turnkey Landfill located in 176 Rochester Neck Road, Rochester, New Hampshire. On August 16, 2024, the EPA Administrator issued an order denying the petition. The order itself

explains the basis for the EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than December 6, 2024.

Dated: October 1, 2024.

David Cash,

Regional Administrator, Region 1.

[FR Doc. 2024-23094 Filed 10-4-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OLEM-2018-0543, FRL-12176-01-OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; Hazardous Remediation Waste Management Requirements (HWIR) Contaminated Media (Renewal), EPA ICR No. 1775.10, OMB Control No. 2050-0161

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), "Hazardous Remediation Waste Management Requirements (HWIR) Contaminated Media (Renewal)", EPA ICR No. 1775.10, OMB Control No. 2050-0161 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described in **SUPPLEMENTARY INFORMATION**. This is a proposed extension of the ICR, which is currently approved through May 31, 2025. This notice allows for 60 days for public comments.

DATES: Comments must be submitted on or before December 6, 2024.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA-HQ-OLEM-2018-0543, at <https://www.regulations.gov> (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information

provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT:

Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202-566-0453; vyas.peggy@epa.gov.

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through May 31, 2025. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

This notice allows 60 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <https://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate forms of information technology. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The Resource Conservation and Recovery Act (RCRA) requires EPA to establish a national regulatory program to ensure that hazardous wastes are managed in a manner protective of human health and the

environment. Under this program, EPA regulates newly generated hazardous wastes, as well as hazardous remediation wastes (*i.e.*, hazardous wastes managed during cleanup). Hazardous remediation waste management sites must comply with all parts of 40 CFR part 264 except subparts B, C, and D. In place of these requirements, they need to comply with performance standards based on the general requirement goals in these sections, which are codified at 40 CFR 264.1(j).

Under § 264.1(j), owners/operators of remediation waste management sites must develop and maintain procedures to prevent accidents. These procedures must address proper design, construction, maintenance, and operation of hazardous remediation waste management units at the site. In addition, owners/operators must develop and maintain a contingency and emergency plan to control accidents that occur. The plan must explain specifically how to treat, store, and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever fire, explosion, or release of hazardous waste or hazardous waste constituents that could threaten human health or the environment. In addition, the Remedial Action Plan streamlines the permitting process for remediation waste management sites to allow cleanups to take place more quickly.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are the private sector, as well as State, local, or Tribal governments.

Respondent's obligation to respond: mandatory (RCRA section 3004(u)).

Estimated number of respondents: 170.

Frequency of response: One-time.

Total estimated burden: 5,114 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$348,088 (per year), which includes \$294,395 in annualized labor and \$53,693 in annualized capital or operation & maintenance costs.

Changes in Estimates: The burden hours are likely to stay substantially the same.

Dated: October 1, 2024.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2024-23077 Filed 10-4-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2022-0430; FRL-12197-01-OAR]

Notice of Data Availability Relevant to Data Reported Under the American Innovation and Manufacturing Act of 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: This Notice of Data Availability is to alert stakeholders that the U.S. Environmental Protection Agency (EPA) has released data on production, consumption and other activity related to hydrofluorocarbons regulated under the American Innovation and Manufacturing Act of 2020. The Agency has published these data in the *Protecting Our Climate by Reducing Use of HFCs* web area.

DATES: October 7, 2024.

FOR FURTHER INFORMATION CONTACT: Leo Cosgrove, U.S. Environmental Protection Agency, Stratospheric Protection Division, telephone number: 202-564-2870; or email address: Cosgrove.Leo@epa.gov. You may also visit EPA's website at <https://www.epa.gov/climate-hfcs-reduction> for further information.

SUPPLEMENTARY INFORMATION:

I. Background

EPA has published information collected under mandatory reporting requirements in 40 CFR part 84 that support the hydrofluorocarbon (HFC) phasedown specified in the American Innovation and Manufacturing Act of 2020 (AIM Act or Act), codified at 42 U.S.C. 7675. This includes information regarding entities' HFC allowance usage.

II. What information is available?

EPA is providing notice that the Agency has published the following data in the *Protecting Our Climate by Reducing Use of HFCs* web area for calendar year 2023.

Per entity:

- Unused consumption allowances
- Unused production allowances
- Administrative consequences and acquisitions
- Requests for additional consumption allowances
- Number of allowances transferred
- Number of offset allowances deducted from transferor balance
- Number of consumption allowances expended
- Number of production allowances expended

- Quantity of material received for reclamation

Per facility:

- Amount of HFC–23 generated
 - Emissions of HFC–23
- By regulated HFC:*
- Amount destroyed
 - Amount exported
 - Total amount imported
 - Amount imported and not used as feedstock
 - Total amount produced (gross)
 - Amount produced for feedstock use
 - Calculated consumption consistent with the AIM Act
 - Calculated consumption consistent with reporting requirements under the Montreal Protocol
 - Total end of year inventory

Cynthia A. Newberg,

Director, Stratospheric Protection Division.

[FR Doc. 2024–23143 Filed 10–4–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2022–0365 and EPA–HQ–OW–2022–0366; FRL 8310–02–OW]

Final Recommended Aquatic Life Criteria and Benchmarks for Select PFAS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: As part of the Environmental Protection Agency’s (EPA) commitment to safeguard the environment from per- and polyfluoroalkyl substances (PFAS), the agency is announcing the availability of national “Final Recommended Freshwater Aquatic Life Ambient Water Quality Criteria and Acute Saltwater Aquatic Life Benchmarks for Perfluorooctanoic Acid (PFOA)” and “Final Recommended Freshwater Aquatic Life Ambient Water Quality Criteria and Acute Saltwater Aquatic Life Benchmarks for Perfluorooctane Sulfonate (PFOS),” pursuant to the Clean Water Act (CWA). The EPA is also announcing the availability of Acute Freshwater Aquatic Life Benchmarks for eight data-limited perfluoroalkyl substances (PFAS): perfluorobutanoic acid (PFBA), perfluorohexanoic acid (PFHxA), perfluorononanoic acid (PFNA), perfluorodecanoic acid (PFDA), perfluorobutanesulfonic acid (PFBS), perfluorohexanesulfonic acid (PFHxS), 2H-perfluoro-2-decanoic acid (8:2 FTUCA), and 2H,2H,3H,3H-perfluorodecanoic acid (7:3 FTCA).

These final CWA recommended criteria and benchmarks provide information that States and Tribes may consider when adopting water quality standards. Consistent with Clean Water Act sections 304(a)(1) and (a)(2), the EPA expects to update these recommended criteria and benchmark values from time to time as new information becomes available. This announcement is in accordance with Clean Water Act section 304(a)(3), which directs the EPA to publish information developed under sections 304(a)(1) and (a)(2) in the **Federal Register** and make it available to States, Tribes, and the public.

SUPPLEMENTARY INFORMATION:

I. How can I get copies of these documents and other related information?

The EPA has established a first docket for the “Final Recommended Freshwater Aquatic Life Ambient Water Quality Criteria and Saltwater Acute Benchmarks for Perfluorooctanoic Acid (PFOA)” under Docket ID No. EPA–HQ–OW–2022–0365 and a second docket for the “Final Recommended Freshwater Aquatic Life Ambient Water Quality Criteria and Saltwater Acute Benchmarks for Perfluorooctane Sulfonate (PFOS)” under Docket ID No. EPA–HQ–OW–2022–0366. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Docket Center’s hours of operations are 8:30 a.m.–4:30 p.m., Monday through Friday (except Federal holidays). For further information on the EPA Docket Center services and the current status, see: <https://www.epa.gov/dockets>.

The “Final Recommended Freshwater Aquatic Life Ambient Water Quality Criteria and Saltwater Acute Benchmarks for Perfluorooctanoic Acid (PFOA)” document can be accessed on the EPA’s website through the following link: <https://www.epa.gov/system/files/documents/2024-09/pfoa-report-2024.pdf>. The “Final Recommended Freshwater Aquatic Life Ambient Water Quality Criteria and Saltwater Acute Benchmarks for Perfluorooctane Sulfonate (PFOS)” document can be accessed on the EPA’s website through the following link: <https://www.epa.gov/system/files/documents/2024-09/pfos-report-2024.pdf>. The “Final Acute Freshwater Aquatic Life Benchmarks for Eight Data-Limited PFAS: PFBA, PFHxA, PFNA, PFDA, PFBS, PFHxS, 8:2 FTUCA, and 7:3 FTCA” document can be accessed on the EPA’s website

through the following link: <https://www.epa.gov/system/files/documents/2024-09/pfas-report-2024.pdf>.

II. What are PFAS, including PFOA and PFOS?

Per- and polyfluoroalkyl substances (PFAS) are human-made organic chemical compounds composed of a carbon chain bound to multiple fluorine atoms. PFAS have been manufactured and used by a broad range of industries since the 1940s, and there are estimated to be thousands of PFAS present in the global marketplace that are used in a range of commercial and industrial products. PFOA and PFOS are two of the most widely used and studied chemicals in the PFAS group. PFAS are not naturally occurring and have no biologically important functions or beneficial properties to aquatic life. PFAS, including PFOA and PFOS, can persist in the environment and have been detected in U.S. rivers, lakes, and streams. At elevated concentrations, PFAS can be toxic to fish and other aquatic species.

III. What are CWA national ambient water quality criteria and benchmarks developed by the EPA?

CWA section 304(a) directs the EPA to develop and publish water quality criteria that reflect the latest scientific knowledge. The EPA develops national recommended ambient water quality criteria for the protection of aquatic life based on the highest numeric concentrations of pollutants, with specific recommendations on the duration and frequency of those concentrations, that are protective of aquatic ecosystems as a whole. The EPA’s section 304(a)(1) criteria recommendations generally follow the *Guidelines methods (Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses)*, which recommend toxicity data for a minimum of eight families of aquatic animals be used in developing aquatic life criteria to ensure criteria will protect aquatic ecosystems as a whole. Water quality criteria are based solely on data and scientific judgments about the relationship between pollutant concentrations and potential environmental effects. The EPA’s recommended water quality criteria are not regulatory, nor do they automatically become part of a State’s water quality standards. States must adopt into their standards water quality criteria that protect the designated uses of their water bodies. States can establish water quality criteria based on the EPA’s recommended criteria, modify

recommended criteria to reflect site-specific conditions, or develop proposed standards using on other scientifically defensible methods. A State's or Tribe's water quality criteria are not legally effective under the Clean Water Act until they have been adopted into a State's or Tribe's water quality standards and are approved by the EPA.

Aquatic life benchmarks, developed under section 304(a)(2) of the CWA, are informational values that the EPA generates when there are limited high quality toxicity data available and data gaps exist for several aquatic organism families. The EPA develops aquatic life benchmarks to provide information that States and Tribes may consider in their water quality protection programs. In developing aquatic life benchmarks, data gaps may be filled using new approach methods (NAMs), such as computer-based toxicity estimation tools (e.g., EPA's Web-ICE; Version 3.3; <https://www.epa.gov/webice/>) or other new approach methods intended to reduce reliance on additional animal testing (<https://www.epa.gov/chemical-research/epa-new-approach-methods-work-plan-reducing-use-vertebrate-animals-chemical>), including the use of read-across estimates based on other chemicals with similar structures. The EPA's aquatic life benchmark values are

not regulatory, nor do they automatically become part of a State's water quality standards.

IV. What are the EPA's recommended criteria for PFOA and PFOS in freshwater for the protection of aquatic life?

The EPA has developed separate PFOA and PFOS criteria to protect aquatic life from the effects of these individual chemicals. The EPA developed these final recommended aquatic life ambient water quality criteria following the general approach outlined in the EPA's *Guidelines*.¹ The EPA developed the final PFOA and PFOS recommended criteria to protect aquatic life designated uses established for freshwaters. The final criteria documents contain acute and chronic water column criteria for freshwaters (see Table 1 of this document). Acute criteria protect aquatic species from short-term exposures to high pollutant concentrations while chronic criteria protect aquatic species from long-term and repeated pollutant exposures. The final criteria also contain chronic criteria expressed as PFOA and PFOS concentrations in fish muscle tissue, fish whole-body tissue, and in invertebrate tissue (see Table 1 of this document). Many States and Tribes

measure PFAS in fish tissues and these tissue-based criteria values allow States and Tribes to assess the health of fish and invertebrates in their freshwaters. The chronic freshwater and chronic fish/invertebrate tissue-based criteria for both chemicals are intended to be independently applicable and no one criterion takes primacy.

The PFOA and PFOS criteria establish maximum concentrations (*i.e.*, magnitude component), averaged over a given time period (*i.e.*, duration component), that if not exceeded more than the allowable number of times during a specified time period (*i.e.*, frequency component), are expected to protect aquatic ecosystems as a whole. The duration components of criteria are set to be substantially shorter than the length of toxicity tests used to derive the criteria magnitude and restrict allowable fluctuations in pollutant concentrations over time. The frequency components of aquatic life criteria ensure aquatic communities have adequate time to recover following a criteria exceedance event. The EPA's final recommended PFOA and PFOS criteria magnitudes combined with the associated duration and frequency components are expected to protect fish and other aquatic species in freshwaters (see Table 1).

TABLE 1—FINAL RECOMMENDED FRESHWATER AQUATIC LIFE WATER QUALITY CRITERIA FOR PFOA AND PFOS

Criteria component	Acute water column (CMC) ¹	Chronic water column (CCC) ²	Invertebrate whole-body	Fish whole-body	Fish muscle
PFOA Magnitude	3.1 mg/L	0.10 mg/L	1.18 mg/kg ww ⁴	6.49 mg/kg ww ⁴	0.133 mg/kg ww ⁴
PFOS Magnitude	0.071 mg/L	0.00025 mg/L	0.028 mg/kg ww ⁴ ...	0.201 mg/kg ww ⁴ ...	0.087 mg/kg ww ⁴
Duration	1-hour average	4-day average	Instantaneous. ³		
Frequency	Not to be exceeded more than once in three years, on average.	Not to be exceeded more than once in three years, on average.	Not to be exceeded. ⁵		

¹ Criterion Maximum Concentration.

² Criterion Continuous Concentration.

³ Tissue data provide instantaneous point measurements that reflect integrative accumulation of PFOA or PFOS over time and space in aquatic life population(s) at a given site.

⁴ Wet-Weight.

⁵ PFOA and PFOS chronic freshwater tissue-based criteria should not be exceeded, based on measured tissue concentrations representing the central tendency of samples collected at a given site and time.

V. What are the EPA's saltwater acute benchmarks for protecting aquatic life from PFOA and PFOS?

Data limitations did not allow for derivation of PFOA or PFOS national recommended water quality criteria to protect saltwater organisms. Therefore, the EPA derived PFOA and PFOS aquatic life benchmark values under section 304(a)(2) of the CWA using the best available data on the effects of PFOA and PFOS to provide information that States and Tribes may consider in

their water quality protection programs. These benchmark values are based solely on data and scientific judgments about the relationship between pollutant concentrations and potential environmental effects. Like national recommended water quality criteria, the EPA's acute PFOA and PFOS aquatic life benchmark values for saltwater are nonbinding and nonregulatory.

The EPA derived acute saltwater benchmarks using available toxicity data on PFOA and PFOS, supplemented with data estimated using the EPA's

Web-ICE tool. With data gaps addressed using both laboratory and estimated toxicity test data, the acute saltwater benchmarks for PFOA and PFOS were calculated following methods outline in the EPA's *Guidelines*.¹ The EPA's acute saltwater benchmarks for PFOA and PFOS values are the maximum concentrations of these PFOA and PFOS (individually, not in mixture), with associated frequency and duration specifications, that are expected to support protection of aquatic life from acute effects in saltwater (see Table 2).

¹ The EPA's *Guidelines for Deriving Numerical Water Quality Criteria for the Protection of Aquatic*

Organisms and Their Uses can be accessed through the EPA web page at: <https://www.epa.gov/sites/>

[default/files/2016-02/documents/guidelines-water-quality-criteria.pdf](https://www.epa.gov/sites/default/files/2016-02/documents/guidelines-water-quality-criteria.pdf).

TABLE 2—ACUTE SALTWATER AQUATIC LIFE BENCHMARKS FOR PFOA AND PFOS

Chemical	PFOA	PFOA
Magnitude	7.0 mg/L	0.55 mg/L.
Duration	One hour average.	
Frequency	Not to be exceeded more than once in three years on average.	

VI. What are the EPA's freshwater acute benchmarks for protecting aquatic life from eight additional PFAS?

Toxicity data to support benchmarks for these eight PFAS benchmarks were limited relative to the data requirements traditionally used to develop aquatic life criteria. Therefore, the EPA derived PFAS aquatic life benchmark values under section 304(a)(2) of the CWA using the best available data on the effects of these PFAS to provide information that States and Tribes may consider in their water quality protection programs. These benchmark values are based solely on data and scientific judgments about the relationship between pollutant

concentrations and potential environmental effects. Like national recommended water quality criteria, the EPA's eight separate acute aquatic life benchmark values for eight different data-limited PFAS in freshwater are nonbinding and nonregulatory.

Compared to PFOA and PFOS, acute freshwater data were more limited for these eight PFAS that the EPA evaluated. The EPA developed the benchmarks by using the available laboratory-based data on the effects of those chemicals on freshwater organisms, supplemented with data estimated using the EPA's Web-ICE tool, following the same peer-reviewed approach applied in development of the acute saltwater benchmarks for PFOA and PFOS. With data gaps addressed

using both laboratory and estimated toxicity test data, the acute benchmarks for these eight PFAS were calculated following methods outline in the EPA's *Guidelines*.¹

The EPA's acute freshwater benchmark values are the maximum concentrations of these PFAS (individually, not in mixture), with associated frequency and duration specifications, that are expected to support protection of aquatic life from acute effects in freshwaters (see Table 2 of this document). These acute benchmarks for these eight PFAS (Table 3) provide information for States and Tribes to consider as protective values in their water quality protection programs.

TABLE 3—ACUTE FRESHWATER AQUATIC LIFE BENCHMARKS FOR EIGHT PFAS

Chemical	PFBA	PFHxA	PFNA	PFDA	PFBS	PFHxS	8:2 FTUCA	7:3 FTCA
Magnitude ¹	5.3	4.8	0.65	0.50	5.0	0.21	0.037	0.012
Duration	One hour average.							
Frequency	Not to be exceeded more than once in three years on average.							

¹ Values expressed as mg/L, or ppm.

Bruno Pigott,

Principal Deputy Assistant Administrator.

[FR Doc. 2024–23024 Filed 10–4–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0669; FRL–9116–05–OAR]

Phasedown of Hydrofluorocarbons: Notice of Final Administrative Consequences Under the American Innovation and Manufacturing Act Affecting 2024 Allowances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of Agency actions previously taken to

establish administrative consequences for specific entities. These previously finalized actions withheld, retired, or revoked the identified entities' calendar year 2024 allowances in accordance with the administrative consequence regulatory provisions.

FOR FURTHER INFORMATION CONTACT:

Connor Henderson, U.S. Environmental Protection Agency, Stratospheric Protection Division, telephone number: 202–564–2177; email address: henderson.connor@epa.gov. You may also visit EPA's website at <https://www.epa.gov/climate-hfcs-reduction> for further information.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) hereby provides notice that it has taken final actions establishing administrative consequences for specific entities under the American Innovation and Manufacturing Act (AIM Act). Each action, which EPA took through a letter

issued to the relevant entity, is a separate final action informing the recipient entity of an administrative consequence. The requirements pertaining to administrative consequences are codified in 40 CFR 84.35. Under this provision, EPA can retire, revoke, or withhold the allocation of allowances, or ban an entity from receiving, transferring, or conferring allowances. A retired allowance is one that must go unused and expire at the end of the year; a revoked allowance is one that EPA takes back from an allowance holder and redistributes to all the other allowance holders; and a withheld allowance is one that is retained by the Agency until an allowance holder that has failed to meet a regulatory requirement comes back into compliance, at which point EPA allocates it to the allowance holder. A withheld allowance could become a revoked allowance if the allowance

holder fails to meet the applicable regulatory requirement within the timeframe specified by EPA.¹ More information on EPA's approach to administrative consequences can be found at 86 FR 55168 (Allocation Framework Rule).

EPA finalized administrative consequences for three entities that imported regulated HFCs without expending the requisite number of consumption allowances at the time of import. The Agency has retired and

revoked consumption allowances commensurate with the quantities of regulated substances imported without allowances from the following entities' remaining calendar year 2024 consumption allowances: ChemPenn, LLC (ChemPenn); Tulstar Products (Tulstar); and, USSC Acquisition Corp (USSC). EPA also finalized administrative consequences for one entity (Firetrace) who failed to submit complete HFC reports as required in 40 CFR 84.31. This entity failed to submit

complete HFC reports as required, and therefore, EPA withheld 20 percent of Firetrace's calendar year 2024 consumption allowances from any granted requests for additional consumption allowances (RACAs) until the outstanding reports were submitted, and EPA verified them as complete. Table 1 provides a summary of each of the administrative consequences applied to the relevant entities.

TABLE 1—SUMMARY OF ADMINISTRATIVE CONSEQUENCES AFFECTING CONSUMPTION ALLOWANCES, PURSUANT TO 40 CFR 84.35

Entity (effective date)	Number of affected allowances (MTEVe)	Applicable year	Administrative consequence action	Reasoning
ChemPenn (06/06/24)	32.5	2024	Retire	Imported regulated HFCs without expending requisite number of allowances.
	16.3 ^a	2024	Revoke	
Tulstar Products (03/31/24) ..	31,006.5	2024	Retire	Imported regulated HFCs without expending requisite number of allowances.
	15,503.3 ^a	2024	Revoke	
USSC Acquisition Corp (03/31/24).	2.3	2024	Retire	Imported regulated HFCs without expending requisite number of allowances.
	1.2 ^a	2024	Revoke	
Firetrace (02/26/24)	20 percent of granted RACAs.	2024	Withhold ^b	Failure to submit complete HFC reports as required in 40 CFR 84.31.

^a As stated in the Allocation Framework Rule, EPA explained it would take a 50% premium in first instances of administrative consequences. These values correspond to 50% of the full amount of consumption without requisite allowances at the time of production and/or import.

^b Subsequent to finalization of the administrative consequence, Firetrace submitted its outstanding reports. Subsequently, EPA is no longer withholding 20% of granted RACAs.

Adjustments to Consumption Allowances

EPA notes that entities in Table 1 who imported without expending the requisite number of consumption allowances at the time of import are not eligible to receive allowances that are redistributed (to entities that were directly issued calendar year 2024 consumption allowances by EPA) as a result of allowances revoked if the administrative consequence action took effect on the same day, with the exception of entities who had their allowance withheld (regardless of effective date).² There are two separate batches of effective dates for redistribution of revoked consumption allowances: allowances that were revoked effective March 31, 2024 (15,504.5 MTEVe, *i.e.*, the sum of 15,503.3 MTEVe and 1.2 MTEVe); and, allowances that were revoked effective June 6, 2024 (16.3 MTEVe). In the former, neither Tulstar nor USSC are eligible for redistribution of the affected allowances but ChemPenn is eligible, as are all other entities to whom EPA issued consumption allowances for calendar year 2024; in the latter, ChemPenn is not eligible for

redistribution of the affected allowances but Tulstar and USSC are eligible, as are all other entities to whom EPA issued consumption allowances for calendar year 2024. As EPA did not issue consumption allowances to Firetrace for calendar year 2024, this entity is not eligible to receive any of the redistributed allowances described herein. A summary of the number of revoked and redistributed allowances available to each eligible entity from each batch of effective dates is included in table 2 and table 3.

TABLE 2—NUMBER OF CONSUMPTION ALLOWANCES AVAILABLE TO ELIGIBLE ENTITIES DUE TO FINALIZED ADMINISTRATIVE CONSEQUENCES WITH AN EFFECTIVE DATE OF MARCH 31, 2024

Entity	Additional allowances being allocated to each entity (MTEVe)
A.C.S. Reclamation & Recovery (Absolute Chiller Services)	11.4
Ability Refrigerants	11.4

TABLE 2—NUMBER OF CONSUMPTION ALLOWANCES AVAILABLE TO ELIGIBLE ENTITIES DUE TO FINALIZED ADMINISTRATIVE CONSEQUENCES WITH AN EFFECTIVE DATE OF MARCH 31, 2024—Continued

Entity	Additional allowances being allocated to each entity (MTEVe)
ACT Commodities	0.0
Advance Auto Parts	40.8
Advanced Specialty Gases ..	16.3
AFK & Co	11.1
AFS Cooling	11.4
A-Gas	194.8
Air Liquide USA	28.5
American Air Components ^a ..	11.4
Arkema	1,775.3
Artsen	58.7
Automart Distributors DBA Refrigerant Plus	11.4
AutoZone Parts	115.5
AW Product Sales & Marketing	6.9
Bluon ^a	1.9
CC Packaging	11.1
Chemours	1,957.9
Chemp Technology	11.4
ChemPenn	1.3
ComStar International	20.6

¹ Administrative consequences that the Agency has finalized can be found here: <https://www.epa.gov/climate-hfcs-reduction/administrative-consequences-under-hfc-allocation-rule>.

² An identical approach was taken in "Phasedown of Hydrofluorocarbons: Notice of 2024 Allowance Allocations for Production and Consumption of Regulated Substances Under the American Innovation and Manufacturing Act of

2020, and Notice of Final Administrative Consequences" (88 FR 72060).

TABLE 2—NUMBER OF CONSUMPTION ALLOWANCES AVAILABLE TO ELIGIBLE ENTITIES DUE TO FINALIZED ADMINISTRATIVE CONSEQUENCES WITH AN EFFECTIVE DATE OF MARCH 31, 2024—Continued

Entity	Additional allowances being allocated to each entity (MTEVe)
Creative Solution	11.4
Cross World Group	11.4
Daikin America	178.3
EDX Industry	32.8
Electronic Fluorocarbons	6.0
Fireside Holdings DBA American Refrigerants	11.4
First Continental International FluoroFusion Specialty Chemicals	44.0
Freskoa USA	145.8
GlaxoSmithKline	11.4
Golden Refrigerant	30.8
Harp USA	11.4
Honeywell International	43.7
Hudson Technologies	4,704.3
Hungry Bear	194.9
ICool USA	11.4
IGas Holdings	194.6
Iofina Chemical	1,491.5
Kidde-Fenwal	0.1
Lenz Sales & Distribution	11.4
Lina Trade	63.4
Linde	11.4
Matheson Tri-Gas	30.4
MEK Chemical Corporation ..	2.0
Meraki Group	4.8
Metalcraft	11.4
Mexichem Fluor DBA Koura ..	9.2
Mondy Global	1,455.6
National Refrigerants	18.2
Nature Gas Import and Export	1,131.5
North American Refrigerants ..	46.8
O23 Energy Plus	11.4
Perfect Score Too DBA Perfect Cycle	11.4
Reclamation Technologies ...	2.2
Resonac America (formerly Showa Chemicals of America) ^a	34.1
RGAS (formerly listed as Combs Gas)	3.8
RMS of Georgia	261.4
Sciarra Laboratories	94.2
SDS Refrigerant Services	0.5
Solvay Fluorides	11.4
Summit Refrigerants	63.0
SynAgile Corporation	11.4
Technical Chemical	0.1
TradeQuim	195.1
Transocean Offshore Deep-water Drilling	11.4
Tulstar Products	0.0
Tyco Fire Products	ineligible
USSC Acquisition Corp	11.4
Walmart	130.3
Waysmos USA	32.0
Wego Chemical Group	3.2
Weitron	362.1
Wesco HMB	11.4

TABLE 2—NUMBER OF CONSUMPTION ALLOWANCES AVAILABLE TO ELIGIBLE ENTITIES DUE TO FINALIZED ADMINISTRATIVE CONSEQUENCES WITH AN EFFECTIVE DATE OF MARCH 31, 2024—Continued

Entity	Additional allowances being allocated to each entity (MTEVe)
Wilhelmsen Ships Service	2.3
Total	15,504.5

^a As described in “Phasedown of Hydrofluorocarbons: Notice of 2024 Allowance Allocations for Production and Consumption of Regulated Substances Under the American Innovation and Manufacturing Act of 2020, and Notice of Final Administrative Consequences” (88 FR 72060), EPA will retire (and revoke) allowances from these entities until their full administrative consequences are covered. As a result, the allowances allocated to this entity were subsequently retired.

TABLE 3—NUMBER OF CONSUMPTION ALLOWANCES AVAILABLE TO ELIGIBLE ENTITIES DUE TO FINALIZED ADMINISTRATIVE CONSEQUENCES WITH AN EFFECTIVE DATE OF JUNE 6, 2024

Entity	Additional allowances being allocated to each entity (MTEVe)
A.C.S. Reclamation & Recovery (Absolute Chiller Services)	0.0
Ability Refrigerants	0.0
ACT Commodities	0.0
Advance Auto Parts	0.1
Advanced Specialty Gases ..	0.0
AFK & Co	0.0
AFS Cooling	0.0
A-Gas	0.2
Air Liquide USA	0.0
American Air Components ^a ..	0.0
Arkema	1.9
Artsen	0.1
Automart Distributors DBA Refrigerant Plus	0.0
AutoZone Parts	0.1
AW Product Sales & Marketing	0.0
Bluon ^a	0.0
CC Packaging	0.0
Chemours	2.1
Chemp Technology	0.0
ChemPenn	0.0
ComStar International	0.0
Creative Solution	0.0
Cross World Group	0.0
Daikin America	0.2
EDX Industry	0.0
Electronic Fluorocarbons	0.0
Fireside Holdings DBA American Refrigerants	0.0

TABLE 3—NUMBER OF CONSUMPTION ALLOWANCES AVAILABLE TO ELIGIBLE ENTITIES DUE TO FINALIZED ADMINISTRATIVE CONSEQUENCES WITH AN EFFECTIVE DATE OF JUNE 6, 2024—Continued

Entity	Additional allowances being allocated to each entity (MTEVe)
First Continental International FluoroFusion Specialty Chemicals	0.1
Freskoa USA	0.2
GlaxoSmithKline	0.0
Golden Refrigerant	0.0
Harp USA	0.0
Honeywell International	0.1
Hudson Technologies	4.9
Hungry Bear	0.2
ICool USA	0.0
IGas Holdings	0.2
Iofina Chemical	1.6
Kidde-Fenwal	0.0
Lenz Sales & Distribution	0.0
Lina Trade	0.1
Linde	0.0
Matheson Tri-Gas	0.0
MEK Chemical Corporation ..	0.0
Meraki Group	0.0
Metalcraft	0.0
Mexichem Fluor DBA Koura ..	1.5
Mondy Global	0.0
National Refrigerants	0.0
Nature Gas Import and Export	1.2
North American Refrigerants ..	0.1
O23 Energy Plus	0.0
Perfect Score Too DBA Perfect Cycle	0.0
Reclamation Technologies ...	0.0
Resonac America (formerly Showa Chemicals of America) ^a	0.0
RGAS (formerly listed as Combs Gas)	0.3
RMS of Georgia	0.1
Sciarra Laboratories	0.0
SDS Refrigerant Services	0.0
Solvay Fluorides	0.1
Summit Refrigerants	0.0
SynAgile Corporation	0.0
Technical Chemical	0.2
TradeQuim	0.0
Transocean Offshore Deep-water Drilling	0.0
Tulstar Products	0.0
Tyco Fire Products	0.1
USSC Acquisition Corp	0.0
Walmart	0.2
Waysmos USA	0.0
Wego Chemical Group	0.0
Weitron	0.4
Wesco HMB	0.0
Wilhelmsen Ships Service	0.0

TABLE 3—NUMBER OF CONSUMPTION ALLOWANCES AVAILABLE TO ELIGIBLE ENTITIES DUE TO FINALIZED ADMINISTRATIVE CONSEQUENCES WITH AN EFFECTIVE DATE OF JUNE 6, 2024—Continued

Entity	Additional allowances being allocated to each entity (MTEVe)
Total	16.3

^a As described in “Phasedown of Hydrofluorocarbons: Notice of 2024 Allowance Allocations for Production and Consumption of Regulated Substances Under the American Innovation and Manufacturing Act of 2020, and Notice of Final Administrative Consequences” (88 FR 72060), EPA will retire (and revoke) allowances from these entities until their full administrative consequences are covered.

Judicial Review

The AIM Act provides that certain sections of the Clean Air Act (CAA) “shall apply to” the AIM Act and actions “promulgated by the Administrator of [EPA] pursuant to [the AIM Act] as though [the AIM Act] were expressly included in title VI of [the CAA].” 42 U.S.C. 7675(k)(1)(C). Among the applicable sections of the CAA is section 307, which includes provisions governing judicial review. 42 U.S.C. 7607(b)(1). Each adjudicatory action establishing an administrative consequence as described in this notice is a final action previously taken by EPA. Under section 307(b)(1) of the CAA, any petition for review of such a final action shall be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2024. Filing a petition for reconsideration by the Administrator does not affect the finality of any such action for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such action. The final actions described herein may not be challenged later in proceedings to enforce their requirements. 42 U.S.C. 7607(b)(2).

Cynthia A. Newberg,
Director, Stratospheric Protection Division.
[FR Doc. 2024–23138 Filed 10–4–24; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 23–1; DA 24–1006; FR ID 249027]

Rescheduled Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.
ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing the rescheduling of a meeting of the North American Numbering Council (NANC).

DATES: December 13, 2024. The meeting will come to order at 10 a.m. ET.

ADDRESSES: The meeting will be conducted via video conference and will be available to the public via the internet at <http://www.fcc.gov/live>.

FOR FURTHER INFORMATION CONTACT: You may also contact Christi Shewman, Designated Federal Officer, at christi.shewman@fcc.gov or 202–418–0646. More information about the NANC is available at <https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council>.

SUPPLEMENTARY INFORMATION: The NANC meeting previously scheduled for Thursday, December 12, 2024 at 2 p.m. ET has been cancelled. The meeting has been rescheduled for Friday, December 13, 2024 from 10 a.m. until 12 p.m. ET. The meeting will be conducted via video conference and will be open to the public via live feed from the FCC’s web page at <http://www.fcc.gov/live>. Open captioning will be provided for these events. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530. Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days’ advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate. Members of the public may submit comments to the NANC in the FCC’s Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Comments to the NANC should be filed in WC Docket No. 23–1. This is a summary of the Commission’s document in WC Docket

No. 23–1, DA 24–1006, released September 27, 2024.

Proposed Agenda: At the rescheduled December meeting, the NANC will consider and vote on reports and recommendations from the following Working Groups: (1) The Call Authentication Trust Anchor (CATA) Working Group regarding the regulatory treatment of international cellular roaming traffic; (2) The CATA Working Group regarding foreign-originated calls, the use of indirectly obtained numbers, and the use of numbers supplied on a trial basis by interconnected Voice over internet Protocol (VoIP) providers that obtain direct access to numbers; (3) the Numbering Administration Oversight Working Group regarding number use and resale, and number reclamation, by interconnected VoIP providers that obtain direct access to numbers; and (4) the Internet of Things Numbering Usage Working Group regarding the use of North American Numbering Plan numbers for the routing and addressing of Internet of Things communications. The agenda may be modified at the discretion of the NANC Chairwoman and the Designated Federal Officer. (5 U.S.C. ch. 10)

Federal Communications Commission.
Edward Krachmer,
Deputy Chief, Competition Policy Division,
Wireline Competition Bureau.
[FR Doc. 2024–23042 Filed 10–4–24; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0394 and 3060–0707; FR ID 248952]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.
ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the

information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before December 6, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0394.

Title: Section 1.420, Additional Procedures in Proceedings for Amendment of FM, TV or Air-Ground Table of Allotments.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 30 respondents; 30 responses.

Estimated Time per Response: 0.33 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 10 hours.

Total Annual Cost: \$13,500.

Needs and Uses: The information collection requirements contained in 47 CFR 1.420(j) require a petitioner seeking to withdraw or dismiss its expression of interest in allotment proceedings to file a request for approval. This request would include a copy of any related

written agreement and an affidavit certifying that neither the party withdrawing its interest nor its principals has received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, the exact nature and amount of consideration received or promised, an itemization of the expenses for which it is seeking reimbursement, and the terms of any oral agreement. Each remaining party to any written or oral agreement must submit an affidavit within five (5) days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses and provide the terms of any oral agreement relating to the dismissal or withdrawal of the expression of interest.

OMB Control Number: 3060-0707.

Title: Over-the-Air Reception Devices (OTARD).

Type of Review: Extension of a currently approved collection.

Respondents: State or Local, or Tribal Government.

Number of Respondents and Responses: 77 respondents; 77 responses.

Estimated Time per Response: 2-6 hours.

Frequency of Response: On occasion reporting; third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 207 of the Communications Act of 1934, as amended.

Total Annual Burden: 288 hours.

Total Annual Cost: 17,100.

Needs and Uses: Section 207 of the Telecommunications Act of 1996 ("1996 Act") directs the Commission to promulgate rules prohibiting restrictions on viewers' ability to receive over-the-air signals by television broadcast, multichannel multipoint distribution, or direct broadcast satellite services.

In a Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CS Docket No. 96-83, FCC 96-328, released August 6, 1996, the Commission fully implemented Section 207 of the 1996 Act by adopting final rules for a preemption of state, local and non-governmental regulations that impair viewers ability to receive over-the-air signals. In doing so, the FCC acknowledged the necessity of allowing state, local and non-governmental entities to continue to enforce certain regulations and restrictions, such as those serving safety purposes, and therefore exempted them from its

prohibition. Also, state, local and non-governmental entities were permitted to file petitions for waivers.

On September 25, 1998, the Commission released an Order on Reconsideration, FCC 98-214, in this proceeding that further modified and clarified Section 207 rules. Among other things, the Order on Reconsideration clarified how declaratory rulings and waivers in this matter are to be served on all interested parties. If a local government seeks a declaratory ruling or a waiver, it must take steps to afford reasonable, constructive notice to residents in its jurisdiction (e.g., by placing notices in a local newspaper of general circulation). Certificates of service and proof of constructive notice also must be provided to the Commission with the petition. A petition for declaratory ruling or a waiver request can be submitted by mail or electronically.

In this regard, the petitioner should provide the Commission with a copy of the notice and an explanation of where the notice was placed and how many people the notice might reasonably have reached. Effective January 22, 1999, FCC 98-273, the Commission amended the rules so that it applies to rental property where the renter has an exclusive use area, such as a balcony or patio.

In FCC 00-366, the Commission then further amended the rule so that it applies to customer-end antennas that receive and transmit fixed wireless signals. This amendment became effective on May 25, 2001.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024-23092 Filed 10-4-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, October 10, 2024, 10:00 a.m.

PLACE: Hybrid meeting: 1050 First Street NE, Washington, DC (12th Floor) and virtual.

Note: If you would like to virtually access the meeting, see the instructions below.

STATUS: This meeting will be open to the public. To access the meeting virtually, go to the Commission's website www.fec.gov and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Advisory Opinion 2024-09: U.S. Representative Nanette Barragán and Barragán for Congress

Draft Advisory Opinion 2024–13: DSCC, Montanans for Tester, and Gallego for Arizona
 Draft Advisory Opinion 2024–14: DSCC and Rosen for Nevada
 Certification for Payment of Presidential Primary Matching Funds (Mike Pence/Mike Pence for President)
 Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION:
 Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend in person and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Secretary and Clerk, at (202) 694–1040 or secretary@fec.gov, at least 72 hours prior to the meeting date.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2024–23253 Filed 10–3–24; 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 November 6, 2024.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to Comments.applications@dal.frb.org:

1. *Liberty Capital Bancshares, Inc., Addison, Texas*; to acquire Southwestern Bancorp, Inc., and thereby indirectly acquire Texas Heritage Bank, both of Boerne, Texas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–23146 Filed 10–4–24; 8:45 am]

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FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments 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 October 22, 2024.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri, 64198–0001. Comments can also be sent electronically to KCApplicationComments@kc.frb.org:

1. *Cynthia Hendershot, Edmond, Oklahoma*; to acquire control of voting shares of Citizens Bancshares, Inc. (Bancshares), by becoming a co-trustee of the Citizens Bancshares, Inc., ESOP, which controls Bancshares, and thereby indirectly controls The Citizens Bank of Edmond, all of Edmond, Oklahoma.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–23145 Filed 10–4–24; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice-MY–2024–01; Docket No. 2024–0002; Sequence No. 46]

Notice of the Federal Chief Data Officers Council's Data Powers Mission: Transforming Symposium

AGENCY: Federal Chief Data Officers (CDO) Council, Office of Executive Councils, Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: Join leaders from across the Federal Government representing diverse functional domains for an immersive one-day symposium as they share exclusive insights on how data transforms mission delivery and unlocks the art-of-possible. Learn from Federal executives and strategic business partners in the fields of finance, procurement, human capital and other functional areas. Through keynote addresses and panel discussions, attendees will discover the

transformative power of data in modernizing agency missions, digital transformation, and enhancing organizational capabilities. Expect to gain a deeper understanding of how the alignment of AI and data management can unleash sustained and responsible value within Federal agencies. Don't miss out on this opportunity to be part of crucial conversations that will shape the future of Federal agency operations.

DATES: The CDO Council Symposium will be held in-person on Thursday, November 21, 2024 from 8 a.m. to 3:30 p.m. eastern time (ET).

ADDRESSES: GSA Headquarters, 1800 F St NW, Washington, DC 20405 within the Jess Mellon Auditorium.

This is an in-person event. All attendees, including industry partners, must register for the event here: <https://www.ticketsource.us/federal-cdo-council/federal-cdo-council-presents-data-powers-mission-transforming-business-and-mission-with-data/e-pqaaqq>.

Members of the press are invited to attend but are required to register with the GSA press office (via email press@gsa.gov) by Thursday, November 14, 2024.

FOR FURTHER INFORMATION CONTACT: Ariel Crawford and Ashley Jackson, Senior Advisors, Office of Shared Solutions and Performance Improvement, Office of Government-wide Policy, General Services Administration, 1800 F Street NW, (Mail-code: MY), Washington, DC 20405, at 301-653-7198 (Ariel Crawford) and 202-538-2897 (Ashley Jackson), or cdocstaff@gsa.gov.

SUPPLEMENTARY INFORMATION:

Procedures for Attendance

Register to attend the Symposium via the Registration <https://www.ticketsource.us/federal-cdo-council/federal-cdo-council-presents-data-powers-mission-transforming-business-and-mission-with-data/e-pqaaqq>. Attendees must register by 5 p.m. ET, on Friday, November 15, 2024. Space is limited and available based on registration. (GSA will be unable to provide technical assistance to attendees during the meeting.) Members of the press are invited to attend but are required to register with the GSA press office (via email press@gsa.gov) by Thursday, November 14, 2024.

Accommodations

This meeting will include American Sign Language (ASL) interpretation. To request additional accommodations for a disability, please contact cdocstaff@gsa.gov at least seven (7) calendar days

prior to the meeting to allow as much time as possible to process your request.

Background

The Federal Chief Data Officers (CDO) Council was established by the Foundations for Evidence-Based Policymaking Act (Pub. L. 115-435), which also requires all Federal agencies to appoint a CDO. The Council's vision is to improve government mission achievement and increase the benefits to the Nation through improvement in the management, use, protection, dissemination, and generation of data in government decision-making and operations. The CDO Council has more than 90 member CDOs from across the Federal Government, as well as representatives from the Office of Management and Budget, and other key councils and committees. The CDO Council has working groups that focus on critical topics as well as committees that help Federal agencies connect and collaborate. The CDO Council also works with other interagency executive councils on data related topics and activities.

The CDO Council Symposium is for Federal employees as well as any members of the public, including industry, civil society, academia, and any users of Federal Government data. As a result of this meeting, participants will gain insights from Federal leaders leveraging data to transform mission delivery and understand the alignment of AI and data management for sustained value in Federal agencies.

Live Speakers (Subject To Change Without Notice.)

Hosted by: Federal CDO Council

Agenda Topic Areas

November 21, 2024 Symposium Focus Areas

- Data as a strategic enabler for mission and business delivery
- Partnership with CDO's, CAIO's, CIO's and other executive functions in the Federal Government
- Culture and workforce engagement
- The CDO Council's value to the Federal Government
- Strategic partnership in delivery of the Evidence Act

Ariel Crawford,

Senior Advisor CDO Council, Office of Shared Solutions and Performance Improvement, General Services Administration.

[FR Doc. 2024-23036 Filed 10-4-24; 8:45 am]

BILLING CODE 6820-69-P

GENERAL SERVICES ADMINISTRATION

[Notice-PBS-2024-10; Docket No. 2024-0002; Sequence No. 43]

Notice of Inquiry Regarding Sustainable Leasing

AGENCY: Public Buildings Service (PBS), Office of Leasing, General Services Administration, (GSA).

ACTION: Notice; Request for Information (RFI).

SUMMARY: GSA is exploring solutions toward achieving higher sustainability standards in federally leased locations. GSA is publishing this notice to request comments to help us understand the overall impacts of advanced sustainability requirements related to executing green leases. At this time, GSA has not determined whether or not it will work towards a notice of proposed rulemaking to address this topic.

DATES: Interested parties should submit written comments to the Regulatory Secretariat as noted below on or before December 6, 2024.

ADDRESSES: Submit comments in response to this inquiry to: <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "Notice of Inquiry Regarding Sustainable Leasing". Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "Notice of Inquiry Regarding Sustainable Leasing" on your attached document.

Instructions: Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information 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: For clarification of content, contact Ms. Elizabeth Brown, Realty Specialist at elizabeth.brown@gsa.gov or 202-355-3822. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at GSARegSec@gsa.gov or 202-501-4755. Please cite "GSA Sustainable Leasing Inquiry".

SUPPLEMENTARY INFORMATION:

I. Background

GSA has incorporated green requirements into its Request for Lease Proposal (RLP) and Lease documents for

the past 25 years. These green requirements are driven by statutes, federal policies, Executive Orders, and various industry standards. They include provisions related to Energy Star, third-party green ratings, HVAC and commissioning, indoor air quality, water conservation, sustainable products, and landlord reporting of energy and water consumption.

In December 2021, President Biden issued *Executive Order 14057 on Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability* (<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/08/executive-order-on-catalyzing-clean-energy-industries-and-jobs-through-federal-sustainability/>) which was accompanied by OMB Memorandum (M–22–06 (<https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-06.pdf>)). This Executive Order set new climate and sustainability goals for the Federal government, with the target of a net-zero emissions building portfolio by 2045.

Per the OMB memorandum (M–22–06), “. . . all new (including new-replacing, succeeding, and superseding) leases entered into after September 30, 2023, for at least 25,000 rentable square feet in a building where the Federal Government leases at least 75 percent of the total building square footage are green leases. Such green leases must require the lessor to report to the agency annual data on facility greenhouse gas emissions, energy consumption, water consumption, and waste generation . . .” (Section I.F.2). The *Implementing Instructions for E.O. 14057* (https://www.sustainability.gov/pdfs/EO_14057_Implementing_Instructions.pdf) further clarify that these requirements will be measured for “[all] new lease solicitations issued after September 30, 2023, for at least 25,000 rentable square feet (RSF) where the Federal Government occupies at least 75 percent of a building are to be green leases.” (Section 4.4.13).

The E.O. 14057 *Implementing Instructions* further require the following:

“GSA must issue green lease standards and guidelines to be applied to Federal leases, including provisions that promote a standard framework for lessor reporting of emissions, energy, water, and waste associated with leased space. Agencies with independent leasing authority must incorporate the guidelines and language into agency-specific leasing policies and procedures.”

GSA issued the *Green Lease Standards and Guidelines*, (<https://www.gsa.gov/system/files/>

GLSG%20Final%20-%209_28_23%20C%20V2.pdf) Version 1.0 on September 29, 2023. These standards reflect a core set of green requirements that are included in federal leases.

II. Purpose

This inquiry is an important step towards exploring implementation instructions on how to successfully advance green leasing requirements into leasing solutions.

GSA is considering adding more advanced green leasing requirements to lease solicitations. These requirements would apply to leases that are 25,000 rentable square feet or greater where the government collectively occupies at least 75 percent of the building. GSA has identified several optional requirements from GLSG Version 1.0 to include as required in a Version 2.0 update. This RFI seeks to understand how the commercial real estate market will meet these advanced sustainability requirements and any potential impact they will have on rental rates.

The key sustainability solutions that are being explored include: electrification of equipment upon replacement or end-of-life, the use of energy efficient equipment, periodic recommissioning, and landlord tracking and reporting of operational energy usage and waste management.

II.A. Electrification of Building Systems

GSA is reviewing energy efficiency as it relates to the electrification of major base building systems, meaning less reliance on fossil fuels for leases that are 25,000 rentable square feet or greater, where the federal government collectively occupies at least 75 percent of a building. GSA is considering requiring that upon replacement or end-of-life, building equipment used for heating, cooling, ventilation, and domestic hot water be changed from equipment relying on fossil fuels to equipment using electricity as the power source.

II.B. Use of Energy Efficient Equipment

For leases that are 25,000 rentable square feet or greater, where the federal government collectively occupies at least 75 percent of a building, GSA is considering requiring that energy-efficient equipment or components that follow the minimum performance requirements of Energy Star labeled or Federal Energy Management Program (FEMP)-designated program standards be installed for major base building systems (heating, cooling, ventilation, process loads, and domestic hot water) upon the end-of-life or replacement of current equipment.

II.C. Periodic Recommissioning

For leases that are 25,000 rentable square feet or greater and where the federal government collectively occupies at least 75 percent of a building, GSA is considering requiring a building owner to periodically recommission the major systems related to HVAC, controls, lighting, and domestic hot water based on relevant industry standards, to optimize systems and to maintain and enhance energy efficiency.

II.D. Reporting of Waste Generation

For leases that are 25,000 rentable square feet or greater and where the federal government collectively occupies at least 75 percent of a building, GSA is considering requiring the building owner to track and report waste generation, including municipal solid waste (trash and recycling), and construction and demolition debris.

II.E. Lessor Tracking/Reporting of the Government Tenants' Energy Use

For leases that are 25,000 rentable square feet or greater, and where the federal government collectively occupies at least 75 percent of a building, GSA is considering requiring the building owner to track and report energy use for federal government tenants independent from non-government tenants. This could include estimating the government's annual energy use if tenant level submeters are not available.

III. Request for Operational and Economic Information

GSA seeks responses to the questions listed below. Please explain the reasoning behind your responses in detail. Also, please provide any data, studies, or other evidence that supports your response.

In your response please include your contact information, your business socio-economic category if applicable, and a brief description of your business.

GSA also seeks to better understand what industry changes are feasible from an economic perspective. GSA seeks economic data and consumer research to help increase its understanding of the impact that added sustainability requirements will have on rental rates for government leases in multiple markets. In your response please consider some of the questions below.

To help GSA review comments efficiently, identify the question to which you are responding by its associated number and letter (e.g., “IV.2.a”) or whether you are commenting on a topic not listed below.

IV. Questions for Industry

(1.) What measures would be required to transition to electric, non-fossil fuel using equipment for major building systems (heating, cooling, ventilation, and domestic hot water), upon the equipment's replacement or end-of-life?

(a.) What are the constraints or obstacles associated with this transition?

(b.) Please provide an estimate of the impact, if any, that electrification of building equipment would have on rental rates for government leases. Please identify the estimated costs and savings associated with implementing electrification.

(2.) What are the steps needed to shift toward using energy efficient equipment for building systems that follow the minimum performance requirements of Energy Star or FEMP-designated program standards (upon replacement or end-of-life)?

(a.) Are there challenges with obtaining energy efficient equipment and components for major building systems, or following the minimum performance requirements of Energy Star or FEMP-designated program standards for a federal leased space? If yes, what are those market challenges?

(b.) What impact on rental rates, if any, would installing energy efficient equipment and components for major building systems, or following the minimum performance requirements of Energy Star or FEMP-designated program standards?

(3.) If periodic recommissioning is required, what is the appropriate frequency that major building systems should be recommissioned?

(a.) Are there commercial industry standards for building recommissioning that we should consider using?

(b.) What parameters should we consider using if we chose to include recommissioning requirements (eg: percentage of government occupancy; size of lease; term of lease)?

(c.) What impact would periodic recommissioning requirements have on rental rates?

(4.) Are building owners currently required to track and report waste generation (related to trash, recyclables, and construction & demolition debris) in your local jurisdictions (city, county, etc.)?

(a.) What, if any, impact would this type of waste tracking and reporting have on the proposed rental rates for federal government leases?

(5.) Given the thresholds of 25,000 rentable square feet or greater and at least 75 percent federal government occupancy, would any of the 5 key

sustainability solutions reflected in Section II of this RFI prevent building owners from offering space to the government on a competitive lease procurement?

(6.) Are all or any of the 5 key sustainability solutions reflected in Section II of this RFI currently required by any building owners in jurisdictions or markets that you are familiar with (city, county, etc.)?

(a.) If so, which solutions, and which markets?

(b.) Have building owners been able to meet the requirements like these in markets you are familiar with, and what impact, if any, have they had on rental rates?

(7.) Please identify additional advanced sustainability requirements that GSA should consider in the pursuit of a more sustainable leased inventory.

(a.) What are they?

(b.) What are the expected impacts on rental rates for government leases associated with your recommendations?

Crofton Whitfield,

*Assistant Commissioner, Office of Leasing,
Public Buildings Service, General Services
Administration.*

[FR Doc. 2024-23106 Filed 10-4-24; 8:45 am]

BILLING CODE 6820-BT-P

GOVERNMENT ACCOUNTABILITY OFFICE

Comptroller General's Advisory Council on Standards for Internal Control in the Federal Government; Notice of Meeting

AGENCY: U.S. Government
Accountability Office.

ACTION: Notice of meeting.

SUMMARY: The U.S. Government Accountability Office (GAO) is revising the *Standards for Internal Control in the Federal Government*, known as the Green Book. As part of the revision process, GAO will hold a meeting of the Comptroller General's Advisory Council on Standards for Internal Control in the Federal Government (Advisory Council) on Wednesday, October 30, 2024, from 10:00 a.m. to 1:00 p.m. to provide input and recommendations on revisions to the Green Book. The purpose of this meeting is to discuss proposed revisions as a result of comments received on the June 2024 Green Book Exposure Draft. The meeting will be virtual and is open to the public.

DATES: The meeting will be held on Wednesday, October 30, 2024, from 10 a.m. to 1 p.m.

ADDRESSES: The meeting will be virtual only.

FOR FURTHER INFORMATION CONTACT: For further information on the meeting or the Green Book, please contact Carrie Morrison, Assistant Director, Financial Management and Assurance, MorrisonC@gao.gov or (202) 512-4689. To request a reasonable accommodation (RA) for this meeting, email GAO's RA office at ReasonableAccommodations@gao.gov. Please request all accommodations at least five business days prior to the meeting (by October 23, 2024).

SUPPLEMENTARY INFORMATION: Any interested person may attend the virtual meeting as an observer. Members of the public will have an opportunity to address the Advisory Council with brief (five-minute) presentations on matters directly related to the proposed updates and revisions. Any interested person who plans to attend the virtual meeting as an observer must contact Carrie Morrison, Assistant Director, at (202) 512-4689, before October 23, 2024. The meeting agenda will be available upon request one week before the meeting.

Authority: 31 U.S.C. 3512(c), (d).

James R. Dalkin,

*Director, Financial Management and
Assurance, U.S. Government Accountability
Office.*

[FR Doc. 2024-23134 Filed 10-4-24; 8:45 am]

BILLING CODE 1610-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information (RFI): To Inform the Development of the 2026- 2030 National HIV/AIDS Strategy and the National Strategic Plans for Sexually Transmitted Infections, Vaccines, and Viral Hepatitis

AGENCY: Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Through this Request for Information (RFI), the Office of Infectious Disease and HIV/AIDS Policy (OIDP) in the Office of the Assistant Secretary for Health (OASH) in the Office of the Secretary, Department of Health and Human Services (HHS), invites feedback from Federal, State, Tribal, territorial, and local governments; community-based organizations and faith-based organizations; Urban Indian Organizations; health plans and payers; health care providers, and other health-related and social services

organizations; private-sector entities; researchers and academic institutions; people living with and who experience risk for disease; and other interested constituents on Strategic Plans to serve as national roadmaps to guide efforts to address HIV, sexually transmitted infections (STI), and viral hepatitis, and to improve and enhance the development and use of vaccines in the United States.

DATES: To be assured consideration, comments must be received at the addresses provided below, no later than 5:00 p.m. ET on December 6, 2024.

ADDRESSES: Submissions must be submitted electronically via the following website: <https://app.smartsheetgov.com/b/form/68aa1bd9c54b42829f99e85cc4ab1e82>.

FOR FURTHER INFORMATION CONTACT: Questions about this RFI should be directed to Nathan Fecik; Phone: 202–795–7616; Email: Syndemics@hhs.gov.

SUPPLEMENTARY INFORMATION: OIDP requests feedback on the development of the following (collectively referred to as the Strategic Plans):

- National HIV/AIDS Strategy for the United States: 2026–2030 (NHAS)
- Sexually Transmitted Infections National Strategic Plan for the United States: 2026–2030 (STI Plan)
- Vaccines National Strategic Plan for the United States: 2026–2030 (Vaccines Plan)
- Viral Hepatitis National Strategic Plan for the United States 2026–2030 (Viral Hepatitis Plan)

The National HIV/AIDS Strategy for the United States: 2022–2025 (<https://files.hiv.gov/s3fs-public/NHAS-2022-2025.pdf>), the Sexually Transmitted Infections National Strategic Plan for the United States: 2021–2025 (<https://www.hhs.gov/sites/default/files/STI-National-Strategic-Plan-2021-2025.pdf>), the Vaccines National Strategic Plan: 2021–2025 (<https://www.hhs.gov/sites/default/files/HHS-Vaccines-Report.pdf>), and the Viral Hepatitis National Strategic Plan for the United States: A Roadmap to Elimination: 2021–2025 (<https://www.hhs.gov/sites/default/files/Viral-Hepatitis-National-Strategic-Plan-2021-2025.pdf>) expire at the end of calendar year 2025.

OIDP, in collaboration with the White House Office of National AIDS Policy (focused specifically on the NHAS) and Federal partners, is leading work to develop the next iteration of these interrelated Strategic Plans through 2030. As the next NHAS will be developed in parallel with the three national strategic plans, OIDP is collecting information for the 2026–

2030 National HIV/AIDS Strategy at the request of the White House Office of National AIDS Policy. OIDP invites community input as people have served as the cornerstone for developing the Strategic Plans since their inception.

Background: The Strategic Plans serve as national roadmaps for a broad range of constituents to help prevent, diagnose, treat, and cure disease, improve health outcomes, reduce health disparities and inequities, and advance research and technology. The plans include a common vision, overarching goals, objectives, and strategies, and indicators to measure national progress toward established targets.

The development of the next iteration of the Strategic Plans will serve as an opportunity to incorporate the latest epidemiological data; review progress toward achieving national strategic plan goals; center the needs of populations disproportionately affected; address gaps identified in existing Strategic Plans; integrate the latest scientific advances; prioritize the most effective strategies for achieving national goals; and further emphasize the need to implement integrated syndemic approaches (<https://www.hiv.gov/blog/defining-the-term-syndemic>) that cut across each of the Strategic Plans and address common root causes of infectious diseases.

OIDP, in collaboration with Federal partners, is updating the Strategic Plans at the same time because these conditions often disproportionately affect similar populations and may share common root causes. The Vaccine National Strategic Plan is included in this coordinated process to elevate the critical role vaccines can serve as a key intervention to prevent infectious disease, including STIs and viral hepatitis, and to disrupt syndemics. By updating the Strategic Plans at the same time, OIDP aims to identify, leverage, and maximize Federal and other resources to achieve health equity and reduce related health disparities.

OIDP coordinates the development, implementation, and monitoring of the Strategic Plans in collaboration with Federal partners.

Information Requested: Anyone can submit written responses to the questions of interest listed at the following website: <https://app.smartsheetgov.com/b/form/68aa1bd9c54b42829f99e85cc4ab1e82>.

This feedback will inform the 2026–2030 Strategic Plans. Please note that responses have specified word limits. Please provide evidence-based justification where applicable. Professional societies, advocacy organizations, and other groups are

encouraged to submit a single collective response that reflects the views of their membership.

Responses to this RFI Notice are voluntary and may be made public by HHS. The submitted information will be reviewed by HHS staff and may be made available to the public, along with the submitting individual's name, email address, and demographic information consisting of the submitter's location, affiliated organization, role, and (if provided) title and nature of comments. Submitted information will not be considered confidential, so do not include proprietary, classified, confidential, personal, or other sensitive information in your response. This request is for information and planning purposes and should not be construed as a solicitation or as an obligation of the Federal Government or the HHS. No awards will be made based on responses to this RFI. The information submitted will be analyzed and may be used in reports or presentations. Those who respond are advised that the HHS is under no obligation to acknowledge receipt of your comments or provide feedback on your submission. The HHS and the government reserve the right to use any non-proprietary technical information in any future solicitation(s).

Authority: 42 U.S.C. 202 and 42 U.S.C. 207.

B. Kaye Hayes,

Deputy Assistant Secretary for Infectious Disease; Director, Office of Infectious Disease and HIV/AIDS Policy.

[FR Doc. 2024–22948 Filed 10–4–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Collection of Customer Service, Demographic, and Smoking/Tobacco Use Information From the National Cancer Institute's (NCI) Cancer Information Service (CIS)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide an opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact Candace Maynard, Branch Chief, Cancer Information Service Branch, CISB/OCPL, 9609 Medical Center Drive, Rockville, MD 20850, or call non-toll-free number 240–276–6657 or email your request, including your address to: deatonc@mail.nih.gov. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires written comments and/or suggestions from the public, and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary

for the proper performance of the function 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, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Collection of Customer Service, Demographic, and Smoking/Tobacco use Information from the National Cancer Institute's (NCI) Cancer Information Service (CIS), 0925–0208, Expiration Date 03/31/2025, REVISION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Cancer

Institute (NCI) currently collects (1) customer service and demographic information from clients of the Cancer Information Service (CIS) to properly plan, implement, and evaluate cancer education efforts, including assessing the extent by which the CIS reaches and impacts underserved populations; (2) smoking/tobacco use behavior of individuals seeking NCI's smoking cessation assistance through the CIS to provide smoking cessation services tailored to the individual client's needs and track their smoking behavior at follow up. This is a request for OMB to approve a revised submission for an additional three years to provide ongoing customer service collection of demographic information and collection of brief customer satisfaction questions from NCI Cancer Information Service Clients for the purpose of program planning and evaluation.

OMB approval is requested for 3 years. Respondents' only cost is their time. The total estimated annualized burden hours are 6,343.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Category of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Demographic & Customer Satisfaction Questions (Appendix 1A or 1AB).	Individuals	15,754	1	3/60	788
Demographic & Customer Satisfaction Questions (Appendix 1B).	Individuals	17,589	1	2/60	586
Smoking Cessation "Intake" Questions (Appendix 1C).	Individuals	8,839	1	6/60	884
Smoking Call Backs (Appendix 1D)	Individuals	8,840	1	4/60	589
VA Call Backs (Appendix 1E)	Individuals	26,055	1	4/60	1,737
Cancer Info Call Backs (Appendix 1F)	Individuals	1,841	1	4/60	123
Email Intake Form (Appendix 2)	Individuals	9,740	1	10/60	1,623
Demographic & Customer Satisfaction Questions (Appendix 9).	Individuals	400	1	2/60	13
Totals .....	.....	.....	113,191	.....	6,343

Dated: October 2, 2024.

Diane Kreinbrink,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2024–23127 Filed 10–4–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Anti-KK–LC–1 T Cell Receptors

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the

Patents and Patent Applications listed in the Supplementary Information section of this notice to T-Cure Biosciences, Inc. ("T-Cure") located in Calabasas, California.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before October 22, 2024 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an Exclusive Patent License should be directed to: Suna Gulay French, Ph.D., Technology Transfer Manager, NCI

Technology Transfer Center, 9609 Medical Center Drive, RM 3W-204, MSC 9702, Bethesda, MD 20892-9702 (for business mail), Rockville, MD 20850-9702; Telephone: (240)-276-5530; Email: suna.gulay@nih.gov.

SUPPLEMENTARY INFORMATION:

Intellectual Property

1. United States Provisional Patent Application No. 62/327,529, filed April 26, 2016 and entitled "Anti-KK-LC-1 T Cell Receptors" [HHS Reference No. E-153-2016-0-US-01];

2. PCT Patent Application No. PCT/US2017/027865, filed April 17, 2017 and entitled "Anti-KK-LC-1 T Cell Receptors" [HHS Reference No. E-153-2016-0-PCT-02];

3. Australian Patent No. 2017258745, issued July 14, 2022 and entitled "Anti-KK-LC-1 T Cell Receptors" [HHS Reference No. E-153-2016-0-AU-03];

4. Canadian Patent Application No. 3021898, filed April 17, 2017 and entitled "Anti-KK-LC-1 T Cell Receptors" [HHS Reference No. E-153-2016-0-CA-04];

5. European Patent No. 3448882, issued November 24, 2021 and entitled "Anti-KK-LC-1 T Cell Receptors" [HHS Reference No. E-153-2016-0-EP-05];

a. Validated in the following jurisdictions: CH, DE, BE, DK, ES, FI, FR, GB, IE, IT, NL, NO and SE.

6. U.S. Patent No. 11,352,410, issued June 7, 2022 and entitled "Anti-KK-LC-1 T Cell Receptors" [HHS Reference No. E-153-2016-0-US-06].

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the following:

"1. Development, manufacture, and commercialization of autologous T cell therapy products, including T cells with stem-like properties, engineered via retrovirus-mediated gene transfer to express T cell receptors reactive to Kita-Kyushu Lung Cancer Antigen 1 (KK-LC-1), as claimed in the Licensed Patent Rights; such products to be developed for treatment of patients carrying HLA-A*01:01 histocompatibility haplotype, and diagnosed with a cancer expressing KK-LC-1 protein ("KK-LC-1 Targeting TCR-T Products").

2. Development, manufacture, and commercialization of a combination therapy for the treatment of KK-LC-1 expressing human cancers, independent of their HLA phenotype, wherein the treatment comprises:

a. Modification of the patient's tumor using Licensee's proprietary technology

to express the HLA-A*01:01 restriction element, and

b. Treatment with the KK-LC-1 Targeting TCR-T Products.

For the avoidance of doubt, specifically excluded from these Fields of Use are Natural Killer cell therapy products engineered via viral vectors (including lentivirus or retrovirus) to express the TCR(s) claimed in the Licensed Patent Rights."

This technology discloses isolated T cell receptors (TCR) reactive to the Kita-Kyushu lung cancer antigen 1 (KK-LC-1) within the context of human leukocyte antigen (HLA) A*01:01. KK-LC-1 is expressed by various epithelial cancers including carcinomas of the bladder, cervix, stomach, breast, lung, and pancreas. Due to its minimal expression in normal tissues, this antigen may be targeted on KK-LC-1-expressing tumors with minimal normal tissue toxicity.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 1, 2024.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2024-23029 Filed 10-4-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Drug Discovery and Molecular Pharmacology B Study Section.

Date: October 31-November 1, 2024.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Razvan Cornea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 904L, Bethesda, MD 20892, (301) 480-1955, cornearl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Imaging and Bioengineering Technology for Visual Systems (IBV).

Date: November 4-5, 2024.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue NW, Washington, DC 20037.

Contact Person: Susan Gillmor, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 762-3076, susan.gillmor@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel;

Fellowships: Learning, Memory, Language, Communication and Related Neuroscience.

Date: November 4-5, 2024.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Alexei Kondratyev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301-435-1785 kondratyevad@csr.nih.gov.

Name of Committee: Applied Therapeutics for Cancer Integrated Review Group; Drug Discovery and Molecular Pharmacology C Study Section.

Date: November 4–5, 2024.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Georgetown, 2350 M Street NW, Washington, DC 20037.

Contact Person: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, (301) 272–4596, smileyja@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Therapeutics and Biology.

Date: November 4, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lambratu Rahman Sesay, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–905–8294, rahman-sesay@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member conflict: Topics on Biobehavioral Processes

Date: November 4–5, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Natalie S Dailey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–4451, daileyns@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–24–129: Specific Pathogen Free Macaque Colonies.

Date: November 4, 2024.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Latha Malaiyandi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812Q, Bethesda, MD 20892, (301) 435–1999, malaiyandilm@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 1, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–23037 Filed 10–4–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2463]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before January 6, 2025.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA–B–2463, to Rick Sacbibit, Chief, Engineering Services

Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found

online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective

Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online

through the FEMA Map Service Center at <https://msc.fema.gov> for comparison. (Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Kearney County, Nebraska and Incorporated Areas Project: 23-07-0004S Preliminary Date: February 29, 2024	
City of Minden	City Hall, 325 North Colorado Avenue, Minden, NE 68959.
Unincorporated Areas of Kearney County	Kearney County Roads Department, 1124 East 9th Street, Minden, NE 68959.
Village of Axtell	Village Clerk's Office, 419 Main Avenue, Axtell, NE 68924.
Village of Heartwell	Community Center, 210 Main Street, Heartwell, NE 68945.
Village of Norman	Village Hall, 116 Norman Avenue, Norman, NE 68959.
Alamance County, North Carolina and Incorporated Areas Project: 22-04-0022S Preliminary Date: October 28, 2022	
Town of Gibsonville	Planning Department, 129 West Main Street, Gibsonville, NC 27249.
Unincorporated Areas of Alamance County	Alamance County Planning Department, 201 West Elm Street, Graham, NC 27253.
Caswell County, North Carolina and Incorporated Areas Project: 22-04-0023S Preliminary Date: October 28, 2022	
Town of Milton	Town Hall Government Center, Planning Department, 148 Broad Street, Milton, NC 27305.
Town of Yanceyville	Municipal Services Building, 158 East Church Street, Yanceyville, NC 27379.
Unincorporated Areas of Caswell County	Caswell County Government Office, Planning Department, 144 Main Street, Yanceyville, NC 27379.
Davidson County, North Carolina and Incorporated Areas Project: 22-04-0022S Preliminary Date: October 28, 2022	
Unincorporated Areas of Davidson County	Davidson County Government Center, Planning and Zoning Department, 913 Greensboro Street, Lexington, NC 27292.
Forsyth County, North Carolina and Incorporated Areas Project: 22-04-0022S Preliminary Date: October 28, 2022	
Town of Kernersville	Town Hall, Planning Department, 134 East Mountain Street, Kernersville, NC 27284.
Unincorporated Areas of Forsyth County	Forsyth County Bryce A. Stuart Municipal Building, Erosion Control, 100 East 1st Street, Winston-Salem, NC 27101.
Village of Tobaccoville	Forsyth County Bryce A. Stuart Municipal Building, Erosion Control, 100 East 1st Street, Winston-Salem, NC 27101.
Guilford County, North Carolina and Incorporated Areas Project: 22-04-0022S Preliminary Date: October 28, 2022 and January 23, 2024	
City of Greensboro	Stormwater Division, Water Resources, 2602 South Elm-Eugene Street, Greensboro, NC 27406.
City of High Point	City Hall, 211 South Hamilton Street, High Point, NC 27261.
Town of Jamestown	Town Hall, 301 East Main Street, Jamestown, NC 27282.
Town of Oak Ridge	Town Hall, 8315 Linville Road, Suite B, Oak Ridge, NC 27310.
Town of Pleasant Garden	Kirkman Municipal Building/Town Hall, 4920 Alliance Church Road, Pleasant Garden, NC 27313.
Town of Sedalia	Town Hall, 6121 Burlington Road, Sedalia, NC 27342.
Town of Stokesdale	Town Hall, 8325 Angel Pardue Road, Stokesdale, NC 27357.
Town of Summerfield	Planning Office, 4117 Oak Ridge Road, Summerfield, NC 27358.
Unincorporated Areas of Guilford County	Guilford County Planning Department, 400 West Market Street, Greensboro, NC 27402.

Community	Community map repository address
Randolph County, North Carolina and Incorporated Areas Project: 22-04-0022S Preliminary Date: October 28, 2022	
Unincorporated Areas of Randolph County	Randolph County Planning Department, 204 East Academy Street, Asheboro, NC 27205.
Rockingham County, North Carolina and Incorporated Areas Project: 22-04-0023S Preliminary Date: October 28, 2022	
City of Eden	City Hall, Planning and Community Development, 308 East Stadium Drive, Eden, NC 27288.
City of Reidsville	City Hall, 230 West Morehead Street, Reidsville, NC 27320.
Town of Madison	Town Hall, 120 North Market Street, Madison, NC 27025.
Town of Mayodan	Town Hall, 210 West Main Street, Mayodan, NC 27027.
Unincorporated Areas of Rockingham County	Rockingham County Governmental Complex, Planning and Inspections Department, 371 NC Highway 65 #100, Reidsville, NC 27320.
Stokes County, North Carolina and Incorporated Areas Project: 22-04-0022S Preliminary Date: October 28, 2022	
City of King	City Hall, 229 South Main Street, King, NC 27021.
Unincorporated Areas of Stokes County	Stokes County Administration Building, Department of Planning, 1014 Main Street, Danbury, NC 27016.
Allendale County, South Carolina and Incorporated Areas Project: 18-04-0039S Preliminary Date: May 14, 2021	
Unincorporated Areas of Allendale County	Allendale County Administrative Office, 526 Memorial Avenue North, Allendale, SC 29810.
Bamberg County, South Carolina and Incorporated Areas Project: 18-04-0039S Preliminary Date: May 14, 2021 and July 14, 2022	
City of Bamberg	City Hall, 2340 Main Highway, Bamberg, SC 29003.
City of Denmark	City Hall, 64 City Hall Street, Denmark, SC 29042.
Town of Ehrhardt	Town Hall, 13704 Broxton Bridge Road, Ehrhardt, SC 29081.
Unincorporated Areas of Bamberg County	Bamberg County Courthouse Annex, 1234 North Street, Bamberg, SC 29003.
Barnwell County, South Carolina and Incorporated Areas Project: 18-04-0039S Preliminary Date: May 14, 2021 and July 14, 2022	
City of Barnwell	City Hall, 130 Main Street, Barnwell, SC 29812.
Unincorporated Areas of Barnwell County	Barnwell County Administration Building, 57 Wall Street, Barnwell, SC 29812.
Hampton County, South Carolina and Incorporated Areas Project: 19-04-0016S Preliminary Date: May 14, 2021 and July 14, 2022	
Town of Estill	Hampton County B. T. DeLoach Building, 201 Jackson Avenue West, Hampton, SC 29924.
Town of Furman	Hampton County B. T. DeLoach Building, 201 Jackson Avenue West, Hampton, SC 29924.
Town of Hampton	Municipal Court, 608 1st Street West, Hampton, SC 29924.
Town of Luray	Hampton County B. T. DeLoach Building, 201 Jackson Avenue West, Hampton, SC 29924.
Town of Varnville	Hampton County B. T. DeLoach Building, 201 Jackson Avenue West, Hampton, SC 29924.
Town of Yemassee	Town Hall, 101 Town Circle, Yemassee, SC 29945.
Unincorporated Areas of Hampton County	Hampton County B. T. DeLoach Building, 201 Jackson Avenue West, Hampton, SC 29924.

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****[Docket ID FEMA–2024–0002]****Changes in Flood Hazard Determinations**

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at <https://msc.fema.gov>.

FOR FURTHER INFORMATION CONTACT: Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65. The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being

already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

(Catalog of Federal Domestic Assistance No. 97.022, “Flood Insurance.”)

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama: Mobile (FEMA Docket No.: B–2445).	City of Mobile (24–04–1639P).	The Honorable William Stimpson, Mayor, City of Mobile, P.O. Box 1827, Mobile, AL 36633.	City Clerk’s Office, 205 Government Street, Mobile, AL 36602.	Oct. 3, 2024	015007
Arkansas: Pulaski (FEMA Docket No.: B–2445).	Unincorporated areas of Pulaski County (23–06–2073P).	The Honorable Barry Hyde, Pulaski County Judge, 201 South Broadway Street, Suite 400, Little Rock, AR 72201.	Pulaski County Planning and Development Department, 3200 Brown Street, Little Rock, AR 72204.	Sep. 23, 2024	050179
Colorado:					
Adams (FEMA Docket No.: B–2439).	City of Thornton (23–08–0553P).	The Honorable Janifer Kulmann, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	City Hall, 9500 Civic Center Drive, Thornton, CO 80229.	Sep. 20, 2024	080125
Adams (FEMA Docket No.: B–2439).	Unincorporated areas of Adams County (23–08–0553P).	Emma Pinter, Chair, Adams County, Board of Commissioners, 4430 South Adams County Parkway, Brighton, CO 80601.	Adams County Community and Economic Development Department, 4430 South Adams County Parkway, 1st Floor, Suite W2000, Brighton, CO 80601.	Sep. 20, 2024	080001
Douglas (FEMA Docket No.: B–2439).	Unincorporated areas of Douglas County (23–08–0606P).	George Teal, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Department of Public Works Engineering, 100 3rd Street, Castle Rock, CO 80104.	Sep. 13, 2024	080049
Montrose (FEMA Docket No.: B–2439).	City of Montrose (22–08–0573P).	The Honorable J. David Reed, Mayor, City of Montrose, 400 East Main Street, Montrose, CO 81401.	City Hall, 433 South 1st Street, Montrose, CO 81401.	Sep. 12, 2024	080125
Montrose (FEMA Docket No.: B–2439).	Unincorporated areas of Montrose County (22–08–0573P).	Roger Rash, Chair, Montrose County Board of Commissioners, 1140 North Grand Avenue, Suite 250, Montrose, CO 81401.	Montrose County Government Center, 320 South 1st Street, Montrose, CO 81401.	Sep. 12, 2024	080124

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Florida:					
Lee (FEMA Docket No.: B-2445).	City of Bonita Springs (24-04-1255P).	The Honorable Rick Steinmeyer, Mayor, City of Bonita Springs, 9101 Bonita Beach Road, Bonita Springs, FL 34135.	Community Development Department, 9220 Bonita Beach Road, Suite 111, Bonita Springs, FL 34135.	Sep. 23, 2024	120680
Lee (FEMA Docket No.: B-2445).	Unincorporated areas of Lee County (24-04-1255P).	David Harner, Lee County Manager, 2115 2nd Street, Fort Myers, FL 33901.	Lee County Building Department, 1500 Monroe Street, Fort Myers, FL 33901.	Sep. 23, 2024	125124
Manatee (FEMA Docket No.: B-2439).	Unincorporated areas of Manatee County (23-04-6510P).	Charlie Bishop, Manatee County Administrator, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Administration Building, 1112 Manatee Avenue West, Bradenton, FL 34205.	Sep. 23, 2024	120153
Palm Beach (FEMA Docket No.: B-2445).	Town of Loxahatchee Groves (23-04-4820P).	Francine Ramaglia, Manager, Town of Loxahatchee Groves, 155 F Road, Loxahatchee Groves, FL 33411.	Town Hall, 155 F Road, Loxahatchee Groves, FL 33411.	Sep. 12, 2024	120309
Palm Beach (FEMA Docket No.: B-2445).	Unincorporated areas of Palm Beach County (23-04-4820P).	Verdenia C. Baker, Palm Beach County Administrator, 301 North Olive Avenue, Suite 1101, West Palm Beach, FL 33401.	Palm Beach County Building Division, 2300 North Jog Road, Vista Center, 1st Floor, 1E-17, West Palm Beach, FL 33411.	Sep. 12, 2024	120192
Palm Beach (FEMA Docket No.: B-2445).	Village of Royal Palm Beach (23-04-4820P).	The Honorable Fred Pinto, Mayor, Village of Royal Palm Beach, 1050 Royal Palm Beach Boulevard, Royal Palm Beach, FL 33411.	Village Hall, 1050 Royal Palm Beach Boulevard, Royal Palm Beach, FL 33411.	Sep. 12, 2024	120225
Pinellas (FEMA Docket No.: B-2439).	City of Clearwater (23-04-5852P).	The Honorable Bruce Rector, Mayor, City of Clearwater, 100 South Myrtle Avenue, Clearwater, FL 33756.	City Hall, 100 South Myrtle Avenue, Clearwater, FL 33756.	Sep. 13, 2024	125096
Volusia (FEMA Docket No.: B-2439).	City of Daytona Beach (24-04-1863P).	The Honorable Derrick Henry, Mayor, City of Daytona Beach, 301 South Ridgewood Avenue, Daytona Beach, FL 32114.	City Hall, 301 South Ridgewood Avenue, Daytona Beach, FL 32114.	Sep. 12, 2024	125099
Kentucky:					
Hardin (FEMA Docket No.: B-2445).	City of Elizabethtown (24-04-0372P).	The Honorable Jeff Gregory, Mayor, City of Elizabethtown, 200 West Dixie Avenue, Elizabethtown, KY 42702.	City Hall, 200 West Dixie Avenue, Elizabethtown, KY 42702.	Sep. 23, 2024	210095
Jefferson (FEMA Docket No.: B-2445).	Metropolitan Government of Louisville and Jefferson County (23-04-5492P).	The Honorable Craig Greenberg, Mayor, Metropolitan Government of Louisville and Jefferson County, 527 West Jefferson Street, Louisville, KY 40202.	Louisville/Jefferson County Metropolitan Sewer District, 700 West Liberty Street, Louisville, KY 40203.	Sep. 23, 2024	210120
Louisiana:					
East Feliciana (FEMA Docket No.: B-2445).	Unincorporated areas of East Feliciana Parish County (24-06-0746P).	Louis Kent, President, East Feliciana Parish Police Jury, P.O. Box 427, Clinton, LA 70722.	East Feliciana Parish Police Jury and Assessor, 12064 Marston Street, Clinton, LA 70722.	Sep. 19, 2024	220364
West Feliciana (FEMA Docket No.: B-2445).	Unincorporated areas of West Feliciana Parish County (24-06-0746P).	Kenneth Havard, President, West Feliciana Parish, P.O. Box 1921, St. Francisville, LA 70775.	West Feliciana Parish Government, 5934 Commerce Street, St. Francisville, LA 70775.	Sep. 19, 2024	220245
North Carolina:					
Cabarrus (FEMA Docket No.: B-2445).	Town of Harrisburg (22-04-2503P).	The Honorable Jennifer Teague, Mayor, Town of Harrisburg, P.O. Box 100, Harrisburg, NC 28075.	Town Hall, 4100 Main Street, Suite 101, Harrisburg, NC 28075.	Sep. 19, 2024	370038
Cabarrus (FEMA Docket No.: B-2445).	Unincorporated areas of Cabarrus County (22-04-2503P).	Stephen M. Morris, Chair, Cabarrus County Board of Commissioners, P.O. Box 707, Concord, NC 28026.	Cabarrus County Planning Services Department, 65 Church Street Southeast, Concord, NC 28025.	Sep. 19, 2024	370036
Guilford (FEMA Docket No.: B-2445).	City of Greensboro (23-04-3912P).	The Honorable Nancy Vaughan, Mayor, City of Greensboro, P.O. Box 3136, Greensboro, NC 27402.	Stormwater Planning Division, 2602 South Elm, Eugene Street, Greensboro, NC 27402.	Sep. 19, 2024	375351
Mecklenburg (FEMA Docket No.: B-2439).	Town of Cornelius (24-04-0324P).	The Honorable Woody Washam, Mayor, Town of Cornelius, P.O. Box 399, Cornelius, NC 28031.	Town Hall, 21445 Catawba Avenue, Cornelius, NC 28031.	Sep. 11, 2024	370498
North Dakota:					
McKenzie (FEMA Docket No.: B-2439).	City of Alexander (23-08-0604P).	The Honorable Kenneth Willcox, Mayor, City of Alexander, P.O. Box 336, Alexander, ND 58831.	City Hall, 112 Manning Avenue, Alexander, ND 58831.	Sep. 12, 2024	380055

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
McKenzie (FEMA Docket No.: B-2439).	Unincorporated areas of McKenzie County (23-08-0604P).	Howdy Lawlar, Chair, McKenzie County Board of Commissioners, 201 5th Street Northwest, Suite 543, Watford City, ND 58854.	McKenzie County Public Works Department, 1300 12th Street Southeast, Watford City, ND 58854.	Sep. 12, 2024	380054
Pennsylvania:					
Butler (FEMA Docket No.: B-2450).	Township of Adams (23-03-0933P).	Russell R. Ford, Chair, Township of Adams Board of Supervisors, 690 Valencia Road, Mars, PA 16046.	Township Hall, 690 Valencia Road, Mars, PA 16046.	Sep. 12, 2024	421415
Butler (FEMA Docket No.: B-2450).	Township of Middlesex (23-03-0933P).	Michael Spreng, Chair, Township of Middlesex Board of Supervisors, 133 Browns Hill Road, Valencia, PA 16059.	Township Hall, 133 Browns Hill Road, Valencia, PA 16059.	Sep. 12, 2024	421229
South Carolina: York (FEMA Docket No.: B-2439).	Unincorporated areas of York County (23-04-6209P).	David Hudspeth, York County Manager, 6 South Congress Street, York, SC 29745.	York County Planning and Development Services Department, 18 West Liberty Street, York, SC 29745.	Sep. 12, 2024	450193
Tennessee: Williamson (FEMA Docket No.: B-2445).	City of Spring Hill (23-04-5418P).	The Honorable Jim Hagaman, Mayor, City of Spring Hill, 199 Town Center Parkway, Spring Hill, TN 37174.	Engineering Department, 8060 Station Hill Drive, Spring Hill, TN 37174.	Sep. 13, 2024	470278
Texas:					
Atascosa (FEMA Docket No.: B-2445).	City of Lytle (24-06-0507P).	The Honorable Ruben Gonzalez, Mayor, City of Lytle, P.O. Box 743, Lytle, TX 78052.	City Hall, 14916 Main Street, Lytle, TX 78052.	Sep. 12, 2024	480692
Bexar (FEMA Docket No.: B-2439).	Unincorporated areas of Bexar County (23-06-2243P).	The Honorable Peter Sakai, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Probandt Street, San Antonio, TX 78214.	Sep. 16, 2024	480035
Collin (FEMA Docket No.: B-2439).	Unincorporated areas of Collin County (23-06-2300P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, McKinney, TX 75071.	Juvenile Justice Alternative Education Program Building, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	Sep. 16, 2024	480130
Denton (FEMA Docket No.: B-2439).	Unincorporated areas of Denton County (24-06-0136P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100, Denton, TX 76208.	Denton County Development Services Department, 3900 Morse Street, Denton, TX 76208.	Sep. 16, 2024	480774
Ellis (FEMA Docket No.: B-2439).	City of Venus (23-06-0989P).	The Honorable Alejandro Galaviz, Mayor, City of Venus, 700 West U.S. Highway 67, Venus, TX 76084.	Department of Public Works, 700 West U.S. Highway 67, Venus, TX 76084.	Sep. 16, 2024	480883
Ellis (FEMA Docket No.: B-2439).	Unincorporated areas of Ellis County (23-06-0989P).	The Honorable Todd Little, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	Ellis County Engineering Department, 109 South Jackson Street, Waxahachie, TX 75165.	Sep. 16, 2024	480798
Guadalupe (FEMA Docket No.: B-2439).	City of New Braunfels (23-06-2669P).	Robert Camareno, Manager, City of New Braunfels, 550 Landa Street, New Braunfels, TX 78130.	City Hall, 550 Landa Street, New Braunfels, TX 78130.	Sep. 12, 2024	485493
Guadalupe (FEMA Docket No.: B-2445).	Unincorporated areas of Guadalupe County (23-06-2723P).	The Honorable Kyle Kutscher, Guadalupe County Judge, 101 East Court Street, Seguin, TX 78155.	Guadalupe County Environmental Health Department, 310 Interstate Highway 10 West, Seguin, TX 78155.	Sep. 23, 2024	480266
Hays (FEMA Docket No.: B-2439).	City of Kyle (24-06-0264P).	The Honorable Travis Mitchell, Mayor, City of Kyle, 100 West Center Street, Kyle, TX 78640.	City Hall, 100 West Center Street, Kyle, TX 78640.	Sep. 12, 2024	481108
Kaufman (FEMA Docket No.: B-2439).	City of Forney (23-06-1347P).	The Honorable Jason Roberson, Mayor, City of Forney, P.O. Box 826, Forney, TX 75126.	City Hall, 101 East Main Street, Forney, TX 75126.	Sep. 13, 2024	480410
Medina (FEMA Docket No.: B-2445).	City of Castroville (23-06-2481P).	The Honorable Darrin Schroeder, Mayor, City of Castroville, 1209 Fiorella Street, Castroville, TX 78009.	Municipal Court, 1209 Fiorella Street, Castroville, TX 78009.	Sep. 20, 2024	480932
Medina (FEMA Docket No.: B-2445).	Unincorporated areas of Medina County (23-06-2481P).	The Honorable Keith Lutz, Medina County Judge, 1300 Avenue M, Room 250, Hondo, TX 78861.	Medina County Courthouse, 1100 16th Street, Hondo, TX 78861.	Sep. 20, 2024	480472
Nueces (FEMA Docket No.: B-2439).	City of Corpus Christi (23-06-1985P).	The Honorable Paulette M. Guajardo, Mayor, City of Corpus Christi, 1201 Leopard Street, Corpus Christi, TX 78401.	City Hall, 1201 Leopard Street, Corpus Christi, TX 78401.	Sep. 16, 2024	485464

[FR Doc. 2024-23124 Filed 10-4-24; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA-2024-0025]

Agency Information Collection Activities: Incident Reporting Form

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; new Information Collection Request, 1670-NEW.

SUMMARY: The Cybersecurity Division (CSD) within the Cybersecurity and Infrastructure Security Agency (CISA) submits the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This is a replacement to an existing collection and is a new collection request. This ICR collects cybersecurity incident reports related to Federal agency information systems, mandatory reports on behalf of certain Federal regulatory agencies, mandatory reports due to contractual requirements, and voluntary reports from members of the public. This ICR, which is authorized by the Federal Information Security Modernization Act of 2014 (FISMA) and the Homeland Security Act, is distinct from incident reporting under the Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA). CISA will use a different information collection instrument for CIRCIA incident reports after the effective date of CIRCIA implementing regulations. The questions included in this package for public review represent the universe of all possible questions CISA may use for incident report information collection purposes across multiple use cases; no respondent will be presented all the questions.

DATES: Comments are encouraged and will be accepted until December 6, 2024.

ADDRESSES: You may submit comments, identified by docket number Docket -CISA-2024-0025, by following the instructions below for submitting comment via the Federal eRulemaking Portal at <http://www.regulations.gov>.

Instructions: All comments received must include the agency name and docket number Docket #CISA-2024-0025. 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:

Brian DeWyngaert; 202-657-1360; Brian.dewyngaert@cisa.dhs.gov.

SUPPLEMENTARY INFORMATION: CISA serves as “a Federal civilian interface for the multi-directional and cross-sector sharing of information related to cyber threat indicators, defensive measures, cybersecurity risks, incidents, analysis, and warnings for Federal and non-Federal entities.” 6 U.S.C. 659(c)(1).

CISA is responsible for performing, coordinating, and supporting response to information security incidents, which may originate outside the Federal community and affect users within it, or originate within the Federal community and affect users outside of it. CISA uses the information from incident reports to develop timely and actionable information for distribution to Federal departments and agencies; State, local, Tribal and territorial (SLTT) governments; critical infrastructure owners and operators; private industry; and international organizations. Often, the effective handling of security incidents relies on information sharing among individual users, industry, and the Federal Government, which may be facilitated by and through CISA.

Pursuant to the *Federal Information Security Modernization Act of 2014 (FISMA)*, 44 U.S.C. 3552 *et seq.*, CISA operates the Federal information security incident center for the United States Federal Government. 44 U.S.C. 3556. Federal agencies notify and consult with CISA regarding information security incidents involving Federal information systems. CISA provides Federal agencies with technical assistance and guidance on detecting and handling security incidents, compiles and analyze incident information that threatens information security, informs agencies of current and potential threats and vulnerabilities, and provides intelligence or other information about cyber threats, vulnerabilities, and incidents to agencies. 44 U.S.C. 3556(a). CISA also receives incident reports from non-Federal entities who are reporting to satisfy existing regulatory, statutory, and/or contractual requirements. Finally, CISA receives voluntary incident reports from non-Federal entities.

CISA’s website (at <https://www.cisa.gov/>) is a primary tool used by constituents to report incident

information, access information sharing products and services, and interact with CISA. Constituents, which may include anyone or any entity in the public, use forms located on the website to complete these activities. Incident reports are primarily submitted using CISA’s current Incident Reporting Portal, available at <https://www.cisa.gov/forms/report>. This new collection instrument will replace the current form once the new collection instrument is online and active.

By accepting incident reports and feedback, and interacting among Federal agencies, industry, the research community, State and local governments, and others to disseminate reasoned and actionable cybersecurity information to the public, CISA has provided a way for citizens, businesses, and other institutions to communicate and coordinate directly with the Federal Government about cybersecurity.

Incident reports are collected through the Incident Reporting Portal, which enables end users to report incidents and indicators as well as submit malware artifacts associated with incidents to CISA. This information is used by CISA to conduct analyses and provide warnings of system threats and vulnerabilities, and to develop mitigation strategies as appropriate. This ICR also requests the user’s name, email address, organization, and infrastructure sector. The primary purpose for the collection of this contact and industry information is to allow CISA to contact requestors regarding their report.

In addition to web-based electronic forms, information may be collected through email or telephone. These methods enable individuals, private sector entities, personnel working at other Federal or State agencies, and international entities, including individuals, companies and other nations’ governments to submit information.

This collection of information will replace CISA’s current Incident Reporting Form. There are significant changes to the current set of questions asked. The questions included in this package for public review represent the universe of all possible questions CISA may use for incident report information collection purposes across the multiple use cases outlined above; no respondent will be presented all the questions. In the Incident Reporting Portal respondents will be directed to answer a subset of the questions based on the characteristics of the reporting entity, the reasons for which they are reporting, and the nature of the incident. The dynamic design of the Incident

Reporting Portal means that the user experience flow from question to question is driven by the individual respondent's responses. No respondent will be prompted to answer all the questions included in this package for review and approval.

This collection of information is distinct from CISA's efforts to implement the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA) covered cyber incident and ransom payment reporting requirements. On April 4, 2024, CISA published the CIRCIA Notice of Proposed Rulemaking (NPRM). 89 FR 23644 (Apr. 4, 2024). Among other aspects of the proposed rulemaking, the CIRCIA NPRM described the proposed required content of CIRCIA reports. The public comment for that NPRM closed on July 3, 2024, and CISA is currently reviewing and considering comments as it develops the CIRCIA Final Rule. However, CISA clarifies that reporting under CIRCIA will not go into effect until the effective date of the CIRCIA Final Rule, which is anticipated to be late 2025 or early 2026.

As described above, the purpose of this ICR is to replace CISA's current Incident Reporting Form (approved under OMB control number 1670-037) which is used to collect incident reports under CISA's non-CIRCIA authorities (including FISMA) or other existing regulatory, statutory, and/or contractual requirements that provide for reporting of incidents to CISA. This collection is intended to replace the current Incident Reporting Form, prior to the effective date of the CIRCIA Final Rule, with a revised question set that will enrich the value and analytical capabilities on the data collected under these other incident reporting and information sharing authorities.

Because this effort is distinct from the CIRCIA Final Rule development, comments submitted in response to this **Federal Register** notice will not be considered comments on the CIRCIA NPRM or otherwise considered as part of the development of the CIRCIA Final Rule. Further, because CISA is still actively in the process of considering comments received in response to the CIRCIA NPRM, this ICR should not be viewed as indicating how CISA will resolve such comments as part the Final Rule.

This collection of information will not have a significant economic impact on a substantial number of small entities. Based on an average of 26,000 respondents and the current hourly compensation rates, the burden and cost estimates are as follows: the burden hour estimate for an initial report is

52,000 hours and 146,250 hours for subsequent updates to the initial report. The annual burden cost is \$8,870,611. The annual government cost is \$4,351,165.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

Title: Clearance for the Collection of Information through CISA Reporting Form.

OMB Number: 1670-NEW.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments, Private Sector, and Academia.

Number of Respondents: 26,000.

Estimated Time per Respondent: 3 hours (Initial Report) 7.5 hours (Updated Report).

Total Burden Hours: 198,250.

Total Annualized Respondent Cost: \$8,870,611.

Total Annualized Government Cost: \$4,351,162.

Robert J. Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2024-23070 Filed 10-4-24; 8:45 am]

BILLING CODE 9111-LF-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[XXXD5198NI DS61100000
DNINR0000.000000 DX61104]

Exxon Valdez Oil Spill Public Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of renewal.

SUMMARY: The U.S. Department of the Interior announces the charter renewal of the *Exxon Valdez* Oil Spill Public Advisory Committee.

FOR FURTHER INFORMATION CONTACT:

Grace Cochon, U.S. Department of the Interior, Office of Environmental Policy and Compliance, 1011 E Tudor Road, Anchorage, Alaska 99503, 907-227-3781.

SUPPLEMENTARY INFORMATION: The Court Order establishing the *Exxon Valdez* Oil Spill Trustee Council also required the creation of a public advisory group to advise the Trustee Council. Consequently, the *Exxon Valdez* Oil Spill Public Advisory Committee was established and began functioning in October 1992. The Committee consists of 10 members representing the following principal interests: aquaculture/mariculture, commercial fishing, commercial tourism, conservation/environmental, Native landownership, recreation, sport hunting/fishing, subsistence, science/technology, and public-at-large. In order to ensure that a broad range of public viewpoints continues to be available to the Trustee Council, and in keeping with the settlement agreement, the continuation of the Public Advisory Committee is recommended.

In accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. Ch. 10), and in consultation with the General Services Administration, the Secretary of the Interior hereby renews the charter for the *Exxon Valdez* Oil Spill Public Advisory Committee.

Certification Statement: I hereby certify that the renewal of the charter for the *Exxon Valdez* Oil Spill Public Advisory Committee is necessary and in the public interest in connection with the performance of duties mandated by the settlement of *United States v. State of Alaska*, No. A91-081 CV, and is in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended and supplemented.

(Authority: 5 U.S.C. Ch. 10)

Deb Haaland,
Secretary of the Interior.

[FR Doc. 2024-23133 Filed 10-4-24; 8:45 am]

BILLING CODE 4334-63-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[DOI-2024-0013]; 188 PPWOCRADS7
PPMRSCR1C.CE0000 WBS:
PX.P0252231F.00.1]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to create a new Privacy Act system of records, INTERIOR/DOI-22, Archaeological Resources Preservation System. This system of records helps the DOI implement the Archaeological Resources Protection Act of 1979, as amended, and manage, preserve, and protect archaeological resources on Federal lands under DOI's jurisdiction. This newly established system will be included in the DOI's inventory of record systems.

DATE: This new system will be effective upon publication. New routine uses will be effective November 6, 2024. Submit comments on or before November 6, 2024.

ADDRESSES: You may send comments identified by docket number [DOI-2024-0013] by any of the following methods.

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* DOI_Privacy@ios.doi.gov. Include docket number [DOI-2024-0013] in the subject line of the message.
- *U.S. mail or hand-delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI-2024-0013]. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, DOI_Privacy@ios.doi.gov or (202) 208-1605.

SUPPLEMENTARY INFORMATION:

I. Background

The DOI is establishing the INTERIOR/DOI-22, Archaeological Resources Preservation System, system of records to implement the Archaeological Resources Protection Act of 1979 (ARPA), which requires DOI to issue implementing regulations to manage, protect, and preserve archaeological resources on Federal lands under DOI's jurisdiction. In compliance with ARPA, DOI promulgated regulations at 43 CFR part 7, Protection of Archaeological Resources, that provide uniform definitions, standards, and procedures for the protection of archaeological resources located on public lands and Indian lands of the United States. The regulations enable Federal land managers to protect archaeological resources through issuing permits for authorized excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal of archaeological resources, promote the preservation of archaeological resource collections and data, and ensure the confidentiality of information about archaeological resources. Archaeological resources are any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest, as defined in 43 CFR part 7. The INTERIOR/DOI-22, Archaeological Resources Preservation System, system of records will help DOI in the oversight, management, tracking, and reporting of activities conducted under ARPA and 43 CFR part 7 and ensure the protection of archaeological resources on Federal lands.

The ARPA contains criminal and civil penalties for persons who commit prohibited acts or for violations involving archaeological resources under the ARPA and other law enforcement authorities. Any reported or suspected violation of the ARPA will be referred to the appropriate Federal, State, or local law enforcement organization for investigation and appropriate action. Records related to criminal investigations for prohibited acts or violations involving archaeological resources under the ARPA and 43 CFR part 7 will be maintained separately in other law enforcement systems of records as

appropriate and will not be part of this system of records. However, records relating to criminal and civil penalties assessed under the ARPA and 43 CFR part 7 may be maintained in this system or other systems of records as necessary to implement the provisions of the ARPA and regulations at 43 CFR part 7.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each Federal agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The system of records notice for the INTERIOR/DOI-22, Archaeological Resources Preservation System, is published in its entirety below. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Participation

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/DOI-22, Archaeological Resources Preservation System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records pertaining to the protection of archaeological resources, investigations, and program management are maintained at:

(1) Departmental Consulting Archaeologist, National Park Service, 1849 C Street NW, Mail Stop 7508 MIB, Washington, DC 20240.

(2) Office of the Regional Director in each region of the National Park Service (NPS) in which the archaeological investigation is taking place. A current listing of park offices and contact information may be obtained by visiting the NPS website at <https://www.nps.gov> or by contacting the System Manager.

(3) Office of the Regional Director in each U.S. Fish and Wildlife Service (FWS) National Wildlife Refuge in which the archaeological investigation is taking place. A current listing of these offices may be obtained by writing to the System Manager or by visiting the FWS website at <https://www.fws.gov>.

(4) Office of the Regional Director in each region of the Bureau of Indian Affairs (BIA) in which the archaeological investigation is taking place. A current listing of contact information may be obtained by visiting the BIA website at <https://www.bia.gov/regional-offices> and by contacting the Regional Archaeologist.

(5) Office of the Regional Director in each region of the Bureau of Land Management (BLM) in which the archaeological investigation is taking place. Contact information can be found on the BLM leadership website at <https://www.blm.gov/leadership>.

(6) Bureau of Reclamation (Reclamation), Federal Preservation Officer, Denver Federal Center, and the Office of the Regional Archaeologist in each Reclamation region in which the archaeological work is taking place. A current list of the Regional Archaeologists can be found at <https://www.usbr.gov/cultural/crmstaff.html>.

SYSTEM MANAGER(S):

(1) National Park Service—Departmental Consulting Archaeologist, National Park Service, 1849 C Street NW, Mail Stop 7508 MIB, Washington, DC 20240.

(2) U.S. Fish and Wildlife Service—Office of the Regional Director in each National Wildlife Refuge in which the archaeological investigation is taking place. A current listing of these offices may be obtained by writing to the System Manager/s or by visiting the FWS website at <https://www.fws.gov>.

(3) Bureau of Indian Affairs—Regional Director in each Region of the BIA in

which the archaeological investigation is taking place. A current listing of contact information may be obtained by visiting the BIA website at <https://www.bia.gov/regional-offices> and by contacting the Regional Archaeologist.

(4) Bureau of Land Management—Headquarters Division Chief, Division of Education, Cultural and Paleontological Resources, 760 Horizon Dr, Ste. 109, Grand Junction, CO 81506.

(5) Bureau of Reclamation—Federal Preservation Officer, Denver Federal Center, PO Box 25007, Denver, CO 80225-0007.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa–470mm; 43 CFR part 7, Protection of Archaeological Resources; The Antiquities Act of 1906, Public Law 59–209, 34 Stat. 225; Monuments, Ruins, Sites, and Objects of Antiquity, 54 U.S.C. 320301–320303; 25 CFR 262.8, Custody of archaeological resources; 43 CFR part 3, Preservation of American Antiquities; U.S.C. Title 54—National Park Service and Related Programs; The National Park Service Organic Act; The Reclamation Act; The National Wildlife Refuge System Administration Act; and The Federal Land Policy and Management Act.

PURPOSE(S) OF THE SYSTEM:

The primary purposes of the system are to support the management, preservation, and protection of archaeological resources on Federal lands; help Federal land managers oversee research projects, monitor fieldwork, manage field records and reports, and ensure material objects are appropriately curated; and comply with ARPA and 43 CFR part 7 for the protection of archaeological resources.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include members of the public, researchers, principal investigators, field directors, and permit administrators who apply for or process permits for proposed archaeological investigations, Tribal officials involved in the permit approval process, and Federal employees with responsibility for administering permits for proposed archaeological investigations. This system contains records concerning corporations, educational institutions, and other business entities, which are not subject to the Privacy Act. However, records pertaining to individuals acting on behalf of corporations and other business entities may reflect personal information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records related to the management and protection of archaeological resources including permits, applications, investigations, notice of violations, assessment of penalties, records related to violations, referrals for investigation, suspension or revocation, appeals and administrative decisions, and documented consent from Tribes or Indian owner(s). These records may include but are not limited to: permit number, name, personal or business address, personal or business telephone number, personal or business email address, advanced education and related documentation, training, qualifications, nature and location of proposed work, duration of project and fieldwork, proposed outlet(s) for public written dissemination of the investigation results, signature of permit administrator, and any additional information that may be required to fulfill requirements of the ARPA and 43 CFR part 7 to manage and protect archaeological resources.

RECORD SOURCE CATEGORIES:

Records in the system are obtained from commercial organizations and independent researchers at institutions, such as colleges and universities, who submit an application for a permit, a report, or artifacts, provide evidence to a Federal land manager, or are involved in a permit application, excavation, controlled collection, analysis, or permitted activity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

- (1) DOI or any component of DOI;
- (2) Any other Federal agency appearing before the Office of Hearings and Appeals;
- (3) Any DOI employee or former employee acting in his or her official capacity;
- (4) Any DOI employee or former employee acting in his or her individual

capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The United States Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, territorial, local, Tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, State, territorial, local, Tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To State, territorial and local governments and Tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, shared service provider, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (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 DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI 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.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A-19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To State Historic Preservation Offices to maintain inventory of known archaeological sites located within the State, including sites on Federal lands in order to:

(1) conduct a comprehensive statewide survey of historic property and maintain inventories of the property; and

(2) maintain historical and archaeological data under a contract or cooperative agreement.

P. To Federal, State, territorial, and local governments, Tribal organizations, and members of the public to conduct consultations among agency officials and other parties with an interest in the effects of the undertaking, including any

project, activity, or program either funded, permitted, licensed, or approved by a Federal agency, on historic properties or Federal lands.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in both paper format and electronic format. Paper records are contained in file folders stored in secured file cabinets. Electronic records are contained in removable drives, computers, email, and electronic databases.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in the system may be retrieved by name, address, telephone number, or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are maintained in accordance with Department-wide or specific bureau records retention schedules that have been approved by NARA.

NPS maintains records in accordance with the NPS Record Schedule, Resource Management and Lands (Item 1), 1.A, Land Acquisition and Land Status Records, which has been approved by NARA (N1-79-08-1). Permits for archaeological investigations are permanent. Permanent special media and electronic records along with any finding aids or descriptive information, including linkage to the original file, and related documentation are transferred by calendar year to the National Archives when 3 years old. Digital records will be transferred according to standards applicable at the time. All other permanent records are transferred to the National Archives 15 years after closure.

FWS maintains records in accordance with the FWS Records Schedule, PERM-811, Archaeological Permit Files which has been approved by NARA (N1-022-05-01/34). These records are considered temporary. Approved permits are maintained for three years after the permit expiration or termination date. Denied permits are maintained for 1 year after the final determination.

BIA records are maintained under Indian Affairs Records Schedule, Cultural Resources Site Study (4303 or TR-4303-P5) approved by NARA (N1-075-04-001) and Indian Land Permit (4502 or TR-4502 P-5) (N1-075-04-03). These records are scheduled as permanent. Records are maintained in the office of record for five years after cutoff, and then retired to the American Indian Records Repository. Transfer to the National Archives of the United

States in accordance with the signed Standard Form 258, Agreement to Transfer Records to the National Archives of the United States.

BLM records are maintained under the BLM Records Schedule 4, Property Use and Disposal, Item 11A—Resources Inventory, Study, or Survey Case Files (N1–49–90–01). These records are scheduled as permanent. Records are maintained in the office for three years after cutoff then transferred to a Federal Records Center (FRC) and are transferred to NARA 25 years after cutoff.

Reclamation records are currently maintained in accordance with the following approved NARA Reclamation Records Retention Schedule 3, Environmental Compliance and Management, ENV–3.00, Cultural Resources (N1–115–94–7). Archeology files have a permanent retention. Records are transferred to the FRC 10 years after cutoff then transferred to NARA 30 years after cutoff.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security and privacy rules and policies. During normal hours of operation, paper records are maintained in locked file cabinets under the control of authorized personnel. Computer servers on which electronic records are stored are located in secured DOI controlled facilities with physical, technical and administrative levels of security to prevent unauthorized access to the DOI network and information assets. Access is restricted to authorized personnel who are individually authorized to use the system based on their roles. A Privacy Act Warning Notice appears on computer monitor screens when records containing information on individuals are first displayed. Data exchanged between the servers and the system is encrypted. Backup media are encrypted and stored in a locked and controlled room in a secure, off-site location.

All authorized users are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the DOI Rules of Behavior. Privacy impact assessments are conducted on information systems to ensure that Privacy Act requirements are met and appropriate privacy controls were implemented to safeguard the personally identifiable information contained in the system.

RECORD ACCESS PROCEDURES:

An individual requesting access to their records should send a written inquiry to the applicable System Manager identified above. DOI forms and instructions for submitting a Privacy Act request may be obtained from the DOI Privacy Act Requests website at <https://www.doi.gov/privacy/privacy-act-requests>. The request must include a general description of the records sought and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked "PRIVACY ACT REQUEST FOR ACCESS" on both the envelope and letter. A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of their records should send a written request to the applicable System Manager as identified above. DOI instructions for submitting a request for amendment of records are available on the DOI Privacy Act Requests website at <https://www.doi.gov/privacy/privacy-act-requests>. The request must clearly identify the records for which amendment is being sought, the reasons for requesting the amendment, and the proposed amendment to the record. The request must include the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked "PRIVACY ACT REQUEST FOR AMENDMENT" on both the envelope and letter. A request for amendment must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records about them should send a written inquiry to the applicable System Manager as identified above. DOI instructions for submitting a request for notification are available on the DOI Privacy Act Requests website at <https://www.doi.gov/privacy/privacy-act-requests>. The request must include a general description of the records and the requester's full name, current address, and sufficient identifying

information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked "PRIVACY ACT INQUIRY" on both the envelope and letter. A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Teri Barnett,

Departmental Privacy Officer, U.S. Department of the Interior.

[FR Doc. 2024–23078 Filed 10–4–24; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

**[DOI–2024–0006; 24XD4523WD
DWDFJ0000.000000 DS68664000]**

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, Interior.
ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to modify the Privacy Act system of records, INTERIOR/DOI–91, Oracle Federal Financials (OFF). DOI is revising this notice to update the system manager and system location, authorities, storage, retrieval, records retention schedule, safeguards, record source categories, and notification, records access and contesting procedures; propose new and modified routine uses, and all sections to accurately reflect changes in management of the system of records. This modified system will be included in DOI's inventory of record systems.

DATES: This modified system will be effective upon publication. New or modified routine uses will be effective November 6, 2024. Submit comments on or before November 6, 2024.

ADDRESSES: You may send comments identified by docket number [DOI–2024–0006] by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for sending comments.

• *Email:* DOI_Privacy@ios.doi.gov. Include docket number [DOI–2024–0006] in the subject line of the message.

• *U.S. mail or hand-delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2024–0006]. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, DOI_Privacy@ios.doi.gov or (202) 208–1605.

SUPPLEMENTARY INFORMATION:

I. Background

The DOI Interior Business Center (IBC) maintains the INTERIOR/DOI–91, Oracle Federal Financials (OFF), system of records. The IBC is a service provider that performs services for Federal government agencies. The IBC's service offerings include providing and maintaining various types of business management systems for its clients, including human resources and financial management applications. The OFF system provides IBC clients with a web-based application that contains customizable financial management modules that combine to provide a comprehensive financial software package to support budgeting, purchasing, Federal procurement, accounts payable, fixed assets, general ledger, inventory, accounts receivable, reimbursement, reporting, and collection functions.

IBC hosts the OFF system and is responsible for system administration functions and other management functions in accordance with interagency agreements with internal and external Federal customer agencies. Each external client agency retains control over its data in the system and is responsible for maintaining client agency records in the OFF system and for meeting the requirements of the Privacy Act and other laws, regulations, and policies. While DOI records generated and maintained in OFF are covered under this system of records notice (SORN), each client agency that maintains records within the system has published system notices that cover

their financial management activities. IBC does not collect personally identifiable information directly from individuals on behalf of the customer agency for this system. Therefore, individuals seeking access to or amendment of their records under the control of an external client agency should follow the access procedures outlined in the applicable client agency SORN or send a written inquiry to that Federal agency Chief Privacy Officer.

Additionally, some records maintained within the OFF system may also be covered by existing government-wide SORNs published by the General Services Administration, including GSA/GOVT–3, Travel Charge Card Program, 78 FR 20108 (April 3, 2013); GSA/GOVT–4, Contracted Travel Services Program 74 FR 26700 (June 3, 2009), modification published at 74 FR 28048 (June 12, 2009); and GSA/GOVT–6, GSA SmartPay Purchase Charge Card Program, 73 FR 22376 (April 25, 2008). These records may be subject to handling and disclosure requirements pursuant to the routine uses in the government-wide SORNs, as applicable. Client agencies are responsible for ensuring the handling, use, and sharing of their records in OFF are in compliance with the Privacy Act of 1974, including the provisions regarding notice, access, collection, use, retention, and disclosure of records.

In this notice, DOI is proposing to update the system manager and system location sections; expand on the record source categories section; update authorities for maintenance of the system; update the storage, retrieval, records retention schedule, and safeguards; update the notification, records access and contesting procedures; and provide general updates in accordance with the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act*.

DOI is also changing the routine uses from a numeric to alphabetic list and is proposing to modify existing routine uses to provide clarity and transparency and reflect updates consistent with standard DOI routine uses. The notice of disclosure to consumer reporting agencies section was moved to the end of this section. Routine use A has been modified to further clarify disclosures to the Department of Justice or other Federal agencies when necessary in relation to litigation or judicial proceedings. Routine use B has been modified to clarify disclosures to a congressional office to respond to or resolve an individual's request made to

that office. Routine use H has been modified to expand the sharing of information with territorial organizations in response to court orders or for discovery purposes related to litigation. Routine use I has been modified to include the sharing of information with grantees and shared service providers that perform services requiring access to these records on DOI's behalf to carry out the purposes of the system. Routine use J was slightly modified to allow DOI to share information with appropriate Federal agencies or entities when reasonably necessary to prevent, minimize, or remedy the risk of harm to individuals or the Federal Government resulting from a breach in accordance with OMB Memorandum M–17–12, *Preparing for and Responding to a Breach of Personally Identifiable Information*. Routine use R has been modified to reflect the agency name change for the Government Accountability Office.

DOI is proposing a new routine use to facilitate the sharing of information with another Federal agency to carry out a statutory responsibility of the DOI. Proposed routine use S allows DOI to share information with the Department of the Treasury in support of the Do Not Pay Program in accordance with the Payment Integrity Information Act of 2019 to prevent and detect improper payments.

Pursuant to the Privacy Act, 5 U.S.C. 552a(b)(12), DOI may disclose information from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) to aid in the collection of outstanding debts owed to the Federal Government.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of

DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The INTERIOR/DOI-91, Oracle Federal Financials (OFF), SORN is published in its entirety below. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Participation

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/DOI-91, Oracle Federal Financials (OFF).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Interior Business Center, U.S. Department of the Interior, One Denver Federal Center, Building 48, Denver, CO 80225.

SYSTEM MANAGER(S):

Chief, Technical Services and Solutions Division, U.S. Department of the Interior, Interior Business Center, 381 Elden Street, Suite 200, Herndon, VA 20170.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive agency accounting and other financial management reports and plans, 31 U.S.C. 3512; Acceptance of contributions, awards, and other payments, 5 U.S.C. 4111; Installment deduction for indebtedness to the United States, 5 U.S.C. 5514; Travel and Subsistence Expenses; Mileage Allowances, 5 U.S.C. chapter 57, subchapter I; Collection and compromise, 31 U.S.C. 3711; and the Office of Management and Budget Circular A-123, appendix D, Compliance with the Federal Financial Management Improvement Act of 1996.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system is to support financial management for Federal agencies by providing a standardized, automated capability for performing administrative control of funds, general accounting, billing and collections, payments, management reporting, and regulatory reporting.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include employees of various Federal agencies that are IBC clients using OFF, as well as employees or agents for third party vendors, contractors and suppliers who provide OFF clients with related financial services. This system also contains information about individuals, both employees and non-employees, who owe debts to the Federal government. Records relating to corporations and other business entities contained in this system are not subject to the Privacy Act, however, records relating to individuals acting on behalf of corporations and other business entities may reflect personal information that may be maintained in this system of records.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains financial and administrative records that include but are not limited to:

(1) Accounts receivable records, including individuals and employees who owe money to OFF clients and are the subject of collections actions. Records may include first and last names, home addresses, phone numbers, email addresses, Employee Identification Numbers (EINs), and Social Security Numbers (SSNs).

(2) Accounts payable records about non-employee individuals and sole proprietors, including individuals who provide services to OFF clients. These records may include names, home or business addresses, phone or fax numbers, email addresses, Tax Identification Numbers, SSNs, banking account numbers for electronic fund transfer payments, and invoices and claims for reimbursement.

(3) Records of employees of OFF clients who submit claims for reimbursable expenses. These records may include names, EINs, SSNs, work addresses, phone numbers, email addresses, and receipts and claims for reimbursement.

(4) Records of employees of OFF clients who hold government bank or debit cards for purchases or travel. These records may include names, EINs, SSNs, home or work addresses, phone

numbers, email addresses, card numbers and purchase histories.

The system may contain other information collected or created through correspondence, reports, or during the processing and support of financial management transactions, administrative controls, and general accounting. The system may also contain additional business and financial records for OFF clients that do not include personal information. Records in this system are subject to the Privacy Act only if they are about an individual within the meaning of the Privacy Act, and not if they are about a business, organization, or other non-individual.

RECORD SOURCE CATEGORIES:

Information sources are Federal customer agencies, contractors, sole proprietors, service providers, third-party vendors, and suppliers who provide related financial and other services to clients using the system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

- (1) DOI or any component of DOI;
- (2) Any other Federal agency appearing before the Office of Hearings and Appeals;
- (3) Any DOI employee or former employee acting in his or her official capacity;
- (4) Any DOI employee or former employee acting in his or her individual capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or
- (5) The United States Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from

that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, territorial, local, Tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, State, territorial, local, Tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To State, territorial and local governments and Tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, shared service provider, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (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 DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI 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.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A-19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To a commercial credit card contractor(s) for the accounting and payment of employee obligation for travel, purchasing, and fleet management credit card usage.

P. To OFF clients for the purpose of processing, using, and maintaining their agency's data in the OFF system.

Q. To DOJ or other Federal agencies for further collection action on any delinquent debt when circumstances warrant.

R. To the Government Accountability Office, DOJ, or a United States Attorney for actions regarding debt and attempts to collect monies owed.

S. To the Department of the Treasury in order to eliminate waste, fraud, and abuse in Federal programs and to prevent payment errors before they occur in accordance with the Do Not Pay Program which is authorized and governed by the Payment Integrity Information Act of 2019.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records are maintained on servers located in secure facilities. Paper records are contained in file folders stored in file cabinets in accordance with Departmental policy.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The personal identifiers that can be used to retrieve information on individuals are name, SSN, EIN, bank account number, government travel/small purchase bank card number, and supplier number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

DOI financial management records are retained in accordance with Departmental Records Schedule (DRS) 1—Administrative Records, Long-term Financial and Acquisition Records (DAA-0048-2013-0001-0011), which was approved by NARA. The disposition for these records is temporary with destruction authorized seven years after the cut off of the record as instructed in the bureau or office records manual or at the end of fiscal year in which the files are closed, if no unique cut-off is specified. Approved disposition methods include shredding or pulping for paper records, and degaussing or erasing electronic records in accordance with NARA guidelines and Departmental policy.

Each Federal agency client maintains records in the system in accordance with records retention schedules approved by NARA, and agency clients are responsible for the retention and disposal of their own records. While the IBC provides system administration and management support to agency clients, any records disposal is in accordance with client agency approved data disposal procedures.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security and privacy rules and policies. During normal hours of operation, paper records are maintained in locked file cabinets under the control of authorized personnel. Computer servers on which electronic records are stored are located in secured DOI controlled facilities with physical, technical and administrative levels of security to prevent unauthorized access to the DOI network and information assets. A Privacy Act Warning Notice appears on computer monitor screens when records containing information on individuals are first displayed. Data exchanged between the servers and the system is encrypted. Backup tapes are encrypted and stored in a locked and controlled room in a secure, off-site location.

Computerized records systems follow the National Institute of Standards and Technology privacy and security

standards as developed to comply with the Privacy Act of 1974, as amended, 5 U.S.C. 552a; Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*; Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 *et seq.*; and the Federal Information Processing Standards 199: Standards for Security Categorization of Federal Information and Information Systems. Security controls include user identification, multi-factor authentication, database permissions, encryption, firewalls, audit logs, and network system security monitoring, and software controls.

Access to records in the system is limited to authorized personnel who have a need to access the records in the performance of their official duties, and each user's access is restricted to only the functions and data necessary to perform that person's job responsibilities. System administrators and authorized users are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the DOI Rules of Behavior. Privacy Impact Assessments are conducted on use of systems and third-party applications to ensure that Privacy Act requirements are met and appropriate privacy controls are implemented to safeguard the personally identifiable information contained in the system.

RECORD ACCESS PROCEDURES:

An individual requesting access to their records should send a written inquiry to the System Manager identified above. DOI forms and instructions for submitting a Privacy Act request may be obtained from the DOI Privacy Act Requests website at <https://www.doi.gov/privacy/privacy-act-requests>. The request must include a general description of the records sought and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. The request must include the specific bureau or office that maintains the record to facilitate location of the applicable records. Requests submitted by mail must be clearly marked "PRIVACY ACT REQUEST FOR ACCESS" on both the envelope and letter. A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of their records should send a written request to the System Manager as identified above. DOI instructions for submitting a request for amendment of records are available on the DOI Privacy Act Requests website at <https://www.doi.gov/privacy/privacy-act-requests>. The request must clearly identify the records for which amendment is being sought, the reasons for requesting the amendment, and the proposed amendment to the record. The request must include the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked "PRIVACY ACT REQUEST FOR AMENDMENT" on both the envelope and letter. A request for amendment must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records about them should send a written inquiry to the System Manager as identified above. DOI instructions for submitting a request for notification are available on the DOI Privacy Act Requests website at <https://www.doi.gov/privacy/privacy-act-requests>. The request must include a general description of the records and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked "PRIVACY ACT INQUIRY" on both the envelope and letter. A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 66551 (October 29, 2015); modification published at 86 FR 50156 (September 7, 2021).

Teri Barnett,

Departmental Privacy Officer, U.S. Department of the Interior.

[FR Doc. 2024-23080 Filed 10-4-24; 8:45 am]

BILLING CODE 4334-63-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO4500182174]

Notice of Public Meeting of the Mojave-Southern Great Basin Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Mojave-Southern Great Basin Resource Advisory Council (RAC) will meet as follows.

DATES: The Mojave-Southern Great Basin RAC will meet on November 12, 2024, from 8 a.m. to 4:30 p.m. Pacific time (PT); participate in a field tour on February 5, 2025, from 8 a.m. to 3 p.m. PT; and meet on February 6, 2025, from 8 a.m. to 4:30 p.m. PT. The meetings and field tour are open to the public.

ADDRESSES: The meetings and field tour will commence and conclude at the BLM Southern Nevada District Office at 4701 North Torrey Pines, Las Vegas, Nevada 89130. A virtual participation option will be available on the Zoom platform for the November and February meeting. Registration and participation guidelines details for the meetings and field tour will be available 30 days in advance at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/nevada/mojave-southern-great-basin-rac>.

FOR FURTHER INFORMATION CONTACT:

Kirsten Cannon, Public Affairs Specialist, email: klcannon@blm.gov, or telephone: 702-515-5057. 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. Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact the individual listed above in this section at least 14 business days prior to the meeting to give the Department of the Interior sufficient time to process the request. All reasonable accommodations requests are managed on a case by case basis.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues located within the Battle Mountain, Ely, and Southern Nevada District Offices. Each meeting will include district updates and a time reserved for open discussion, followed by a public comment period. Depending on the number of people who wish to speak, the time for individual comments may be limited.

The public may submit written comments to the RAC in advance of the meeting via email to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least five business days prior to the meeting. Any written comments received will be provided to RAC members before the meeting. Please include "RAC Comment" in your submission. Before including your address, phone number, email address, or other personal identifying information in your comment, please be aware that your entire comment—including your personally identifying information—may be made publicly available at any time. While individuals may request their personally identifying information to be withheld from public view, we cannot guarantee that we will be able to do so.

Agenda topics for the November 2024 meeting may include a presentation by the Southern Paiute on Tribal issues, and presentations on Public Lands Rule implementation and renewable energy projects. The February 2025 field tour will be to renewable energy project sites within the area managed by the Las Vegas Field Office. Members of the public are welcome to participate in the field tour but must provide their own transportation and meals. Agenda topics for the February 2025 meeting may include presentations on mining projects, partnerships, and vegetation and water drainage at renewable energy project sites.

Detailed minutes for RAC meetings are maintained in the BLM Southern Nevada District Office. Minutes will also be posted to the BLM Nevada RAC web page.

(Authority: 43 CFR 1784.4–2)

Theresa Coleman,

Southern Nevada District Manager.

[FR Doc. 2024–23067 Filed 10–4–24; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RX.17731720.0000000 24XR0680S1
RR040U2200]

Colorado River Basin Salinity Control Advisory Council Notice of Public Meeting

AGENCY: Bureau of Reclamation,
Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Reclamation is publishing this notice to announce that a Federal Advisory Committee meeting of the Colorado River Basin Salinity Control Advisory Council (Council) will take place. The meeting is open to the public.

DATES: The meeting will take place in-person and virtually on Tuesday, October 22, 2024, from 1:30 p.m. to 4:30 p.m.; and Wednesday, October 23, 2024, from 8:30 a.m. to approximately 10:00 a.m. (MDT).

ADDRESSES: The in-person meeting will be held at the Marriott Courtyard, Scottsdale Salt River, 5201 North Pima Road, Scottsdale, Arizona 85250.

To access the meeting virtually, please contact Clarence Fullard; see **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Clarence Fullard, telephone (303) 253–1042; email at cfullard@usbr.gov. Individuals who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The meeting of the Council is being held under the provisions of the Federal Advisory Committee Act of 1972. The Council was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise Federal agencies on implementing the Act.

Purpose of the Meeting: The purpose of the meeting is to discuss the accomplishments of Federal agencies and make recommendations on future activities to control salinity in the Colorado River Basin.

Agenda: Council members will be briefed on the status of salinity control activities. Discussions about salinity control research studies will occur. The Bureau of Reclamation, Bureau of Land Management, U.S. Fish and Wildlife

Service, and United States Geological Survey of the Department of the Interior; the Natural Resources Conservation Service of the Department of Agriculture; and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities, the contents of the reports, and the Basin States Program created by Public Law 110–246, which amended the Act. A final agenda will be posted online at <https://www.usbr.gov/uc/progact/salinity/> at least one week prior to the meeting.

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact Clarence Fullard (see **FOR FURTHER INFORMATION CONTACT** section of this notice) at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Individuals wanting virtual access to the meeting or those requiring special accommodations should contact Clarence Fullard (see **FOR FURTHER INFORMATION CONTACT**) no later than October 9, 2024, to receive instructions.

Public Comments: The Council chairman will provide time for oral comments from members of the public at the meeting. Individuals wanting to make an oral comment should contact Clarence Fullard (see **FOR FURTHER INFORMATION CONTACT**) to be placed on the public comment list. Members of the public may also file written statements with the Council before, during, or up to 30 days after the meeting either in person or by mail. To allow full consideration of information by Council members at this meeting, written comments must be provided to Clarence Fullard (see **FOR FURTHER INFORMATION CONTACT**) by October 9, 2024.

Public Disclosure of Personal Information: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Ch. 10.

Katrina Grantz,

Deputy Regional Director, Upper Colorado
Basin—Interior Region 7, Bureau of
Reclamation.

[FR Doc. 2024-23131 Filed 10-4-24; 8:45 am]

BILLING CODE 4332-90-P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade
Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain TOPCon Solar Cells, Modules, Panels, Components Thereof, and Products Containing Same, DN 3773*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Trina Solar (U.S.), Inc., Trina Solar US Manufacturing Module 1, LLC, and Trina Solar Co., Ltd. on September 30, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into

the United States, the sale for importation, and the sale within the United States after importation of certain TopCon solar cells, modules, panels, components thereof, and products containing same. The complaint names as respondents: Runergy USA Inc. of Pleasanton, CA; Runergy Alabama Inc. of Huntsville, AL; Jiangsu Runergy New Energy Technology Co., Ltd. of China; Adani Solar USA Inc. of Irving, TX; and Adani Green Energy Ltd. of India. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) explain how the articles potentially subject to the requested remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the

issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3773") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel,² solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.³

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 1, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–23039 Filed 10–4–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0014]

Agency Information Collection Activities; Proposed eCollection Activities; Proposed eCollection Comments Requested; Revision of a Previously Approved Collection; Application for Registration and Application for Registration Renewal; DEA Forms 224, 224A

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Drug Enforcement Administration (DEA), 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 December 6, 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 Heather E. Achbach, Regulatory Drafting

and Policy Support Section, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (571) 776–3882; Email: DEA.PRA@dea.gov or Heather.E.Achbach@dea.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: The Controlled Substances Act (CSA) (21 U.S.C. 801–971) requires all persons that manufacture, distribute, dispense, conduct research with, import, or export any controlled substance to obtain a registration issued by the Attorney General. DEA would be revising the proposed information collection instruments as statutorily mandated by the Protecting Patient Access to Emergency Medications Act of 2017. DEA would be creating a new business activity and adding it to forms DEA–224 and DEA–224A to allow Emergency Medical Services agencies to register as such, if authorized by state law. This new business activity would allow EMS agencies to obtain a DEA registration that will permit EMS agencies to deliver controlled substances to their designated locations without obtaining a separate registration as a Distributor. This registration would allow EMS personnel to administer

controlled substances outside the physical presence of a medical director or authorizing medical professional in the course of providing emergency medical services. Upon issuance of an EMS agency registration, the EMS agency should use the online system to identify all of the locations it intends to designate under the EMS agencies' DEA registration. This proposed collection would also allow EMS agencies to choose the option of a single registration in each state where the EMS agency operates. If the agency operates EMS facilities in multiple states, the agency must have a separate registration in each state where the agency operates.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Application for Registration and Application for Registration Renewal.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DEA Forms: 224, 224A. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: (Primary) Business or other for-profit.

Affected public (Other): Not-for-profit institutions; Federal, State, local, and tribal governments.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates that 146,285 registrants participate in this information collection for DEA Form 224, and 524,196 registrants for DEA form 224A. The time per response is 20 minutes for DEA Form 224, and 10 minutes for DEA Form 224A.

6. *An estimate of the total annual burden (in hours) associated with the collection:* DEA estimates that this collection takes 48,762 annual burden hours for DEA Form 224 and 87,366 annual burden hours for DEA Form 224A.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$0.

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

TOTAL BURDEN HOURS

Activity	Number of respondents	Total annual responses	Time per response (hours)	Total annual burden (hours)
DEA—224	146,285 .....	.....	0.33 hours (20 minutes)	48,762
DEA—224A	524,196 .....	.....	0.17 hours (10 minutes)	87,366
Unduplicated Totals	670,481 .....	.....	.....	136,366

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 20530.

Dated: October 1, 2024.

Darwin Arceo,
Department Clearance Officer for PRA, U.S.
Department of Justice.

[FR Doc. 2024–23027 Filed 10–4–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0060]

**Agency Information Collection
Activities; Proposed eCollection
eComments Requested; New
Information Collection Request;
Emergency Medical Services
Recordkeeping and Notice
Requirements**

AGENCY: Drug Enforcement
Administration, Department of Justice.
ACTION: 60-Day notice.

SUMMARY: The Drug Enforcement Administration (DEA), 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 December 6, 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 Heather E. Achbach, Regulatory Drafting and Policy Support Section, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (571) 776–3882; Email: DEA.PRA@dea.gov or Heather.E.Achbach@dea.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: The Controlled Substances Act (CSA) (21 U.S.C. 801–971) requires all persons who handle controlled substances to obtain a registration from the Attorney General. 21 U.S.C. 822, 823, 831, 957, and 958. The “Protecting Patient Access to Emergency Medications Act of 2017,” (hereafter the “Act”) which became law on November 17, 2017, amended the Controlled Substances Act to allow for a new registration category for emergency medical services agencies that handle controlled substances. It also established standards for registering emergency medical services agencies, and set forth new requirements for delivery, storage, and recordkeeping related to their handling of controlled substances.

With this proposed collection, DEA is proposing recordkeeping regulations for EMS agencies to incorporate the Act's CSA amendments regarding recordkeeping, and to ensure an accurate accounting of the controlled

substances outside the two-registrant integrity system.

The Act require EMS agencies to maintain records of the EMS personnel whose State license or certification gives them the ability to administer controlled substances, in compliance with their State laws. Under 21 U.S.C 827(b), controlled substance records for all DEA registrants are required to be maintained for at least two years from the date of such inventory or records. Following the Act, 21 U.S.C. 823(k)(9)(B)(ii), DEA would require that records be maintained, whether electronically or otherwise, at each registered and designated location of the agency where the controlled substances involved are received, administered, or otherwise disposed of.

Consistent with the Act's amendments to the CSA, 21 U.S.C. 823(k)(9), DEA would require an EMS agency to maintain records for each controlled substance administered or disposed of in the course of providing emergency medical services. In addition, any EMS personnel who disposes of or administers controlled substances to a patient in the course of providing emergency medical care would have to record the name of the controlled substance(s) and detailed information about the circumstances surrounding the administration of the controlled substance(s) (*e.g.*, name of the substance, date dispensed, identification of the patient).

Additionally, in accordance with 21 U.S.C 821(k)(9)(b), that an EMS agency must maintain records of controlled substances delivered between registered and designated locations of the agency (except agencies restocking at the hospital under which the EMS agency is operating, because the hospital is required to keep records of such restocking). These records, for example, should include the name of the controlled substance(s), finished form, number of units in the commercial container, date delivered, and the address of the EMS agency location where the controlled substances were delivered.

Overview of This information Collection

1. *Type of Information Collection:* New information collection.
2. *The Title of the Form/Collection:* Emergency Medical Services Recordkeeping and Notice Requirements.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

No form number is associated with this collection. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: (Primary) Business or other for-profit.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond: The DEA estimates that 21,283 Registrants participate in this information collection. The time per response is 5 minutes.

6. *An estimate of the total annual burden (in hours) associated with the collection:* DEA Estimates that this collection takes 92,226 annual burden hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
EMS Recordkeeping and Notice	21,283	52	1,106,716	5 min	92,226
Unduplicated Totals	21,283	.....	1,106,716	.....	92,226

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: October 2, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-23091 Filed 10-4-24; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

[OMB 1140-0050]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Identification Markings Placed on Firearms

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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 December 6, 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, contact: Jennifer Scott, FIPB, either by mail at Bureau of Alcohol, Tobacco, Firearms, and Explosives; 99 New York Ave., Washington, DC 20226, by email at fipb-informationcollection@atf.gov or telephone at 202-648-7190.

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: Each licensed firearms manufacturer and licensed firearms importer must legibly identify each

firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing on the frame or receiver an individual serial number, any associated license number, and all other additional required information to a depth of at least .003 inch and in a print size no smaller than 1/16 inch. Used to facilitate the investigations of the criminal use of firearms. Information Collection (IC) OMB #1140-0050 is being revised to reflect an increase in costs resulting from an increase in the number of respondents and firearms covered by the information collection, and from adding both a burden hour monetized value and start-up costs based on a rulemaking that occurred since the last time this collection was renewed.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Identification Markings Placed on Firearms.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Private Sector-for or not for profit institutions.

The obligation to respond is mandatory per 18 U.S.C Chapter 44 and 26 U.S.C § 5842.

5. *An estimate of the total number of respondents and the amount of time*

estimated for an average respondent to respond: An estimated 22,662 respondents will provide information in compliance with this information collection once per firearm, and it will take each respondent approximately 1 minute to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 257,419,782 total hours, which is equal to 15,445,156 (total respondents) * 1 (#

of response per respondent) * 0.016666667 (1 minute).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* 45,598,278.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency (per firearm)	Total annual responses	Time per response	Total annual burden (hours)
Identification Markings Placed on Firearms	22,662	1	15,445,156	0.016666667	257,419,782
Unduplicated Totals	22,662	1	15,445,156	0.016666667	257,419,782

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: October 2, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-23156 Filed 10-4-24; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

[OMB Number 1110-0048]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Cargo Theft Incident Report

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Federal Bureau of Investigation (FBI), 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 30 days until November 6, 2024.

FOR FURTHER INFORMATION CONTACT: If you have 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: Edward L. Abraham, Crime and Law Enforcement Statistics Unit Chief, FBI, CJIS Division, 1000 Custer Hollow

Rd, Clarksburg, WV 26306; email: elabraham@fbi.gov, telephone: 304-625-4830.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register** on August 22, 2024, allowing a 60-day comment period. 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 agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- 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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering either the title of the information collection or the OMB

Control Number 1110-0048. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.
2. *Title of the Form/Collection:* Cargo Theft Incident Report.
3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Cargo Theft Incident Report.
4. *Affected Public:* Law Enforcement Agencies.

Abstract: This survey is needed to collect reports of cargo theft offenses reported by Federal, State, local, Tribal, university/college, and territorial LEAs. It should be noted cargo theft offenses are being collected under the National Incident-Based Reporting System (NIBRS) as of January 1, 2021. However, some agencies did not complete the transition to NIBRS by the given date. Therefore, the FBI's Uniform Crime Reporting (UCR) Program continues to collect cargo theft information under the Summary Reporting System (SRS). This practice will only occur for a short period of time after which the FBI's UCR Program will no longer accept new cargo theft data from those agencies not yet participating in NIBRS (*i.e.*, SRS agencies). When the extension officially expires, the FBI's UCR Program will

only accept updates to previously reported cargo theft incidents submitted by SRS agencies via the Cargo Theft Incident Report. The updated information will be added to the master file for historical purposes.

5. *Obligation to Respond*: Voluntary.

6. *Total Estimated Number of Respondents*: 22,433.

7. *Estimated Time per Respondent*: 5 minutes.

8. *Frequency*: Annually.

9. *Total Estimated Annual Time Burden*: 2,170 hours.

10. *Total Estimated Annual Other Costs Burden*: \$0.

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, 4W-218 Washington, DC 20530.

Dated: October 1, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-23028 Filed 10-4-24; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1117-0053]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Leadership Engagement Survey (LES)

AGENCY: Drug Enforcement Administration (DEA), Department of Justice (DOJ).

ACTION: 60-Day notice.

SUMMARY: The Drug Enforcement Administration, Department of Justice, 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 December 6, 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: Tammie Pugh, Section Chief, Research and Analysis Staff, Human Resources Division, DEA, Tammie.S.Pugh@dea.gov, 571-776-2496, 600 Army Navy Dr., Arlington, VA 22202.

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 Leadership Engagement Survey (LES) is an internal, agency-wide survey which provides a way for employees, contractors, and TFOs to share honest feedback about their

leaders and the organizational climate of their division. Survey responses are anonymous, and numerical results will only be shared in the aggregate and identifying information is removed from comments. Climate data provides valuable insight for action planning while the leadership results guide professional development.

Overview of This Information Collection

1. *Type of Information Collection*: Extension of a previously approved collection.

2. *The Title of the Form/Collection*: Leadership Engagement Survey.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection*: N/A.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond*: Federal Government/DEA employees, contractors, and TFOs working at the DEA are encouraged to respond. 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*: The maximum numbers of potential respondents is 15,000, although the expected responses are estimated to be 5,000. The time per response is 20 minutes to complete the Leadership Engagement Survey.

6. *An estimate of the total annual burden (in hours) associated with the collection*: The total annual burden hours for this collection is approximately 1,650 hours, assuming 5,000 respondents at 20 minutes for each response.

7. *An estimate of the total annual cost burden associated with the collection, if applicable*: There is no cost to continue the survey since it is already fully developed and runs on an internal platform accessible only to DEA employees.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
Survey respondents	5000	1/annually	5000	20	1650

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: October 1, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-23031 Filed 10-4-24; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On September 30, 2024, the Department of Justice lodged a proposed consent decree with the United States District Court for the Central District of California in the lawsuit entitled *United States, Cal. Dept. of Toxic Substances Control, and Toxic Substances Control Account v. Honeywell International Inc., et al.*, Civil Action No. 2:24-cv-08378.

The United States, the California Department of Toxic Substances Control (“DTSC”), and the Toxic Substances Control Account filed the lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) and the California Health and Safety Code. The complaint names Honeywell International Inc., HD Development of Maryland, Inc., Kaiser Foundation Health Plan, Inc., and PSA Institutional Partners, L.P. as defendants. The complaint requests recovery of costs that the United States and DTSC incurred responding to releases and threatened releases of hazardous substances at or from the North Hollywood Operable Unit of the San Fernando Valley (Area 1) Superfund Site in Los Angeles, California. The complaint also seeks injunctive relief, including implementation of the second interim remedy that the U.S. Environmental Protection Agency (“EPA”) selected for the North Hollywood Operable Unit.

The defendants signed the consent decree. Under the consent decree, Honeywell International Inc. agrees to implement the second interim remedy in a portion of the North Hollywood Operable Unit and to pay EPA and DTSC’s future response costs. HD Development of Maryland, Inc., Kaiser Foundation Health Plan, Inc., and PSA Institutional Partners, L.P. agree to pay \$250,000 each to EPA for past response costs. All defendants agree to pay \$21,952.57 to DTSC for past response costs. In return, the United States, DTSC, and the Toxic Substances Control Account agree not to sue the defendants under sections 106 and 107(a) of CERCLA or under section 7003 of the Resource Conservation and Recovery Act (“RCRA”) regarding the remedial work and costs. DTSC and the Toxic Substances Control Account further agree not to sue the defendants under California Health and Safety Code sections 79055, 78870, 78660, or 79650.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, Cal. Dept. of Toxic Substances Control, and Toxic Substances Control Account v. Honeywell International Inc., et al.*, D.J. Ref. No. 90–11–3–1149/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area. Any comments submitted in writing or at a public meeting may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the consent decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Scott Bauer,
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.
[FR Doc. 2024–23079 Filed 10–4–24; 8:45 am]
BILLING CODE 4410–15–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 24–056]

Name of Information Collection: NASA Applied Remote Sensing Training Program Follow-Up Survey

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: NASA, as part of its continuing effort to reduce paperwork and respondent burden, under the Paperwork Reduction Act, invites the general public and other Federal

agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by November 6, 2024.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to NASA PRA Clearance Officer, Stayce Hoult, NASA Headquarters, 300 E Street SW, JC0000, Washington, DC 20546, phone 256–714–8575, or email hq-ocio-pra-program@mail.nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

All participants of Applied Remote Sensing Training program (ARSET) trainings will be invited to complete an online survey. Participation is optional and no personal identifiers are collected to ensure confidentiality. The follow-up survey will be used to assess participant perceptions of the long-term benefits of training in earth observation tools and data, improve understanding how remote sensing data and tools are used by stakeholders, identify barriers to data and tool use, and gather suggestions for training improvement, including future training needs.

This data collection supports the Capacity Building Program of NASA’s Earth Action component of the Earth Science Division. NASA is committed to effectively performing the Agency’s communication function in accordance with the Space Act Section 203 (a)(3) to “provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof,” and to enhance public understanding of, and participation in, the nation’s aeronautical and space program in accordance with the NASA Strategic Plan.

II. Methods of Collection

Online survey.

III. Data

Title: NASA Applied Remote Sensing Training Program Survey.
OMB Number: 2700–xxxx.

Type of review: New collection of information.

Affected Public: Individuals.

Estimated Annual Number of Activities: 16.

Estimated Number of Respondents per Activity: 70.

Annual Responses: 1120.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 317 hours.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Stayce Hoult,

PRA Clearance Officer, National Aeronautics and Space Administration.

[FR Doc. 2024-23104 Filed 10-4-24; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 43 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from David Travis, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; travisd@arts.gov, or call 202-682-5001.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chair of March 11, 2022, these sessions will be closed to the public pursuant to 5 U.S.C. 10.

The Upcoming Meetings Are

Music Theater (review of applications): This meeting will be closed.

Date and time: November 4, 2024; 1 p.m. to 3 p.m.

Music Theater (review of applications): This meeting will be closed.

Date and time: November 4, 2024; 4 p.m. to 6 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 5, 2024; 11:30 a.m. to 1:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 5, 2024; 2:30 p.m. to 4:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 6, 2024; 11:30 a.m. to 1:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 6, 2024; 2:30 p.m. to 4:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 7, 2024; 1 p.m. to 3 p.m.

Media Arts (review of applications): This meeting will be closed.

Date and time: November 7, 2024; 2:30 p.m. to 4:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 7, 2024; 4 p.m. to 6 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: November 8, 2024; 12 p.m. to 2 p.m.

Opera (review of applications): This meeting will be closed.

Date and time: November 8, 2024; 3 p.m. to 5 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 12, 2024; 12 p.m. to 2 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 12, 2024; 3 p.m. to 5 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 13, 2024; 12 p.m. to 2 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 13, 2024; 3 p.m. to 5 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 14, 2024; 12 p.m. to 2 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 14, 2024; 3 p.m. to 5 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 15, 2024; 12 p.m. to 2 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 15, 2024; 3 p.m. to 5 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 18, 2024; 11:30 a.m. to 1:30 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 18, 2024; 12 p.m. to 2 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 18, 2024; 3 p.m. to 5 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 19, 2024; 11:30 a.m. to 1:30 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 19, 2024; 12 p.m. to 2 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: November 19, 2024; 12 p.m. to 2 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 19, 2024; 1:30 p.m. to 3:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 19, 2024; 2:30 p.m. to 4:30 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 19, 2024; 3 p.m. to 5 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: November 19, 2024; 3 p.m. to 5 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 20, 2024; 11:30 a.m. to 1:30 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: November 20, 2024; 12 p.m. to 2 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 20, 2024; 1 p.m. to 3 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 20, 2024; 1:30 p.m. to 3:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 20, 2024; 2:30 p.m. to 4:30 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: November 20, 2024; 3 p.m. to 5 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: November 20, 2024; 4 p.m. to 6 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 21, 2024; 12 p.m. to 2 p.m.

Music (review of applications): This meeting will be closed.

Date and time: November 21, 2024; 12 p.m. to 2 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: November 21, 2024; 1:30 p.m. to 3:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Date and time: November 21, 2024; 2:30 p.m. to 4:30 p.m.

Dance (review of applications): This meeting will be closed.

Date and time: November 21, 2024; 3 p.m. to 5 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: November 22, 2024; 12 p.m. to 2 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: November 22, 2024; 3 p.m. to 5 p.m.

Dated: October 2, 2024.

David Travis,

Specialist, National Endowment for the Arts.

[FR Doc. 2024–23097 Filed 10–4–24; 8:45 am]

BILLING CODE 7537–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; System of Records

AGENCY: Office of the General Counsel, U.S. Office of Personnel Management.

ACTION: Notice of modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Office of Personnel Management (OPM) proposes to modify the current system of records titled, “OPM/Central-7, Litigation and Claims Records.” The system of records is also being retitled to reflect its proper categorization as an OPM Internal system of records. The modifications will expand the range of information covered to include not only litigation and claims matters, but also all other matters worked on by Office of General Counsel (OGC) staff, including, but not limited to, legal advisory work for OPM programs, the Office of the Director, and other Federal Government agencies, as well as records created or received in the course of the office’s work on legal issues on behalf of the agency. Accordingly, the system name and number, system purposes, categories of individuals, categories of records, and routine uses are being substantially revised. Additionally, OPM is taking this opportunity to make minor and editorial changes and updates throughout the notice.

DATES: Please submit comments on or before November 6, 2024. This new system is effective upon today’s publication in the **Federal Register**, with the exception of new or modified routine uses, which are effective November 12, 2024.

ADDRESSES: You may submit written comments by one of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <https://www.regulations.gov> as they are received without change, including any

personal identifiers or contact information.

- **Mail:** General Counsel, Office of the General Counsel, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415–1300.

FOR FURTHER INFORMATION CONTACT:

Becky Ronayne, Office of the General Counsel, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415–1300, (202) 606–1700.

SUPPLEMENTARY INFORMATION: OGC is revising this system of records to encompass the full range of matters on which OGC works that are collected and maintained in OGC’s matter management and tracking system. Changes and updates are being made throughout the notice, with the most substantial changes being that the System Name and Number will change to “OPM/Internal-28, Litigation, Advisory, and Matter Management Records” and the Purpose(s) of the System, Categories of Individuals, Categories of Records, and Routine Uses sections will be modified to reflect the full scope of matters on which OGC works and the activities associated with such work. In addition, OPM is taking the opportunity to make minor and editorial changes and updates throughout the notice.

In accordance with 5 U.S.C. 552a(r), OPM has provided a report of this modified system of records to the Office of Management and Budget and to Congress. This modified system of records will be included in OPM’s inventory of record systems.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

SYSTEM NAME AND NUMBER:

OPM/Internal-28, Litigation, Advisory, and Matter Management Records.

SECURITY CLASSIFICATION:

Certain records in the system may be Confidential or Secret but most records are not classified.

SYSTEM LOCATION:

Office of the General Counsel, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415–1300.

SYSTEM MANAGER(S):

General Counsel, Office of the General Counsel, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415–1300.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 1103; 5 U.S.C. 1301–1307; 28 U.S.C. 552; 28 U.S.C.

2672; 31 U.S.C. 3721; and Executive Order 10577.

PURPOSE(S) OF THE SYSTEM:

These records are collected and maintained to defend OPM against lawsuits, administrative actions, and to settle administrative claims brought against OPM or OPM employees. In addition, records are collected and maintained to manage the office's work on oversight matters, legal advisory work, and subpoena and Touhy issues, as well as to track and manage the work of the office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- a. Individuals who make claims under the Military Personnel and Civilian Employees Claims Act of 1964, as amended.
- b. Individuals who file civil actions, administrative claims or appeals, or other actions against or concerning OPM, its officials, and employees.
- c. Individuals who are parties to actions in which the Government is involved, but for which OPM's role is advisory to another agency.
- d. Individuals who filed claims with OPM under the Federal Tort Claims Act, as amended;
- e. OPM officials whose records are relevant to oversight matters;
- f. Program and agency officials;
- g. OGC attorneys and other office staff;
- h. Individuals at other government agencies who raise matters requiring OPM assistance, guidance, or input;
- i. Organizations, entities, or members of the public who raise matters requiring OPM assistance, guidance, or input.

CATEGORIES OF RECORDS IN THE SYSTEM:

- a. Garnishment documents;
- b. Administrative appeals;
- c. Investigative reports;
- d. Retirement records;
- e. Official personnel records;
- f. Documentation of litigation including complaints, answers, motions, briefs, orders, decisions, supporting documentation, and related materials;
- g. Claims and supporting documentation submitted under the Federal Tort Claims Act and the Military Personnel and Civilian Employees Claims Act, together with correspondence and records of settlement;
- h. Testing and examination materials;
- i. Final administrative and judicial determinations;
- j. GAO, Congressional, and other oversight related records;
- k. Records related to subpoena and Touhy matters;

- l. Legal advisory opinions, correspondence, and related documentation; and
- m. Records related to litigation holds.

RECORD SOURCE CATEGORIES:

- Information in this system of records is obtained from:
- a. The individual on whom the record is maintained;
 - b. Agency officials and records;
 - c. Records of administrative and court proceedings including statements of witnesses and documents relating to the proceeding;
 - d. Law enforcement agencies; and
 - e. Witnesses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside OPM as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

- a. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when OPM or another agency representing OPM determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.
- b. To the Department of Justice when (a) OPM, or any component thereof; (b) any OPM employee in their official capacity; (c) any OPM employee in their individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where OPM determines that litigation is likely to affect OPM or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by OPM to be relevant and necessary to the litigation.
- c. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.
- d. To a member of Congress from the record of an individual in response to

an inquiry made at the request of the individual to whom the record pertains.

e. To the National Archives and Records Administration (NARA) for records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

f. To appropriate agencies, entities, and persons when (1) OPM suspects or has confirmed that there has been a breach of the system of records, (2) OPM has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, OPM (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 OPM's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

g. To another Federal agency or Federal entity, when OPM 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.

h. To contractors, grantees, experts, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, or other assignment for OPM when necessary to accomplish an agency function related to this system of records.

i. To any source that OGC has reason to believe possesses information regarding a matter within OGC's purview, to the extent necessary to obtain information relevant to an OPM decision or authorized action.

j. To the insurance carrier of an employee, or a claimant against OPM under the Federal Tort Claims Act or the Military Personnel and Civilian Employees Claims Act in order to determine the proper assignment of any liability.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records in this system of records are stored electronically in an OPM FedRAMP cloud or at an OPM data center. Access to the electronic systems is restricted to authorized users with a need to know.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records in this system of records are retrieved primarily by name and may also be retrieved by any personal identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Certain records in this system are permanent. Others are maintained and destroyed in accordance with 3.LEG.01 or 3.LEG.02. A records retention schedule will be established with NARA for the unscheduled records in this system and, until it is finalized, those unscheduled records will be treated as permanent.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are protected from unauthorized access and misuse through various administrative, technical, and physical security measures including limiting access to OPM staff, role-based access controls, and encryption. OPM's security measures comply with the Federal Information Security Modernization Act of 2002, as amended by the Federal Information Security Modernization Act of 2014, associated OMB policies, and applicable standards and guidance from the National Institute of Standards and Technology (NIST).

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to their records in this system of records may do so by submitting a request in writing to the Office of Personnel Management, Office of the Executive Secretariat, Privacy, and Information Management—FOIA, 1900 E Street NW, Washington, DC 20415–7900 or by emailing foia@opm.gov. Individuals must furnish the following information for their records to be located:

1. Full name, including any former name.
2. Date of birth.
3. Social Security Number.
4. Name and address of employing agency or retirement system.
5. Reasonable specification of the requested information.
6. The address to which the information should be sent.
7. Signature.

Individuals requesting access must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about themselves

may do so by writing to the Office of Personnel Management, Office of the Executive Secretariat, Privacy, and Information Management—FOIA, 1900 E Street NW, Washington, DC 20415–7900 or by emailing foia@opm.gov. Requests for amendment of records should include the words “PRIVACY ACT AMENDMENT REQUEST” in capital letters at the top of the request letter; if sending the request by email, include those words in the subject line. Individuals must furnish the following information for their records to be located:

1. Full name, including any former name, and address.
2. Date of birth.
3. Social Security Number.
4. Name and address of employing agency or retirement system.
5. Precise identification of the information to be amended.
6. Signature.

Individuals requesting amendment must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

NOTIFICATION PROCEDURES:

See “Record Access Procedure.”

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

When litigation or claim cases occur, information from other systems of records may be incorporated into the case file. In certain instances, OPM may have claimed exemptions under the Privacy Act concerning the incorporated information. To the extent that such exempt material is incorporated into a litigation or claim file, the appropriate exemption 5 U.S.C. 552a(k) (1), (2), (3), (4), (5), (6) or (7) shall also apply to the information as it appears in this system. The exemptions will be only from those provisions of the Act that were claimed for the systems from which the records originated.

The Office of the General Counsel, pursuant to 5 U.S.C. 552a(d)(5), reserves the right to refuse access to information compiled in reasonable anticipation of a civil action or proceeding.

HISTORY:

58 FR 19180 (April 12, 1993); 60 FR 63075 (December 8, 1995); 80 FR 74815 (November 30, 2015); 87 FR 5874 (February 2, 2022).

[FR Doc. 2024–23130 Filed 10–4–24; 8:45 am]

BILLING CODE 6325–48–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–775 and K2024–68; MC2024–776 and K2024–69; MC2024–777 and K2024–70; MC2024–778 and K2024–71; MC2024–779 and K2024–72; MC2024–780 and K2024–73; MC2024–781 and K2024–74; MC2024–782 and K2024–75; MC2024–783 and K2024–76]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 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
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I. Introduction

Pursuant to 39 CFR 3041.405, 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)*: MC2024–775 and K2024–68; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 368 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Gregory S. Stanton; *Comments Due*: October 8, 2024.

2. *Docket No(s)*: MC2024–776 and K2024–69; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 413 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Gregory S. Stanton; *Comments Due*: October 8, 2024.

3. *Docket No(s)*: MC2024–777 and K2024–70; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 414 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Gregory S. Stanton; *Comments Due*: October 8, 2024.

4. *Docket No(s)*: MC2024–778 and K2024–71; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail

& USPS Ground Advantage Contract 415 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Alain Brou; *Comments Due*: October 8, 2024.

5. *Docket No(s)*: MC2024–779 and K2024–72; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 416 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Alain Brou; *Comments Due*: October 8, 2024.

6. *Docket No(s)*: MC2024–780 and K2024–73; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 417 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: October 8, 2024.

7. *Docket No(s)*: MC2024–781 and K2024–74; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 418 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: October 8, 2024.

8. *Docket No(s)*: MC2024–782 and K2024–75; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 419 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Nikki Brendemuehl; *Comments Due*: October 8, 2024.

9. *Docket No(s)*: MC2024–783 and K2024–76; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 420 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 30, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Samuel Robinson; *Comments Due*: October 8, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–23026 Filed 10–4–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–318, OMB Control No. 3235–0361]

Proposed Collection; Comment Request; Extension: Form ADV–E

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form ADV–E (17 CFR 279.8) is the cover sheet for certificates of accounting filed pursuant to rule 206(4)–2(a)(4) under the Investment Advisers Act of 1940 (17 CFR 275.206(4)–(2)(a)(4)). The rule further requires that the public accountant file with the Commission a Form ADV–E and accompanying statement within four business days of the resignation, dismissal, removal from consideration for being reappointed, or other termination of its engagement.

The Commission has estimated that compliance with the requirement to complete Form ADV–E imposes a total burden of approximately 0.05 hours (3 minutes) per respondent. Based on current information from advisers registered with the Commission, the Commission staff estimates that 1,946 filings will be submitted with respect to surprise examinations and 52 filings will be submitted with respect to termination of accountants. Based on these estimates, the total estimated annual burden would be 99.90 hours ((1,946 filings × .05 hours) + (52 filings × .05 hours)).

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection

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).

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 December 6, 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: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: October 2, 2024.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-23150 Filed 10-4-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101225; File No. 4-698]

Joint Industry Plan; Notice of Filing of Partial Amendment No. 1 to an Amendment to the National Market System Plan Governing the Consolidated Audit Trail Regarding Cost Savings Measures

October 1, 2024.

On March 27, 2024, and pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (the “Exchange Act”)¹ and Rule 608 of Regulation NMS thereunder,² BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., The Financial Industry Regulatory Authority, Inc., Investors’ Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAx Emerald, LLC, MIAx PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (“the Participants”) filed with the Securities and Exchange Commission (the “Commission” or the

“SEC”) proposed amendments to the national market system plan governing the consolidated audit trail (the “CAT NMS Plan”)³ that were designed to implement certain costs saving measures (the “Proposed Cost Savings Amendments”).⁴ The Proposed Cost Savings Amendments were published for comment in the **Federal Register** on April 16, 2024.⁵ On July 15, 2024, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,⁶ to determine whether to disapprove the Proposed Cost Savings Amendments or to approve the Proposed Cost Savings Amendments with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment (the “OIP”).⁷

On September 20, 2024, the Participants submitted a letter to propose certain revisions to the Proposed Cost Savings Amendments and to respond to issued discussed in the OIP.⁸ Sections I, II, and III below, which were substantially prepared by CAT LLC on behalf of the Participants, contain a description of the revisions to the Proposed Cost Savings Amendments, additional details regarding the Participants’ calculation of

³ In July 2012, the Commission adopted Rule 613 of Regulation NMS, which required the Participants to jointly develop and submit to the Commission a national market system plan to create, implement, and maintain a consolidated audit trail (the “CAT”). See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012) (“Rule 613 Adopting Release”); 17 CFR 242.613. On November 15, 2016, the Commission approved the CAT NMS Plan. See Securities Exchange Act Release No. 78318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”). The CAT NMS Plan is Exhibit A to the CAT NMS Plan Approval Order. See CAT NMS Plan Approval Order, at 84943–85034.

⁴ See Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated March 27, 2024, available at <https://catnmsplan.com/sites/default/files/2024-03/03.27.24-Proposed-CAT-NMS-Plan-Amendment-Cost-Savings-Amendment.pdf>. MIAx Sapphire, LLC was not a Participant to the CAT NMS Plan when the Proposal was originally filed, but the Participants filed an immediately-effective amendment to the CAT NMS Plan on July 30, 2024 to add MIAx Sapphire, LLC as a Participant. See Securities Exchange Act Release No. 100631 (July 31, 2024), 89 FR 64011 (Aug. 6, 2024).

⁵ See Securities Exchange Act Release No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024) (“Notice”). Comments received in response to the Notice can be found on the Commission’s website at <https://www.sec.gov/comments/4-698/4-698-d.htm>.

⁶ 17 CFR 242.608(b)(2)(i).

⁷ See Securities Exchange Act Release No. 100530 (July 15, 2024), 89 FR 58838 (July 19, 2024).

⁸ See Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated Sept. 20, 2024, available at <https://www.sec.gov/comments/4-698/4698-522995-1501362.pdf>.

estimated cost savings, and responses prepared by the Participants to the OIP, respectively. In addition, the Participants filed *Exhibit A*, which sets forth the cumulative changes proposed to be made to the CAT NMS Plan, and *Exhibit B*, which sets forth the proposed additional revisions to the changes in the Proposed Cost Savings Amendments. The Commission is publishing this notice to solicit comments on the additional revisions to the Proposed Cost Savings Amendments from interested persons.

I. Revisions to the Proposed Cost Savings Amendments

CAT LLC was both surprised and disappointed by the Commission’s decision to institute proceedings on the Proposed Cost Savings Amendments, which will delay or ultimately impede CAT LLC’s ability to achieve more than \$20 million in annual cost savings. All commenters strongly favored the Proposed Cost Savings Amendments.⁹ The Commission did not receive any comments opposing the proposed amendments.

While the Commission does not bear any CAT costs, the Commission’s objective should be to ensure the CAT achieves its regulatory objectives in an efficient and cost-effective manner. The immense costs of operating the CAT—estimated at \$213 million in 2024—are driven by the strict requirements in the CAT NMS Plan to process and store record data volumes in accordance with complex reporting and linkage requirements, within the narrow timeframes required by the SEC. CAT LLC and the Plan Processor have put significant effort into reducing CAT costs that are within their control given these strict requirements, but many additional cost savings measures require Commission action to permit their implementation.

After discussions with the Staff, CAT LLC is withdrawing the proposal to provide an interim CAT-Order-ID on an “as requested” basis, as opposed to on a continuous basis, which would have resulted in approximately \$2 million in annual cost savings. With these changes, CAT LLC strongly urges the Commission to approve the Proposed Cost Savings Amendments without further delay.

⁹ See Letter from Howard Meyerson, Managing Director, FIF, to Commission (May 7, 2024); Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, and Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, Commission (May 31, 2024); Letter from Jeffrey S. Davis, Senior Vice President, Principal Deputy General Counsel, Nasdaq, Inc., to Vanessa Countryman, Secretary, Commission (July 1, 2024).

¹ 15 U.S.C. 78k-1(a)(3).

² 17 CFR 242.608.

A. Processing, Storage, and Query Requirements for Options Market Maker Quotes in Listed Options

The CAT NMS Plan currently contains broad requirements relating to the processing, storage, and querying of Option Market Maker quotes in Listed Options.¹⁰ The Proposed Cost Savings Amendments would save approximately \$20 million annually by changing certain processing, query, and storage requirements that would otherwise apply to Options Market Maker quotes in Listed Options.¹¹ These changes would significantly reduce the costs of the CAT with limited regulatory impact. The vast majority of Options Market Maker quote lifecycles do not involve any execution or allocation and Participant regulatory users very rarely access such data. Options Exchanges would continue to report Options Market Maker quotes in Listed Options in the same manner they do today, but the Plan Processor would only ingest, perform basic data validations, and store such data. Unlinked data would remain accessible to regulators by T+1 at 12:00 p.m. Eastern Time.

Based on discussions with the Staff, CAT LLC is proposing several revisions to the Proposed Cost Savings Amendments.

First, CAT LLC proposes to revise the Proposed Cost Savings Amendments to replace any proposed references to “Options Market Maker Quotes in Listed Options,” which is not a separately defined term in the CAT NMS Plan, with “Options Market Maker quotes in Listed Options”.¹² Relatedly, to eliminate potential confusion regarding the intended scope of the proposal, CAT LLC proposes to eliminate the phrase “and related Reportable Events”. CAT LLC believes that the meaning of Options Market Maker quotes in Listed Options is well understood by CAT Reporters as it has been the basis for CAT reporting since

the inception of the CAT.¹³ Specifically, as described in Section 5.1 (Market Maker Quotes) of the Plan Participant Technical Specifications, there are two types of events used to report Options Market Maker quotes in Listed Options:

- *Quote Event*: Used to report a new quote or a quote replacement. When a quote is replaced, the Original Quote ID will identify the quote being replaced, and the Quote ID will provide the new ID for the updated and replaced quote (or note in the event that the market maker can only have one quote active at any given time).
- *Quote Cancel*: Reported when a quote is canceled.¹⁴

Accordingly, under the proposed amendments, Option Quote (OQ) and Option Quote Cancel (OQC) events will not be subject to any requirement to link and create an order lifecycle, and will not undergo any linkage validation, linkage feedback, or lifecycle enrichment processing.

Relatedly, trades resulting from an Options Market Maker quote are reported to the CAT by Plan Participants using Option Trade (OT) events. OT events will continue to be subject to the requirement to link and create an order lifecycle, and will undergo linkage validation, linkage feedback, and lifecycle enrichment processing. However, given the proposal to eliminate linkage requirements related to OQ and OQC events, when an Options Market Maker quote is on one side of an OT event, the quote side of the OT event will not be linked to the Options Market Maker quote via the linkage process; instead, a single event lifecycle will be created that contains only the quote side of the OT event. Regulators, however, will be able to readily identify the Options Market Maker quote executed in an OT event via the quoteID field on the side of the OT event involving the Options Market Maker quote. In addition, the side of the OT event that does not involve an Options Market Maker quote would be linked with the relevant order and would include the order lifecycle related to such order, and would be subject to all lifecycle enrichment processing.

Second, CAT LLC proposes to revise the Proposed Cost Savings Amendments

to clarify that the Plan Processor would continue to perform *ingestion* validation on Options Market Maker quotes (but would stop performing *linkage* validation).¹⁵

Third, CAT LLC proposes to revise the Proposed Cost Savings Amendments to provide that, upon request of the SEC or any Participant, the Plan Processor will provide the business and technical requirements needed to re-create the eliminated enrichments, as well as the code required to derive any eliminated data elements from the unlinked data.

As revised, new Section 3.4 of Appendix D would state:

3.4 Requirements for Options Market Maker Quotes in Listed Options

The provisions of this section shall govern the processing and storage of Options Market Maker quotes in Listed Options and shall override any conflicting provisions in the CAT NMS Plan, this Appendix D, or Exchange Act Rule 17a-1.

Options Market Maker quotes in Listed Options must be reported to the Central Repository as provided under Section 6.4(d)(iii) of the CAT NMS Plan. This data will undergo ingestion validation only and such unlinked data will be made available to regulators by T+1 at 12:00 p.m. Eastern Time. Options Market Maker quotes in Listed Options will not be subject to any requirement to link and create an order lifecycle, and will not undergo any linkage validation, linkage feedback, or lifecycle enrichment processing, but will undergo ingestion validation. Options Market Maker quotes in Listed Options will be accessible through BDSQL and Direct Read interfaces only and will not be accessible through the online targeted query tool.

Upon request of the SEC or any Participant, the Plan Processor will provide the business and technical requirements needed to re-create the eliminated enrichments, as well as the code (which is unique to the Plan Processor's linkage implementation) existing as of the effective date of this provision used to derive the eliminated enrichments. The Plan Processor will not maintain the business and technical requirements and the code following the effective date of this provision, but it will retain a copy so that they may be provided to any regulators that might request them in the future.

In addition, as noted in the Proposed Cost Savings Amendments, CAT LLC proposes to amend Section 3, Section 6.1, and Section 8.1.1 of Appendix D of the CAT NMS Plan to include cross-references to new Section 3.4 of Appendix D. Consistent with the revisions discussed above, references to “Options Market Maker Quotes in Listed Options and related Reportable Events” in Section 3, Section 6.1, and

¹⁰ For a description of these requirements, see OIP at 58839–40.

¹¹ As described in the SRO Letter, only market maker quotes that are reported to CAT as quote events would be affected by the proposal. Market maker quotes reported to CAT as order events will not be impacted by this proposal and will continue to receive all enrichments and be fully available to regulatory users in DIVER. See SRO Letter at 7.

¹² An “Options Market Maker” is “a broker-dealer registered with an exchange for the purpose of making markets in options contracts on the exchange.” Section 1.1 of the CAT NMS Plan. A “Listed Option” is defined as having “the meaning set forth in Rule 600(b)(35) of Regulation NMS.” See *id.* Rule 600(b)(35) has since been redesignated as Rule 600(b)(43), which defines a “Listed Option” as “any option traded on a registered national securities exchange or automated facility of a national securities association.” 17 CFR 242.600(b)(43).

¹³ See Section 6.4(d)(iii) of the CAT NMS Plan (describing “the reporting obligations of an Options Market Maker with regard to its quotes in Listed Options”). See also CAT Alert 2020–03, Options Market Maker Quote Sent Time (June 4, 2020).

¹⁴ See Section 5.1 of the CAT Reporting Technical Specifications for Plan Participant v. 10r.21 [sic] (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf.

¹⁵ For reference, see Appendix B–1 (describing data ingestion error codes) and Appendix B–3 (describing linkage validation error codes) of the CAT Reporting Technical Specifications for Plan Participant v.10r.21 [sic] (Apr. 15, 2024).

Section 8.1.1 of Appendix D have been revised to “Options Market Maker quotes in Listed Options”.

B. Storage for Raw Unprocessed Data and Interim Operational Copies of CAT Data Older Than 15 Days

The CAT NMS Plan currently requires CAT Data to be “directly available and searchable electronically without manual intervention for at least six years” and within certain query tool response times.¹⁶ The Proposed Cost Savings Amendments would save approximately \$1 million annually by permitting the Plan Processor to move raw unprocessed data (*i.e.*, as-submitted data) and interim operational data older than 15 days to a more cost-effective storage tier that is optimized for infrequent access. In each case, retrieving such data for regulators would require some “manual intervention” by the Plan Processor.

As described in the Proposed Cost Savings Amendments, when a regulator queries CAT data, the CAT always provides results to the user based on the latest, most current version of the data. Accordingly, raw unprocessed data and interim operational data older than 15 days do not provide any regulatory value after the final corrected data version is delivered by T+5 at 8:00 a.m. ET.

Based on discussions with the Staff, CAT LLC proposes to amend the Proposed Cost Savings Amendments to clarify the scope of affected data.¹⁷ In addition, CAT LLC proposes to clarify that the Plan Processor will restore archived data to an accessible storage tier upon request to the CAT Help Desk by an authorized regulatory user from the Participants or a senior officer from the SEC.¹⁸ Finally, CAT LLC proposes to clarify that “*Interim Operational Data*” does not include processed data relating to Options Market Maker quotes in Listed Options made available to regulators by T+1 at 12:00 p.m. ET. As

revised, new Section 6.3 of Appendix D would state:

6.3 Exceptions to Data Availability Requirements

Notwithstanding any other provision of the CAT NMS Plan, this Appendix D, or Exchange Act Rule 17a–1, the following types of data may be retained in an archive storage tier. Archived data is not directly available and searchable electronically without manual intervention and will not be subject to any query tool performance requirements until it is restored to an accessible storage tier. The Plan Processor will restore archived data to an accessible storage tier upon request to the CAT Help Desk by an authorized regulatory user from the Participants or a senior officer from the SEC.

- Raw Unprocessed Data older than 15 days. “*Raw Unprocessed Data*” means data that has been ingested by the Plan Processor and made available to regulators prior to 12:00 p.m. Eastern Time on T+1.
- Interim Operational Data older than 15 days. “*Interim Operational Data*” means all processed, validated and unlinked data made available to regulators by T+1 at 12:00 p.m. ET and all iterations of processed data made available to regulators between T+1 and T+5, but excludes the final version of corrected data that is made available at T+5 at 8:00 a.m. ET. For the avoidance of doubt, “*Interim Operational Data*” does not include processed data relating to Options Market Maker quotes in Listed Options made available to regulators by T+1 at 12:00 p.m. ET.
- All submission and feedback files older than 15 days.

In addition, as noted in Exhibit A of the Proposed Cost Savings Amendments, CAT LLC proposes to add the phrase “subject to the exceptions in Section 6.3 of Appendix D” to Section 6.5(b)(i)¹⁹ and Section 1.4 of Appendix D.

C. Provision of an Interim CAT-Order-ID on an “As Requested” Basis

The CAT NMS Plan currently requires the Plan Processor to provide an interim CAT-Order-ID by T+1 at 9 p.m. ET, even where no regulatory need exists.²⁰ With respect to this requirement, the Commission has previously invited the Participants “to develop alternative solutions that achieve the regulatory goals of Rule 613 and the CAT NMS Plan in a more cost-effective manner,” noting that “the Commission emphasizes its willingness to consider

such alternative solutions in the form of a proposed CAT NMS Plan amendment.”²¹

CAT LLC originally proposed to provide an interim CAT-Order-ID on an “as requested” basis, which would have saved approximately \$2 million annually. This alternative solution would have preserved the Commission’s ability to obtain an interim CAT-Order-ID promptly upon request, while avoiding the substantial cost of delivering an interim CAT-Order-ID on a regular ongoing basis even where no regulatory need exists. CAT LLC would have added a separate line item to its budget to reflect costs attributable to SEC requests to generate an interim CAT-Order-ID.

However, after discussions with the Staff, CAT LLC is withdrawing this proposal. Accordingly, the prior changes to Section 6.1 of Appendix D relating to this proposal have been eliminated. The Participants continue to believe that the approximate \$2 million in annual savings associated with the proposal substantially outweigh the minimal regulatory impact. Subject to further discussions with the Staff, the Participants will consider whether to re-propose this proposal in a future cost savings amendment.

II. Additional Details Regarding Calculation of \$21 Million in Estimated Annual Savings

The Commission requested “additional details and underlying calculations used to estimate the cost savings as well as information on the costs to the Plan Processor of implementing each element of each of the proposed amendments (*e.g.*, some amendments would require coding changes, which would impose costs).”²²

The Proposed Cost Savings Amendments and the SRO Letter include detailed information regarding how the cost savings estimates were calculated, which CAT LLC is further supplementing below. As previously described, all cost savings estimates are based on reasonable assumptions related to, among other factors, the current state and costs of CAT operations; current CAT NMS Plan requirements; reporting by Participants, Industry Members and market data providers; observed data rates and volumes; current discounts, reservations, and cost savings plans; and associated cloud fees.²³ CAT LLC

¹⁶ See Section 6.5(b)(i) and Appendix D, Section 1.4 of the CAT NMS Plan.

¹⁷ Exhibit A of the Proposed Cost Savings Amendments previously referred to “interim raw unprocessed data”; the text of Exhibit A has been clarified to refer to “raw unprocessed data”.

¹⁸ CAT Data is currently stored in three storage tiers: S3 Frequent Access, S3 Infrequent Access, and S3 Instant Archive Access. Data files that are either new or that have recently been read by regulatory users are stored in S3 Frequent Access. If a file is not read by a regulatory user for 30 days, then it moves to S3 Infrequent Access. Similarly, if a file is not read by a regulatory user for 90 days, then it moves to S3 Archive Instant Access. The Plan Processor currently anticipates that archived data would be restored to the S3 Frequent Access tier. Storage tiers are subject to change based on future technology developments and product offerings.

¹⁹ The Proposed Cost Savings Amendments inadvertently referred to Section 6.5(d)(i); however, Exhibit A of the Proposed Cost Savings Amendments accurately reflected the addition of the phrase “subject to the exceptions in Section 6.3 of Appendix D” to Section 6.5(b)(i) as intended.

²⁰ See Exchange Act Release No. 98848 (Nov. 2, 2023), 88 FR 77128 (Nov. 8, 2023) (granting exemptive relief from the requirement set forth in appendix D, section 6.1 of the CAT NMS Plan that lifecycle linkages be created by T+1 at noon ET).

²¹ Exchange Act Release No. 95234 (July 8, 2022), 87 FR 42247, 42248 (July 14, 2022).

²² OIP at 58847.

²³ See Proposed Cost Savings Amendments at 2 n.5.

believes that the cost savings estimates and assumptions are reasonable and provide an adequate basis for the Commission to evaluate the costs and benefits of the Cost Savings Amendments.

One-time implementation costs are expected to be minimal relative to overall cost savings. Implementation costs may vary based on various factors, including the details of any requirements in any final amendment approved by the Commission and any changes in labor costs. One-time implementation costs will generally consist of Plan Processor labor costs associated with coding and software development, as well as any related cloud fees associated with the development, testing and load testing of the proposed changes. Ongoing operational costs, other than cloud hosting costs, will not be affected by the proposed amendments.

1. Processing, Storage, and Query Requirements for Options Market Maker Quotes in Listed Options: Estimated Annual Savings of \$20 Million

The Proposed Cost Savings Amendments would save approximately \$20 million annually by changing certain processing, query, and storage requirements that would otherwise apply to Options Market Maker quotes in Listed Options.

Processing Requirements. The Plan Processor estimates that approximately \$12 million in savings would be attributable to linkage processing and data processing reductions, assuming 22 processing days per month for a total of 264 processing days in a year and based on data volumes observed in the first half of 2024. Linkage processing costs would be reduced from approximately \$27,000 per day to \$0 per day, resulting in estimated annual linkage processing savings of \$7,128,000 ($\$27,000/\text{day} \times 264 \text{ days}$). Data processing costs (*i.e.*, costs attributable to data ingestion and preparation and publication of data versions to the relevant regulatory interfaces) would be reduced from approximately \$27,000 per day to \$9,000 per day, resulting in estimated annual data processing savings of \$4,752,000 ($\$18,000/\text{day} \times 264 \text{ days}$). In the aggregate, linkage processing and data processing savings would total \$11,880,000, or approximately \$12 million, based on data volumes observed in the first half of 2024. If data volumes continue to increase as they have historically, the associated costs avoided would similarly increase.

Storage Requirements. The Plan Processor estimates that approximately \$8 million in savings would be

attributable to the reduction in the storage footprint for Options Market Maker quotes in Listed Options through the elimination of versioned quote data (*i.e.*, T+2 8 a.m. ET, T+5 8 a.m. ET, DIVER and OLA copies). The \$8 million in savings assumes a reduction of the current production storage footprint of approximately 37.5 petabytes (PB) per month based on data volumes from the first half of 2024 to approximately 9 PB per month spread across the S3 Intelligent Tiers (Frequent Access, Infrequent Access, and Archive Instant Access).²⁴

Query Requirements. As described in the SRO Letter, the Plan Processor estimates that the continued optimization of Options Market Maker quotes in Listed Options to make them available via DIVER would cost approximately \$2.8 million per year. This estimate consists of (i) \$2.2 million per year in compute costs for producing the DIVER-specific hash partition copy of Options Market Maker quotes;²⁵ and (ii) \$600,000 per year in storage costs for one year's worth of DIVER-specific copies of Options Market Maker quotes.²⁶ These amounts are included in the processing and storage estimates described above.

²⁴ Specific to storage cost estimates, S3 Intelligent Tier storage fees in production are allocated at a ratio of 1 (S3 Frequent Access): 1 (S3 Infrequent Access): 8 (S3 Archive Instant Access). This ratio describes the current percentage distribution of data files between storage tiers, which is driven by regulatory usage. Data files that are either new or that have recently been read by regulatory users are stored in S3 Frequent Access. If a file is not read by a regulatory user for 30 days, then it moves to S3 Infrequent Access. Similarly, if a file is not read by a regulatory user for 90 days, then it moves to S3 Archive Instant Access. Based on current observed regulatory usage, the Plan Processor's storage cost model is based on a 1:1:8 ratio across the S3 storage tiers. If regulatory users begin to read more older data files, then those files would be moved up to S3 Frequent Access, and the 1:1:8 ratio between the S3 storage tiers would change. Because each S3 storage tier has its own cost-per-petabyte of data, any change in the 1:1:8 ratio based on regulatory usage would affect storage costs.

²⁵ The \$2.2 million estimate was calculated by multiplying (x) the cost of DIVER-specific ETL jobs for Options Market Maker quotes, which is approximately \$13,500 per day, by (y) a 65 percent allocation of compute time toward Options Market Maker quotes for Participant options data and multiplying that result by (z) 252 trading days in a year.

²⁶ The \$600,000 estimate was calculated by multiplying (x) the total storage of DIVER-specific copies, which is 0.0542 petabytes per day by (y) a 90 percent allocation of storage toward Options Market Maker quotes based on record volume and multiplying that result by (z) 252 trading days in a year.

2. Storage for Raw Unprocessed Data and Interim Operational Copies of CAT Data Older Than 15 Days: Estimated Annual Savings of \$1 Million

The Proposed Cost Savings Amendments would save approximately \$1 million annually by permitting the Plan Processor to move raw unprocessed data (*i.e.*, as-submitted data) and interim operational data older than 15 days to a more cost-effective storage tier that is optimized for infrequent access.

The estimated \$1 million in reduced storage costs are attributable to storage pricing for Glacier Deep Archive, currently the lowest storage tier available on AWS cloud, and are based on data volumes observed in the first half of 2024.²⁷

CAT LLC reiterates that the affected data provides minimal regulatory value after the final corrected data version is delivered by T+5 at 8 a.m. ET. When a regulator queries CAT data, the CAT provides results to the user based on the latest, most current version of the data. As required by the CAT NMS Plan, prior to 12:00 p.m. on T+1, raw unprocessed data (*i.e.*, as-submitted data) that has been ingested by the Plan Processor must be available to Participants' regulatory staff and the SEC. Between T+1 and T+5, the CAT query tools will return the latest iteration of processed data available. Any interim data versions are ultimately supplanted in all CAT query tools by the final version of corrected data that is made available at T+5 at 8:00 a.m. ET. Accordingly, raw unprocessed data and the various iterations of interim operational data delivered between T+1 and T+5 provide minimal regulatory value after T+5, and regulators are unlikely to access this data after T+5. Currently, regulators may access such data "without manual intervention" as required by the CAT NMS Plan via the use of CAT data management APIs, but after four years of operation, the Plan Processor has not seen any regulatory usage of this data.

CAT LLC further reiterates that it is not proposing to delete this data; rather, it is only asking the Commission to allow the Plan Processor to move this data to a more cost-effective storage tier requiring some "manual intervention" in order to save \$1 million annually. Upon request by the Staff to the CAT Help Desk, archived data would be

²⁷ The affected data currently represents approximately 52% of the daily storage footprint in CAT. Specifically, raw unprocessed data (*i.e.*, as-submitted data) represents approximately 16% of the daily storage footprint, and interim operational copies (*i.e.*, T+1 12 p.m. ET, T+1 9 p.m. ET, and associated DIVER copies) represent approximately 36% of the daily storage footprint.

restored by the Plan Processor to an accessible storage tier, at which point it would be available and searchable electronically by the Staff in the same manner it is today.

3. Provision of an Interim CAT-Order-ID on an “As Requested” Basis: Estimated Annual Savings of \$2 Million

As noted above, after discussions with the Staff, the proposal to provide an interim CAT-Order-ID to the Commission on an “as requested” basis has been withdrawn. Accordingly, the \$2 million in annual cost savings associated with this proposal have been eliminated. The Plan Processor will continue to be required to produce an interim CAT-Order-ID on a daily basis.

III. Additional Responses to OIP

A. Processing, Query, and Storage Requirements for Options Market Maker Quotes in Listed Options

Under the Proposed Cost Savings Amendments, Options Market Maker quotes in Listed Options will no longer be subject to enrichment processing. The Commission requested, “in addition to the three ‘Eliminated [Enrichments]’ discussed in the SRO Letter, . . . more information on data elements—namely, a list of fields and variables for various event types in current CAT Data—that would no longer be directly available, would only be available indirectly (via notifications or making of requests to the Plan Processor or other entities), or would be available on a delay relative to today.”²⁸

As previously described, the following data elements will no longer be available in CAT under the Proposed Cost Savings Amendments:

- Derived Next Event Timestamp/
- Derived Next Event Epoch Timestamp
- CAT Lifecycle Sequence Number
- CAT Lifecycle ID (*i.e.*, CAT Order ID and Venue Order ID)²⁹

In addition to the elements previously noted, the Derived Next Event Type Code will no longer be available under the proposed amendments.

In addition, the following processing enrichments, which can be characterized as linkage metadata, will no longer be available:

- Intra Venue Link Status Code
- Unlinked Indicator
- Lifecycle Assembly Date
- Associated Lifecycles

As reflected in the proposed amendment as revised, upon request of the SEC or any Participant, the Plan Processor will provide the existing code required to derive any eliminated data elements from the unprocessed data.

Finally, the Staff requested information regarding how the “Top Indicator” data element would be affected under the proposed amendments. Plan Participant events do not represent the top of a lifecycle. Accordingly, the “Top Indicator” is not an enrichment available on Plan Participant events.

B. Provision of an Interim CAT-Order-ID on an “As Requested” Basis

The Commission requested certain additional information regarding the proposal to provide an interim CAT-Order-ID on an “as requested” basis.³⁰ As noted above, this proposal has been withdrawn after discussions with the Staff. Therefore, CAT LLC believes it is no longer necessary to respond to this portion of the OIP.

IV. Solicitation of Comments

The Commission seeks comments on the proposed additional revisions to the Proposed Cost Savings Amendments. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed additional revisions to the Proposed Cost Savings Amendments are consistent with the Exchange 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 4–698 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 4–698. 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 Cost Savings Amendments that are filed with the Commission, and all written communications relating to the Proposed Cost Savings Amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the Participants’ offices. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–698 and should be submitted on or before October 28, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Sherry R. Haywood,
Assistant Secretary.

Exhibit A

Cumulative Proposed Revisions to CAT NMS Plan

Additions *italicized*; deletions [bracketed]

* * * * *

Article VI

Functions and Activities of CAT System

* * * * *

Section 6.5. Central Repository.

* * * * *

(b) Retention of Data.

(i) Consistent with Appendix D, Data Retention Requirements, the Central Repository shall retain the information collected pursuant to paragraphs (c)(7) and (e)(7) of SEC Rule 613 in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention by the Plan Processor for a period of not less than six (6) years, *subject to the exceptions in Section 6.3 of Appendix D*. Such data when available to the Participant regulatory staff and the SEC shall be linked.

(ii) The Plan Processor shall implement and comply with the records retention policy contemplated by Section 6.1(d)(i) (as such

²⁸ OIP at 58847. As described in the SRO Letter, the “Eliminated Enrichments” are “(i) derived next event timestamp; (ii) lifecycle sequence number; and (iii) the CAT Lifecycle ID.” SRO Letter at 5. See also Proposed Cost Savings Amendments at 4; Notice at 26985.

²⁹ The CAT Order ID is the lifecycle ID across all CAT Reporters whereas the Venue Order ID is the lifecycle ID within a single CAT Reporter. Because option quote events only exist within a single CAT Reporter, the CAT Order ID and Venue Order ID are identical for such events.

³⁰ OIP at 58847.

³¹ 17 CFR 200.30–3(a)(85).

policy is reviewed and updated periodically in accordance with Section 6.1(d)(i)).

* * * * *

Appendix D

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1.2 Technical Environments

The architecture must include environments for production, development, quality assurance testing, disaster recovery, industry-wide coordinated testing, and individual on-going CAT Reporter testing. The building and introduction of environments available to CAT Reporters may be phased in to align with the following agreed upon implementation milestones:

- *Development environment*—the development environment must be created to build, develop, and maintain enhancements and new requirements. This environment must be separate from those listed below.

- *Quality assurance environment*—a quality assurance (QA) environment must be created to allow simulation and testing of all applications, interfaces, and data integration points contained in the CAT System.

- The QA environment shall be able to simulate end-to-end production functionality and perform with the same operational characteristics, including processing speed, as the production environment.

- The QA environment shall support varied types of changes, such as, but not limited to, the following:

- Application patches;
 - Bug fixes;
 - Operating system upgrades;
 - Introduction of new hardware or software components;
 - New functionality;
 - Network changes;
 - Regression testing of existing functionality;

- Stress or load testing (simulation of production-level usage); and
 - Recovery and failover.

- A comprehensive test plan for each build and subsequent releases must be documented.

- *Production environment*—fully operational environment that supports receipt, ingestion, processing and storage of CAT Data. Backup/disaster recovery components must be included as part of the production environment.

- *Industry test environment*—

- The Plan Processor must provide an environment supporting industry testing (test environment) that is functionally equivalent to the production environment, including:

- End-to-end functionality (e.g., data validation, processing, linkage, error identification, correction and reporting mechanism) from ingestion to output, sized to meet the standards of the production SLA;
 - Performance metrics that mirror the production environment; and
 - Management with the same information security policies applicable to the production environment.

- The industry test environment must also contain functionality to support industry testing, including:

- Minimum availability of 24x6;
 - Replica of production data when needed for testing;

- Data storage sized to meet varying needs, dependent upon scope and test scenarios; and

- Support of two versions of code (current and pending).

- The industry test environment must support the following types of industry testing:

- Technical upgrades made by the Plan Processor;

- CAT code releases that impact CAT Reporters;

- Changes to industry data feeds (e.g., SIP, OPRA, etc.);

- Industry-wide disaster recovery testing;

- Individual CAT Reporter and Data Submitter testing of their upgrades against CAT interfaces and functionality; and

- Multiple, simultaneous CAT Reporter testing.

- The industry test environment must be a discrete environment separate from the production environment.

- The Plan Processor must provide the linkage processing of data submitted during coordinated, scheduled, industry-wide testing. Results of the linkage processes must be communicated back to Participants as well as to the Operating Committee.

- Data from industry testing must be saved for three months. *Notwithstanding any other provision of the CAT NMS Plan, this Appendix D, or Exchange Act Rule 17a-1, such test data (whether related to the CAT order and transaction system or the customer account and information system) may be deleted by the Plan Processor after three months.* Operational metrics associated with industry testing (including but not limited to testing results, firms who participated, and amount of data reported and linked) must be stored for the same duration as the CAT production data.

- The Plan Processor must provide support for industry testing, including testing procedures, coordination of industry testing, publish notifications, and provide help desk support during industry testing.

- The Participants and the SEC must have access to industry test data.

* * * * *

1.4 Data Retention Requirements

The Plan Processor must develop a formal record retention policy and program for the CAT, to be approved by the Operating Committee, which will, at a minimum:

- Contain requirements associated with data retention, maintenance, destruction, and holds;

- Comply with applicable SEC record-keeping requirements;

- Have a record hold program where specific CAT Data can be archived offline for as long as necessary;

- Store and retain both raw data submitted by CAT Reporters and processed data; and

- Make data directly available and searchable electronically without manual intervention for at least six years, *subject to the exceptions in Section 6.3 of Appendix D.*

* * * * *

3. Reporting and Linkage Requirements

All CAT Data reported to the Central Repository must be processed and assembled

to create the complete lifecycle of each Reportable Event. Reportable Events must contain data elements sufficient to ensure the same regulatory coverage currently provided by existing regulatory reporting systems that have been identified as candidates for retirement.

Additionally, the Central Repository must be able to:

- Assign a unique CAT-Reporter-ID to all reports submitted to the system based on sub-identifiers, (e.g., MPIDs, ETPID, trading mnemonic) currently used by CAT Reporters in their order handling and trading processes.

- Handle duplicate sub-identifiers used by members of different Participants to be properly associated with each Participant.

- Generate and associate one or more Customer-IDs with all Reportable Events representing new orders received from a Customer(s) of a CAT Reporter. The Customer-ID(s) will be generated from a Firm Designated ID provided by the CAT Reporter for each such event, which will be included on all new order events.

- Accept time stamps on order events handled electronically to the finest level of granularity captured by CAT Reporters. Additionally, the CAT must be able to expand the time stamp field to accept time stamps to an even finer granularity as trading systems expand to capture time stamps in ever finer granularity. The Plan Processor must normalize all processed date/time CAT Data into a standard time zone/format.

In addition, the data required from CAT Reporters will include all events and data elements required by the Plan Processor in the Technical Specifications to build the:

- Life cycle of an order for defined events within a CAT Reporter;

- Life cycle of an order for defined events intra-CAT Reporter; and

- State of all orders across all CAT Reporters at any point in time.

The Plan Processor must use the “daisy chain approach” to link and create the order lifecycle. In the daisy chain approach, a series of unique order identifiers, assigned to all order events handled by CAT Reporters are linked together by the Central Repository and assigned a single CAT-generated CAT-Order-ID that is associated with each individual order event and used to create the complete lifecycle of an order.

By using the daisy chain approach the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order. At a minimum, the Central Repository must be able to create the lifecycle between:

- All order events handled within an individual CAT Reporter, including orders routed to internal desks or departments with different functions (e.g., an internal ATS);

- Customer orders to “representative” orders created in firm accounts for the purpose of facilitating a customer order (e.g., linking a customer order handled on a riskless principal basis to the street-side proprietary order);

- Orders routed between broker-dealers;

- Orders routed from broker-dealers to exchanges;

- Orders sent from an exchange to its routing broker-dealer;

- Executed orders and trade reports;
 - Various legs of option/equity complex orders; and
 - Order events for all equity and option order handling scenarios that are currently or may potentially be used by CAT Reporters, including:
 - Agency route to another broker-dealer or exchange;
 - Riskless principal route to another broker-dealer or exchange capturing within the lifecycle both the customer leg and street side principal leg;
 - Orders routed from one exchange through a routing broker-dealer to a second exchange;
 - Orders worked through an average price account capturing both the individual street side execution(s) and the average price fill to the Customer;
 - Orders aggregated with other orders for further routing and execution capturing both the street side executions for the aggregated order and the fills to each customer order;
 - Complex orders involving one or more options legs and an equity leg, with a linkage between the option and equity legs;
 - Complex orders containing more legs than an exchange's order management system can accept, causing the original order to be broken into multiple orders;
 - Orders negotiated over the telephone or via a negotiation system;
 - Orders routed on an agency basis to a foreign exchange;
 - Execution of customer order via allocation of shares from a pre-existing principal order;
 - Market maker quotes; and
 - Complex orders involving two or more options legs.
- Additionally, the Central Repository must be able to:
- Link each order lifecycle back to the originating Customer;
 - Integrate and appropriately link reports representing repairs of original submissions that are rejected by the CAT due to a failure to meet a particular data validation;
 - Integrate into the CAT and appropriately link reports representing records that are corrected by a CAT Reporter for the purposes

of correcting data errors not identified in the data validation process;

- Assign a single CAT-Order-ID to all events contained within the lifecycle of an order so that regulators can readily identify all events contained therein; and
- Process and link Manual Order Events with the remainder of the associated order lifecycle.

As described in Section 3.4 of Appendix D, Options Market Maker quotes in Listed Options will be subject to ingestion only and will not be subject to any linkage requirements.

* * * * *

3.4 Requirements for Options Market Maker Quotes in Listed Options

The provisions of this section shall govern the processing and storage of Options Market Maker quotes in Listed Options and shall override any conflicting provisions in the CAT NMS Plan, this Appendix D, or Exchange Act Rule 17a-1.

Options Market Maker quotes in Listed Options must be reported to the Central Repository as provided under Section 6.4(d)(iii) of the CAT NMS Plan. This data will undergo ingestion validation only and such unlinked data will be made available to regulators by T+1 at 12:00 p.m. Eastern Time. Options Market Maker quotes in Listed Options will not be subject to any requirement to link and create an order lifecycle, and will not undergo any linkage validation, linkage feedback, or lifecycle enrichment processing, but will undergo ingestion validation. Options Market Maker quotes in Listed Options will be accessible through BDSQL and Direct Read interfaces only and will not be accessible through the online targeted query tool.

Upon request of the SEC or any Participant, the Plan Processor will provide the business and technical requirements needed to re-create the eliminated enrichments, as well as the code (which is unique to the Plan Processor's linkage implementation) existing as of the effective date of this provision used to derive the eliminated enrichments. The Plan Processor will not maintain the business and technical

requirements and the code following the effective date of this provision, but it will retain a copy so that they may be provided to any regulators that might request them in the future.

* * * * *

6.1 Data Processing

CAT order events must be processed within established timeframes to ensure data can be made available to Participants' regulatory staff and the SEC in a timely manner. The processing timelines start on the day the order event is received by the Central Repository for processing.

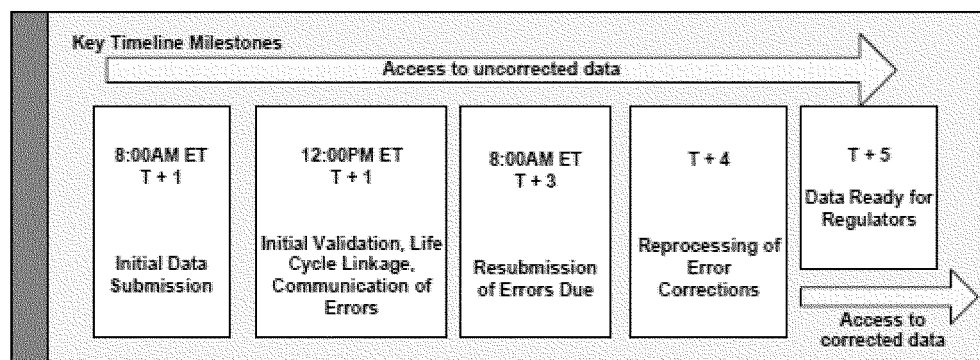
Most events must be reported to the CAT by 8:00 a.m. Eastern Time the Trading Day after the order event occurred (referred to as transaction date). The processing timeframes below are presented in this context. All events submitted after T+1 (either reported late or submitted later because not all of the information was available) must be processed within these timeframes based on the date they were received.

The Participants require the following timeframes (Figure A) for the identification, communication and correction of errors from the time an order event is received by the processor:

- Noon Eastern Time T+1 (transaction date + one day)—Initial data validation, lifecycle linkages and communication of errors to CAT Reporters;
- 8:00 a.m. Eastern Time T+3 (transaction date + three days)—Resubmission of corrected data; and
- 8:00 a.m. Eastern Time T+5 (transaction date + five days)—Corrected data available to Participant regulatory staff and the SEC.

Late submissions or re-submissions (after 8:00 a.m.) may be considered to be processed that day if it falls within a given time period after the cutoff. This threshold will be determined by the Plan Processor and approved by the Operating Committee. In the event that a significant portion of the data has not been received as monitored by the Plan Processor, the Plan Processor may decide to halt processing pending submission of that data.

Figure A: CAT Central Repository Data Processing Timelines



For the avoidance of doubt, processing and storage of Options Market Maker quotes in Listed Options shall be governed by Section 3.4 of Appendix D.

* * * * *

6.3 Exceptions to Data Availability Requirements

Notwithstanding any other provision of the CAT NMS Plan, this Appendix D, or Exchange Act Rule 17a-1, the following types of data may be retained in an archive storage tier. Archived data is not directly available and searchable electronically without manual intervention and will not be subject to any query tool performance requirements until it is restored to an accessible storage tier. The Plan Processor will restore archived data to an accessible storage tier upon request to the CAT Help Desk by an authorized regulatory user from the Participants or a senior officer from the SEC.

- **Raw Unprocessed Data older than 15 days.** “Raw Unprocessed Data” means data that has been ingested by the Plan Processor and made available to regulators prior to 12:00 p.m. Eastern Time on T+1.
- **Interim Operational Data older than 15 days.** “Interim Operational Data” means all processed, validated and unlinked data made available to regulators by T+1 at 12:00 p.m. ET and all iterations of processed data made available to regulators between T+1 and T+5, but excludes the final version of corrected data that is made available at T+5 at 8:00 a.m. ET. For the avoidance of doubt, “Interim Operational Data” does not include processed data relating to Options Market Maker quotes in Listed Options made available to regulators by T+1 at 12:00 p.m. ET.

- **All submission and feedback files older than 15 days.**

* * * * *

8.1 Regulator Access

The Plan Processor must provide Participants’ regulatory staff and the SEC with access to all CAT Data for regulatory purposes only. Participants’ regulatory staff and the SEC will access CAT Data to perform functions, including economic analyses, market structure analyses, market surveillance, investigations, and examinations.

The CAT must be able to support, at a minimum, 3,000 regulatory users within the system. It is estimated that approximately 20% of all users will use the system on a daily or weekly basis while approximately 10% of all users will require advanced regulator-user access, as described below. Furthermore, it is estimated that there may be approximately 600 concurrent users accessing the CAT at any given point in time. These users must be able to access and use

the system without an unacceptable decline in system performance.²⁹

As stated in Appendix D, Data Security, the Plan Processor must be able to support an arbitrary number of user roles. Defined roles must include, at a minimum:

- **Basic regulator users**—Individuals with approved access who plan to use the Central Repository to run basic queries (e.g., pulling all trades in a single stock by a specific party).
- **Advanced regulator users**—Individuals with approved access who plan to use the Central Repository to construct and run their own complex queries.

Regulators will have access to processed CAT Data through two different methods, an online-targeted query tool and user-defined direct queries and bulk extracts.

As described in Section 3.4 of Appendix D, Options Market Maker quotes in Listed Options will be accessible through BDSQL and Direct Read interfaces only and will not be accessible through the online targeted query tool.

Exhibit B

Proposed Additional Revisions to Changes in Proposed Cost Savings Amendment

Additions *italicized*; deletions [bracketed]

* * * * *

Appendix D

* * * * *

3. Reporting and Linkage Requirements

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As described in Section 3.4 of Appendix D, Options Market Maker [Quotes]quotes in Listed Options [and related Reportable Events] will be subject to ingestion only and will not be subject to any linkage requirements.

* * * * *

3.4 Requirements for Options Market Maker Quotes in Listed Options

The provisions of this section shall govern the processing and storage of Options Market Maker [Quotes]quotes in Listed Options [and related Reportable Events] and shall override any conflicting provisions in the CAT NMS Plan, this Appendix D, or Exchange Act Rule 17a-1.

Options Market Maker [Quotes]quotes in Listed Options must be reported to the Central Repository as provided under Section 6.4(d)(iii) of the CAT NMS Plan. This data will undergo ingestion *validation* only and such unlinked data will be made available to regulators by T+1 at 12:00 p.m. Eastern Time. Options Market Maker [Quotes]quotes in Listed Options will not be subject to any requirement to link and create an order lifecycle, and will not undergo any *linkage* validation, *linkage* feedback, [linkage,] or

²⁹ Specific performance requirements will be included in the SLA.

lifecycle enrichment processing, but will undergo ingestion validation. Options Market Maker [Quotes]quotes in Listed Options will be accessible through BDSQL and Direct Read interfaces only and will not be accessible through the online targeted query tool.

Upon request of the SEC or any Participant, the Plan Processor will provide the business and technical requirements needed to re-create the eliminated enrichments, as well as the code (which is unique to the Plan Processor’s linkage implementation) existing as of the effective date of this provision used to derive the eliminated enrichments. The Plan Processor will not maintain the business and technical requirements and the code following the effective date of this provision, but it will retain a copy so that they may be provided to any regulators that might request them in the future.

* * * * *

6.1 Data Processing

CAT order events must be processed within established timeframes to ensure data can be made available to Participants’ regulatory staff and the SEC in a timely manner. The processing timelines start on the day the order event is received by the Central Repository for processing. Most events must be reported to the CAT by 8:00 a.m. Eastern Time the Trading Day after the order event occurred (referred to as transaction date). The processing timeframes below are presented in this context. All events submitted after T+1 (either reported late or submitted later because not all of the information was available) must be processed within these timeframes based on the date they were received.

The Participants require the following timeframes (Figure A) for the identification, communication and correction of errors from the time an order event is received by the processor:

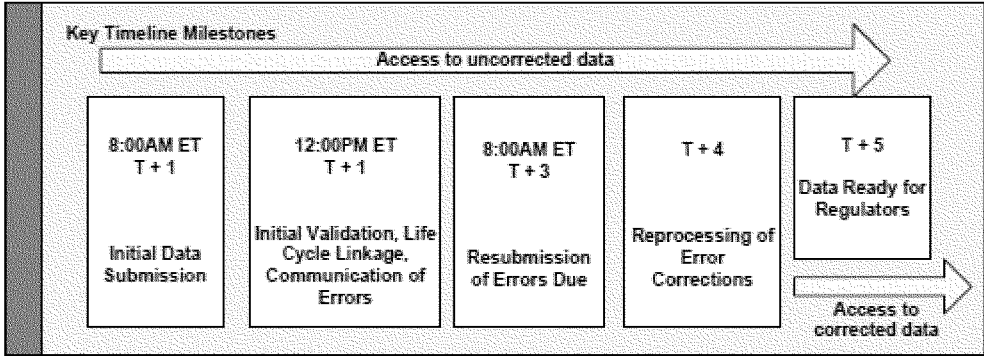
- **Noon Eastern Time T+1 (transaction date + one day)**—Initial data validation, *lifecycle* linkages and communication of errors to CAT Reporters;

- **8:00 a.m. Eastern Time T+3 (transaction date + three days)**—Resubmission of corrected data; and

- **8:00 a.m. Eastern Time T+5 (transaction date + five days)**—Corrected data available to Participant regulatory staff and the SEC.

Late submissions or re-submissions (after 8:00 a.m.) may be considered to be processed that day if it falls within a given time period after the cutoff. This threshold will be determined by the Plan Processor and approved by the Operating Committee. In the event that a significant portion of the data has not been received as monitored by the Plan Processor, the Plan Processor may decide to halt processing pending submission of that data.

Figure A: CAT Central Repository Data Processing Timelines



[{changes to second box in chart: 12:00 PM ET T+1 Initial Validation, Life Cycle Linkage, Communication of Errors}]

[Where there is an immediate regulatory need (for example, in the case of a major market event), upon request of a senior officer of the Division of Trading and Markets, the Division of Enforcement, or the Division of Examinations to CAT LLC, the Plan Processor shall be directed to create an interim CAT-Order-ID and make it available to regulators by T+1 at 9 p.m. ET if the request is received prior to T+1 at 8 a.m. ET, or generally within 14 hours of receiving the request if such request was received after T+1 at 8 a.m. ET.]

For the avoidance of doubt, processing and storage of Options Market Maker [Quotes]quotes in Listed Options [and related Reportable Events] shall be governed by Section 3.4 of Appendix D.

* * * * *

6.3 Exceptions to Data Availability Requirements

Notwithstanding any other provision of the CAT NMS Plan, this Appendix D, or Exchange Act Rule 17a-1, the following types of data may be retained in an archive storage tier[, in which case they will be made available upon request by Participant regulatory staff or the SEC to the CAT Help Desk]. Archived data is not directly available and searchable electronically without manual intervention and will not be subject to any query tool performance requirements until it is restored to an accessible storage tier. The Plan Processor will restore archived data to an accessible storage tier upon request to the CAT Help Desk by an authorized regulatory user from the Participants or a senior officer from the SEC.

- [All raw unprocessed data (i.e., as submitted data) and interim operational data older than 15 days. Interim operational data includes all processed, validated and unlinked data made available to regulators by T+1 at 12:00 p.m. ET, and all iterations of processed data made available to regulators between T+1 and T+5, but excludes the final version of corrected data that is made available at T+5 at 8:00 a.m. ET.]Raw Unprocessed Data older than 15 days. “Raw Unprocessed Data” means data that has been ingested by the Plan Processor and made

available to regulators prior to 12:00 p.m. Eastern Time on T+1.

- Interim Operational Data older than 15 days. “Interim Operational Data” means all processed, validated and unlinked data made available to regulators by T+1 at 12:00 p.m. ET and all iterations of processed data made available to regulators between T+1 and T+5, but excludes the final version of corrected data that is made available at T+5 at 8:00 a.m. ET. For the avoidance of doubt, “Interim Operational Data” does not include processed data relating to Options Market Maker quotes in Listed Options made available to regulators by T+1 at 12:00 p.m. ET.

- All submission and feedback files older than 15 days.

* * * * *

8.1 Regulator Access

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As described in Section 3.4 of Appendix D, Options Market Maker [Quotes]quotes in Listed Options [and related Reportable Events] will be accessible through BDSQL and Direct Read interfaces only and will not be accessible through the online targeted query tool.

[FR Doc. 2024-23063 Filed 10-4-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, October 10, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission’s headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries

will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission’s website at <https://www.sec.gov>.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Resolution of litigation claims; and
- Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Authority: 5 U.S.C. 552b.

Dated: October 3, 2024.

Vanessa A. Countryman, Secretary.

[FR Doc. 2024-23263 Filed 10-3-24; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION**[SEC File No. 270-132, OMB Control No. 3235-0158]****Proposed Collection; Comment Request; Extension: Rule 20a-1***Upon Written Request, Copies Available*

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 20a-1 (17 CFR 270.20a-1) was adopted under Section 20(a) of the Investment Company Act of 1940 ("1940 Act") (15 U.S.C. 80a-20(a)) and concerns the solicitation of proxies, consents, and authorizations with respect to securities issued by registered investment companies ("Funds"). More specifically, rule 20a-1 under the 1940 Act (15 U.S.C. 80a-1 *et seq.*) requires that the solicitation of a proxy, consent, or authorization with respect to a security issued by a Fund be in compliance with Regulation 14A (17 CFR 240.14a-1 *et seq.*), Schedule 14A (17 CFR 240.14a-101), and all other rules and regulations adopted pursuant to section 14(a) of the Securities Exchange Act of 1934 ("1934 Act") (15 U.S.C. 78n(a)). It also requires, in certain circumstances, a Fund's investment adviser or a prospective adviser, and certain affiliates of the adviser or prospective adviser, to transmit to the person making the solicitation the information necessary to enable that person to comply with the rules and regulations applicable to the solicitation. In addition, rule 20a-1 instructs Funds that have made a public offering of securities and that hold security holder votes for which proxies, consents, or authorizations are not being solicited, to refer to section 14(c) of the 1934 Act (15 U.S.C. 78n(c)) and the information statement requirements set forth in the rules thereunder.

The types of proposals voted upon by Fund shareholders include not only the typical matters considered in proxy solicitations made by operating companies, such as the election of directors, but also include issues that are unique to Funds, such as the

approval of an investment advisory contract and the approval of changes in fundamental investment policies of the Fund. Through rule 20a-1, any person making a solicitation with respect to a security issued by a Fund must, similar to operating company solicitations, comply with the rules and regulations adopted pursuant to Section 14(a) of the 1934 Act. Some of those Section 14(a) rules and regulations, however, include provisions specifically related to Funds, including certain particularized disclosure requirements set forth in Item 22 of Schedule 14A under the 1934 Act.

Rule 20a-1 is intended to ensure that investors in Fund securities are provided with appropriate information upon which to base informed decisions regarding the actions for which Funds solicit proxies. Without rule 20a-1, Fund issuers would not be required to comply with the rules and regulations adopted under Section 14(a) of the 1934 Act, which are applicable to non-Fund issuers, including the provisions relating to the form of proxy and disclosure in proxy statements.

The staff currently estimates that approximately 1,129 proxy statements are filed by Funds annually.¹ Based on staff estimates and information from the industry, the staff estimates that the average annual burden associated with the preparation and submission of proxy statements is 85 hours per response, for a total annual burden of 95,965 hours (1,129 responses × 85 hours per response = 95,965). In addition, the staff estimates the costs for purchased services, such as outside legal counsel, proxy statement mailing, and proxy tabulation services, to be approximately \$30,000 per proxy solicitation.

Rule 20a-1 does not involve any recordkeeping requirements. Providing the information required by the rule is mandatory and information provided under the rule will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

¹ This estimate is based on the three-year average of the number of proxies filed by registered investment companies.

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 December 6, 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: Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Oluwaseun Ajayi, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: October 2, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024-23151 Filed 10-4-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION**[Release No. 34-101224; File No. SR-NASDAQ-2024-016]**

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Increase Fees for Certain Market Data and Connectivity Products and To Maintain the Current Fees for Such Products if Members Meet a Minimum Average Daily Displayed Volume Threshold

October 1, 2024.

On March 22, 2024, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change (File Number SR-NASDAQ-2024-016) to increase fees for certain market data and connectivity products and to maintain the current fees for such products if members meet a minimum average daily displayed volume threshold ("Proposal"). The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Act.³ The proposed rule change was published for comment in the **Federal Register** on April 5, 2024.⁴ On May 21, 2024, the Commission issued an order temporarily suspending the proposed rule change pursuant to Section 19(b)(3)(C) of the Act⁵ and simultaneously instituting proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷

Section 19(b)(2) of the Act⁸ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on April 5, 2024.⁹ October 2, 2024 is 180 days from that date, and December 1, 2024 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and its comments. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁰ designates December 1, 2024 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NASDAQ-2024-016).

³ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ See Securities Exchange Act Release No. 99879 (April 1, 2024), 89 FR 24070 (“Notice”).

⁵ 15 U.S.C. 78s(b)(3)(C).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 100188, 89 FR 46243 (May 28, 2024) (“Order Instituting Proceedings”). The Commission has received three comment letters on the proposed rule change, as well as a response from the Exchange to the Order Instituting Proceedings. Comments received on the Proposal are available at: <https://www.sec.gov/comments/sr-nasdaq-2024-016/srnasdaq2024016.htm>.

⁸ 15 U.S.C. 78s(b)(2).

⁹ See Notice, *supra* note 4.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(57).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-23060 Filed 10-4-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Small Business Investment Company Interim Application Filing Window

AGENCY: U.S. Small Business Administration.

ACTION: Notice of SBIC program interim application filing window.

SUMMARY: The U.S. Small Business Administration (SBA) is providing notice of an interim filing window for the acceptance of SBA Form 2181, SBIC Management Assessment Questionnaires (MAQs or Applications) for licensing as a Small Business Investment Company (SBIC).

DATES: The SBIC program interim Application filing window due date identified in this notice is Friday, November 15, 2024, with a deadline for acceptance of Applications submitted prior to 5 p.m. eastern standard time (EST) to SBIC_Applications@SBA.gov.

FOR FURTHER INFORMATION CONTACT: Paul Van Eyl, Office of Investment and Innovation at 202-257-5955 or oii.policy@sba.gov. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: SBA may select to add and publicly announce additional SBIC Application filing windows. Application filings should be made on the actual window date prior to the deadline provided. Application filings made after the deadline date or between window dates, including interim filing window dates, will be held in abeyance until the next window opens. The next quarterly scheduled filing window due date is December 31, 2024. Incomplete MAQ submissions will not be accepted for processing. If an applicant fails to file by the deadline of a quarterly or interim filing deadline date, the applicant SBIC must either wait until the next quarterly window to refile or understand that SBA will take on action on the MAQ until the next quarterly filing window, which for this calendar year would be December 31, 2024, with a deadline of 5 p.m. EST.

MAQ submissions should be emailed to SBIC_Applications@SBA.gov.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration.

[FR Doc. 2024-23088 Filed 10-4-24; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Public Notice 12560]

30-Day Notice of Proposed Information Collection: Statement Regarding a Valid Lost or Stolen U.S. Passport Book and/or Card

ACTION: Notice of request for public comments.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on these collections from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: The Department will accept comments from the public up to November 6, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to: www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. You must include the DS form number, information collection title, and the OMB control number in any correspondence (if applicable). You may send requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to the following email address: Passport-Form-Comments@State.gov. You must include the DS form number and information collection title in the email subject line.

SUPPLEMENTARY INFORMATION:

- **Title of Information Collection:** Statement Regarding a Lost or Stolen U.S. Passport Book and/or Card.
- **OMB Control Number:** 1405-0014.
- **Type of Request:** Revision of a Currently Approved Collection.
- **Originating Office:** Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO).

- *Form Number:* DS-64.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 435,000.
- *Estimated Number of Responses:* 435,000.
- *Average Time per Response:* 5 minutes.
- *Total Estimated Burden Time:* 36,250 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Secretary of State is authorized to issue U.S. passports under 22 U.S.C. 211a et seq, 8 U.S.C. 1104, and Executive Order 11295 (August 5, 1966). Department regulations provide that individuals whose valid or potentially valid U.S. passports were lost or stolen must report the lost or stolen passport to the Department of State before receiving a new passport so that the lost or stolen passport can be invalidated (22 CFR parts 50 and 51). The Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1737) requires the Department of State to collect accurate information on lost or stolen U.S. passports and to enter that information into a data system. Form DS-64 collects information identifying the person who held the valid lost or stolen passport and provides details regarding the circumstances under which the passport was lost or stolen. As required by the cited authorities, we use the information collected to accurately identify the passport that must be invalidated and to make a record of the circumstances surrounding the lost or stolen passport.

Methodology

Passport bearers may submit the form on the Department of State's website, travel.state.gov, where it can be completed, signed, and submitted electronically. The DS-64 is also available at eforms.state.gov where it can be completed online and printed for signature and submission. Additionally, passport bearers have the option to call the National Passport Information Center (NPIC) at 1-877-487-2778 or mail in a hardcopy of the form. The form can be obtained at any passport agency or acceptance facility.

Amanda E. Smith,

Managing Director for Passport Support Operations, Bureau of Consular Affairs, Passport Services, Department of State.

[FR Doc. 2024-23100 Filed 10-4-24; 8:45 am]

BILLING CODE 4710-06-P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from the Port of Long Beach (WB24-46—9/4/24) for permission to use select data from the Board's 2022 UnMasked Carload Waybill Samples. A copy of this request may be obtained from the Board's website under docket no. WB24-46.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245-0319.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2024-23110 Filed 10-4-24; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2024-2167]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Formal Complaints Collection

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 Office of Management and Budget (OMB) approval to renew an information collection. The collection involves the filing of a complaint with the FAA alleging a violation of any requirement, rule, regulation, or order issued under certain statutes within the jurisdiction of the FAA. The FAA will use the information collected to determine if the alleged violation warrants investigation or action.

DATES: Written comments should be submitted by December 6, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket:

www.regulations.gov (Enter docket number into search field).

By mail: Nicholas (Cole) R. Milliard, Aviation Litigation Division, AGC-300, 800 Independence Ave. SW, Washington, DC 20591.

By fax: (202) 267-5106.

FOR FURTHER INFORMATION CONTACT:

Nicholas (Cole) R. Milliard by email at: cole.milliard@faa.gov; phone: (202) 267-3452.

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: 2120-0795.

Title: Formal Complaints Collection.

Form Numbers: N/A.

Type of Review: Renewal of an information collection.

Background: Under 14 CFR 13.5(b), a formal complaint must: (1) Be submitted to the FAA in writing; (2) be identified as a complaint seeking an appropriate order or other enforcement action; (3) identify the subjects of the complaint; (4) state the specific statute, rule, regulation, or order that each subject allegedly violated; (5) contain a concise but complete statement of the facts relied upon to substantiate each allegation; (6) include the name, address, telephone number, and email of the person filing the complaint; and (7) be signed by the person filing the complaint or an authorized

representative. After the FAA confirms that the complaint meets these requirements and the limitations in 14 CFR 13.3(d) and 13.5(a), it sends a copy of the complaint to the subjects of the complaint and gives them an opportunity to submit a written answer. If a complaint does not meet these requirements, it is considered a report of violation under 14 CFR 13.2.

The FAA uses the information in the complaint and answer to determine if there are reasonable grounds for investigating the complaint. If the FAA determines there are reasonable grounds, the FAA proceeds with an investigation. If not, the FAA may dismiss the complaint and give the reason for dismissal in writing to both the person who filed the complaint and the subjects of the complaint.

Respondents: Formal complaints are typically submitted by an individual or organization. Almost all formal complaints are evenly split between three basic categories (complainant listed first): Individual vs. individual, individual vs. organization, and organization vs. organization.

Frequency: The FAA estimates this collection of information would result in about seven formal complaints per year based on FAA data.

Estimated Average Burden per Response: The estimated average burden on the public for each complaint and response under § 13.5 is eight hours. It would take an individual about four hours to write a formal complaint acceptable under § 13.5. The FAA estimates it would take the subject of the complaint about four hours to write an answer to the complaint.

The estimated average burden on the FAA for each complaint is eight hours. A complaint would take the FAA no more than four hours to review to confirm it meets the requirements as laid out in 14 CFR 13.5(b). The FAA would take an additional hour to send the complaint to the subjects of that complaint. The FAA would then take another estimated three hours to determine if an investigation would be necessary.

Estimated Total Annual Burden: The FAA estimates the total annual combined (public + FAA) annual burden and cost of the information requirements to be about 112 hours and \$7,030.

For the public, the estimated total annual hourly burden would be 56 hours, and the estimated total annual cost burden would be about \$2,506. For the FAA, the estimated total annual hourly burden would be 56 hours, and the estimated total annual cost burden would be about \$4,524.

Issued in College Park, Georgia on October 2, 2024.

Taneesha D. Marshall,

Assistant Chief Counsel for Aviation Litigation, Aviation Litigation Division, AGC-300.

[FR Doc. 2024-23147 Filed 10-4-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice To Solicit Transit Advisory Committee for Safety Member Applications

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice to solicit Transit Advisory Committee for Safety member applications.

SUMMARY: The Federal Transit Administration (FTA) is seeking applications for individuals to serve as members, for two-year terms, on the Transit Advisory Committee for Safety (TRACS). The TRACS provides information, advice, and recommendations to the U.S. Secretary of Transportation (Secretary) and FTA Administrator (Administrator) in response to tasks assigned to TRACS. The TRACS does not exercise program management responsibilities and makes no decisions directly affecting the programs on which it provides advice. The Secretary may accept or reject a recommendation made by TRACS and is not bound to pursue any recommendation from TRACS.

DATES: Interested persons must submit their applications to FTA by November 6, 2024.

FOR FURTHER INFORMATION CONTACT: Joseph DeLorenzo, TRACS Designated Federal Officer, Associate Administrator, FTA Office of Transit Safety and Oversight, (202) 366-1783, Joseph.DeLorenzo@dot.gov; or Bridget Zamperini, TRACS Program Manager, FTA Office of Transit Safety and Oversight, TRACS@dot.gov. Please address all mail to the Office of Transit Safety and Oversight, Federal Transit Administration, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Nominations

FTA invites qualified individuals interested in serving on TRACS to apply to FTA for appointment. The Administrator will recommend nominees for appointment by the Secretary. Appointments are for two-

year terms; however, a member may reapply to serve additional terms, in the event that the TRACS Charter is renewed. Applicants should be knowledgeable of trends and issues related to rail transit and/or bus transit safety. Along with their experience in the rail transit and/or bus transit industry, applicants will also be evaluated and selected based on factors including leadership and organizational skills, region of the country represented, diversity characteristics, and the overall balance of industry representation.

Each application should include the applicant's name and organizational affiliation; a cover letter describing the applicant's qualifications and interest in serving on TRACS; a curriculum vitae or resume of the applicant's qualifications; and contact information including the applicant's address, phone number, fax number, and email address. Self-application and application through nomination of others are acceptable. FTA prefers electronic submissions for all applications, via email to TRACS@dot.gov. Applications will also be accepted via mail at the address identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

FTA expects to nominate up to 25 representatives from the public transportation safety community for immediate TRACS membership. The Secretary, in consultation with the Administrator, will make the final selection decision.

This notice is provided in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. app. 2). Please see the TRACS website for additional information at <https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs>.

Joseph P. DeLorenzo,

Associate Administrator for Transit Safety and Oversight.

[FR Doc. 2024-23030 Filed 10-4-24; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2024-0033]

National Emergency Medical Services Advisory Council; Solicitation of Applications

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Solicitation of applications for the candidacy of appointment to the National Emergency Medical Services Advisory Council (NEMSAC).

SUMMARY: NHTSA is soliciting applications for appointment to the DOT's NEMSAC. The purpose of NEMSAC is to serve as a nationally recognized council of Emergency Medical Services (EMS) representatives and consumers to provide advice and recommendations regarding EMS to DOT. Through NHTSA, NEMSAC's advice is provided to the Federal Interagency Committee on EMS (FICEMS).

DATES: Applications for membership must be received by NHTSA on or before 5 p.m. EST, November 1, 2024.

ADDRESSES: If you wish to apply for membership, your application should be submitted by Email to: NEMSAC@dot.gov.

Additional information on NEMSAC, including the current roster, charter, and previous meeting minutes can be found at: <https://www.ems.gov/nemsac.html>.

FOR FURTHER INFORMATION CONTACT:

Clary Mole, EMS Specialist, National Highway Traffic Safety Administration, U.S. Department of Transportation, Clary.Mole@dot.gov or 202-868-3275. Any NEMSAC-related questions should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

Background: NEMSAC is an advisory council established by DOT in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. app.) and DOT Order 1120.3C. NEMSAC provides information, advice, and recommendations to the Secretary via the Administrator of NHTSA, and through NHTSA to FICEMS on matters relating to all aspects of development and implementation of EMS.

Description of Duties: NEMSAC is authorized to:

a. Perform EMS needs assessments and gap analyses to discover issues with national significance, consider findings to develop statements regarding EMS issues, formulate positions on these issues, and make recommendations on such issues for the Secretary of Transportation and/or FICEMS through the NHTSA Office of EMS. NEMSAC provides recommendations or advice relating to EMS on topics such as:

- Expanded use of the National EMS Information System (NEMSIS)—the database used to store EMS data from the U.S. states and territories

- Use of NEMSIS for applied research and development of standards, guidelines, and performance benchmarks that are evidence-based
- Development of federal programs that will both improve coordination among federal agencies supporting local, regional, state, tribal and territorial EMS and 911 systems and improve the delivery of EMS throughout the nation
- National EMS system quality improvement projects and programs that will strengthen the resiliency of EMS systems into one that is inherently more adaptable, innovative, equitable, integrated, prepared, sustainable, and safe
- Enhancements that promote, strengthen and increase medical and operational education, professional development, safety, diversity, recruitment, retention, use of technology, healthcare system data linkages, etc.

b. Respond to requests for consultation on EMS issues from the Secretary of Transportation and/or from FICEMS through the NHTSA Office of EMS.

c. Prepare an annual report to be sent to the Secretary of Transportation, the Secretary of Health and Human Services, and Secretary of Homeland Security, and to FICEMS, which summarizes NEMSAC's actions and recommendations.

Membership: In accordance with the NEMSAC charter, members should represent a cross-section of the diverse agencies, organizations, and individuals involved in EMS activities and programs in the United States. NEMSAC consists of 25 members, each of whom shall be appointed by the Secretary of Transportation, in coordination with the U.S. Departments of Homeland Security and Health and Human Services through their respective representatives on FICEMS. The NEMSAC members shall collectively be representative of all sectors of the EMS community. The NEMSAC's broad-based membership will ensure that it has sufficient EMS system expertise and geographic and demographic diversity to accurately reflect the whole EMS community. Representatives will be selected on the basis of materials submitted and in a manner that ensured equal opportunity for all people and avoided discrimination on the basis of race, color, religion, sex, gender identity, sexual orientation, national origin, disability or age. Moreover, selection will be undertaken in a manner that encourages participation by members of underrepresented and underserved

communities in accordance with Presidential Executive Order 13985. To the extent practical, the final NEMSAC membership shall ensure representation from the following sectors of the EMS community:

- Volunteer EMS Agencies
- Fire-based (career) EMS Agencies
- Private (career non-fire) EMS Agencies
- Hospital-based EMS Agencies
- Tribal EMS Agencies
- Air Medical EMS Agencies
- Local EMS Officials
- EMS Medical Directors
- Emergency Physicians
- Trauma Surgeons
- Pediatric Emergency Physicians
- State EMS Officials
- State Highway Safety Officials
- EMS Educators
- 911 Officials
- EMS Data Management Officials
- EMS Quality Improvement Officials
- EMS Researchers
- Emergency Nurses
- Hospital Administration
- Public Health Officials
- Emergency Management Practitioners
- EMS Clinicians
- Consumers (not directly affiliated with an EMS or healthcare organization)
- State or local legislative bodies (e.g., city/county councils; State legislatures)

Members serve in a "representative" capacity on NEMSAC and not as Special Government Employees. The Secretary of Transportation shall appoint each member for up to a 2-year term and members may be reappointed but may not serve more than two consecutive terms unless the Secretary determines that additional terms are permitted to ensure representation of all sectors of EMS. NEMSAC members will not receive pay or other compensation from NHTSA for their NEMSAC service, but are entitled to reimbursement of their travel expenses, including per diem. The NEMSAC meets in plenary session approximately three to four times per year.

Qualifications: Members will be selected for their ability to reflect a balanced representation of interests from across the EMS community, but no member will represent a specific organization.

Vacancies: NEMSAC is seeking to fill the following EMS sector representative vacancies:

- Hospital-based EMS Agencies
- Tribal EMS Agencies
- Air Medical EMS Agencies
- Local EMS Officials
- Trauma Surgeons

- EMS Data Management Officials
- EMS Researchers
- Emergency Nurses
- Hospital Administration
- Public Health Officials
- Emergency Management Practitioners
- EMS Clinicians
- Consumers (not directly affiliated with an EMS or healthcare organization)
- State or local legislative bodies (e.g., city/county councils; state legislatures)

Materials to Submit: Qualified individuals interested in serving on the NEMSAC are invited to apply for appointment by submitting the following materials to one of the locations listed in the **ADDRESSES** section by the deadline listed in the **DATES** section:

- Resume or Curriculum Vitae (CV) containing the applicants full name, title, home address, phone number, email address.
- At least two (2) but no more than four (4) letters of recommendation from a company, association, organization, or individual on letterhead containing a brief description of why the applicant should be considered for appointment.
- A letter of interest which identifies the EMS sector the applicant seeks to represent and contains an attestation statement indicating that the applicant is not a registered federal lobbyist and an understanding that as a government representative the applicant may not concurrently serve as registered federal lobbyists.

Each applicant must submit the required materials to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by the deadline. Nominees for appointment will be selected on the basis of materials submitted and in a manner that ensures equal opportunity for all people and avoids discrimination on the basis of race, color, religion, sex, gender identity, sexual orientation, national origin, disability or age; however, selection will be undertaken in a manner that encourages participation by members of underrepresented and underserved communities in accordance with Presidential Executive Order 13985.

Authority: 42 U.S.C. 300d–4(b); 49 CFR 1.95(i)(4).

Issued in Washington, DC.

Nanda Narayanan Srinivasan,
Associate Administrator, Research and Program Development.

[FR Doc. 2024–23081 Filed 10–4–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2024–0054]

Agency Information Collection Activities; Notice and Request for Comment; Limousine Crashworthiness Safety Research

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a request for approval of a new collection of information.

SUMMARY: NHTSA invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a new information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. *This document describes a collection of information for which NHTSA intends to seek OMB approval on a new information collection to research limousine crash safety.*

DATES: Comments must be submitted on or before December 6, 2024.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2024–0054 through any of the following methods:

- **Electronic submissions:** Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** (202) 493–2251.
- **Mail or Hand Delivery:** Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments

received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Jason Greb, Structures and Restraints Research Division (NSR–210), (202) 366–3637, National Highway Traffic Safety Administration, W46–443, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to 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. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Limousine Crashworthiness Safety Research

OMB Control Number: New
Form Number(s): NHTSA Form 1802 Interview Guide—OEM; NHTSA Form 1803 Interview Guide—OEM Program Non-Participant; NHTSA Form 1804 Interview Guide—OEM Program Participant.

Type of Request: New.

Type of Review Requested: Regular.

Requested Expiration Date of

Approval: 3 years from date of approval.

Summary of the Collection of Information:

In an effort to understand the limousine market and the characteristics of limousine vehicles with respect to crashworthiness and occupant safety, and to comply with a Congressional mandate, the National Highway Traffic Safety Administration (NHTSA) is seeking approval for a new information collection request (ICR).

Many federal safety regulations (e.g., FMVSS Nos. 207, 208, 209, 210) do not currently apply to limousines and, as a result, the extent of limousine crash safety features and performance is not well known. Furthermore, limousine manufacturers fall into one of three categories (Vehicle Original Equipment Manufacturer [OEM], OEM program participant, and OEM program nonparticipants) and the respective differences of these manufacturer's approach to fabrication and vehicle safety requires targeted research. The proposed NHTSA research approach will consist of one-time voluntary interviews of three groups related to the limousine market: (a) Vehicle Original Equipment Manufacturer [OEM], (b) OEM program participant, and (c) OEM program nonparticipants. The interviews will consist of approximately 10–15 open-ended questions about limousine fabrication intended for reporting on safety characteristics related to evacuation, crashworthiness, occupant seating, and restraints. Three versions of the interview will be used, one for each category of manufacturer. Interview results will be collected and summarized in a final report available for public consumption and the data will help provide NHTSA with data required for necessary cost-benefit analyses prior to potential rulemaking activities.

Description of the Need for the Information and Proposed Use of the Information:

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA or the Bipartisan Infrastructure Law), Public Law 117–58. Sections 23015 and 23023 of the Bipartisan Infrastructure Law

(BIL) mandated that the Secretary of Transportation, NHTSA through delegation, shall conduct a variety of research and actions including research into the development of motor vehicle safety standards for side impact protection, roof crush resistance, and air bag systems for the protection of occupants in limousines with alternative seating positions—including perimeter seating arrangements, safety features and standards that aid evacuation in the event that an exit in the passenger compartment of a limousine is blocked, and amending FMVSS Nos. 207, 208, 209, and 210 such that they apply to limousines on each designated seating position, including side-facing seats.

This information collection will also aid in any cost-benefit analyses that would be required for promulgating new federal safety regulation and other regulatory alternative considerations under Executive Orders (E.O.) 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14094 (Modernizing Regulatory Review), DOT Order 2100.6A and the Department of Transportation's regulatory policies and procedures. Therefore, NHTSA has a need to understand the limousine market and characteristics of limousine vehicles.

Affected Public: This includes selected limousine manufacturers/fabricators which will fall into one of three categories, including Vehicle Original Equipment Manufacturer (OEM), limousine fabricators associated with an OEM limousine program (OEM program participant), and limousine fabricator not associated with an OEM program (OEM program nonparticipants). Participation is voluntary.

Estimated Annual Number of Respondents: 53.

Frequency: Once.

Estimated Annual Burden Hours: 53 hours.

This information collection will consist of interviews conducted across three categories of limousine manufacturers: Vehicle Original Equipment Manufacturer (OEM), OEM program participant, and OEM program nonparticipants. The interviews in this ICR will be one-time responses of limousine manufacturers. For each manufacturer type, the target for minimum number of responses is 10, and then approximately equal distribution of the 11 remaining planned interviews to arrive at a total of a minimum of 41 successful responses. These interviews will take place over the entirety of the information

collection (3-year collection period). Respondents in some of the groups may be more difficult for interview completion than others and thus the target maximum respondent outreach of 160 contacts is as follows: the number of interview attempts for a maximum of 20 OEMs will be contacted in total with an annual average of 7 OEMs contacted (greatest expected response rate), a maximum of 40 OEM program participants will be contacted in total with an annual average of 13 OEM program participants contacted (mid-range expected response), and a maximum of 100 OEM program non-participants will be contacted in total with an annual average of 33 OEM program non-participants contacted (these will be the smaller businesses and response rate is expected to be low).

While each interview guide varies slightly, the time to complete the interview is not expected to vary greatly with an average of 60 minutes per interview. While NHTSA and the research team will discontinue the interview process after a minimum of 41 successful responses is complete across a relatively equal distribution of the categories, there is no similar study to calculate response rates nor average completion time of an incomplete response or declined interview. Therefore, for calculation of burden, NHTSA and the research team have used the maximum number of contacts to provide an absolute maximum burden. The table below provides estimated burden costs and hours, both total burden and annual burden. Based on the average interview time from a preliminary round of nine interviews with limousine manufacturers, the time required to complete each interview is expected to be 60 minutes. This results in a total burden to respondents of 160 hours for the entire study and an annual burden of 53 hours.

The database of respondents for limousine manufacturers will be from S&P Global Mobility and their extensive canvassing of the automotive industry. The respondents in each category will be selected at random and given the opportunity to accept or decline the interview before moving on to the subsequent outreach effort.

Estimated Annual Burden Cost: \$4,999.

To calculate the labor cost associated with the interviews, NHTSA looked at wage estimates for the type of personnel responding to the interviews. NHTSA estimates the total labor costs associated with these burden hours by looking at the average wage for Marketing/Sales Managers in the United States. The Bureau of Labor Statistics (BLS)

estimates that the average hourly wage for Marketing/Sales Managers (BLS Occupation code 11–2020) in the Motor Vehicle Manufacturing Industry is \$66.60. The Bureau of Labor Statistics estimates that private industry workers’

wages represent 70.6% of total labor compensation costs. Therefore, NHTSA estimates the hourly labor costs to be \$94.33 for Marketing/Sales Managers.

NHTSA estimates the total burden cost for the complete study to be \$15,093, while the annual burden cost

is estimated to be \$4,999. Table 1 provides a summary of the estimated burden hours and labor costs associated with those submissions. Note there are slight variations between the total and the annual figures based on rounding.

TABLE 1—BURDEN ESTIMATES

Information collection	Number of respondents (total/annual)	Frequency of response	Time (minutes)	Hourly labor cost	Burden hours	Burden costs (rounded)
Interview Guide—OEM (NHTSA Form 1802).	20 total	1	60	\$94.33	20 total	\$1,887 total
	7 annual				7 annual	\$660 annual.
Interview Guide—OEM Program Participant (NHTSA Form 1804).	40 total	1	60	94.33	40 total	\$,3773 total
	13 annual				13 annual	\$1,226 annual.
Interview Guide—OEM Program Non-participant (NHTSA Form 1803).	100 total	1	60	94.33	100 total	\$9,433 total
	33 annual				33 annual	\$3,113 annual.
Total .....	.....	.....	.....	.....	160	\$15,093.
Annual .....	.....	.....	.....	.....	53	\$4,999.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department’s estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

Cem Hatipoglu,

Associate Administrator, Office of Vehicle Safety Research.

[FR Doc. 2024–23135 Filed 10–4–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2023–0038]

Supplemental Initial Decision That Certain Frontal Driver and Passenger Air Bag Inflators Manufactured by ARC Automotive Inc. and Delphi Automotive Systems LLC, and Vehicles in Which Those Inflators Were Installed, Contain a Safety Defect

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Second extension of deadline for written submissions.

SUMMARY: On October 2, 2024, NHTSA received a request to extend the period during which manufacturers and any interested person may submit written information in response to the agency’s Supplemental Initial Decision published in the **Federal Register** on August 5, 2024. The prior written submission deadline was October 4, 2024. NHTSA is extending the deadline to October 11, 2024.

DATES: The written submission deadline related to the Supplemental Initial Decision published on August 5, 2024, at 89 FR 63473, is extended to October 11, 2024.

ADDRESSES: You may submit written submissions to the docket number identified in the heading of this document by any of the following methods:

• **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Follow the

online instructions for submitting comments.

• **Mail:** Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• **Hand Delivery or Courier:** 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• **Fax:** (202) 493–2251.

Instructions: All submissions must include the agency name and docket number. Note that all written submissions received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act discussion below. We will consider all written submissions received before the close of business on Friday, October 4, 2024.

Docket: For access to the docket to read background documents or written submissions received, go to <https://www.regulations.gov> at any time or to 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: (202) 366–9826.

Privacy Act: In accordance with 49 U.S.C. 30118(b)(1), NHTSA will make a final decision only after providing an opportunity for manufacturers and any interested person to present information, views, and arguments. DOT posts written submissions submitted by manufacturers and interested persons, without edit, including any personal information the

submitter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 Federal Docket Management System (FDMS)), which can be reviewed at www.transportation.gov/privacy.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you must submit your request directly to NHTSA's Office of the Chief Counsel. Requests for confidentiality are governed by 49 CFR part 512. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information (CBI) to the agency under part 512. If you would like to submit a request for confidential treatment, you may email your submission to Allison Hendrickson in the Office of the Chief Counsel at Allison.Hendrickson@dot.gov or you may contact her for a secure file transfer link. At this time, you should not send a duplicate hardcopy of your electronic CBI submissions to DOT headquarters. If you claim that any of the information or documents provided to the agency constitute confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with part 512, to the Office of the Chief Counsel. Your request must include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR 512.8) and a certificate, pursuant to § 512.4(b) and part 512, appendix A. In addition, you should submit a copy, from which you have redacted the claimed confidential business information, to the Docket at the address given above.

FOR FURTHER INFORMATION CONTACT: Allison Hendrickson, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; (202) 366-2992.

SUPPLEMENTARY INFORMATION: On July 31, 2024, NHTSA issued a Supplemental Initial Decision That Certain Frontal Driver and Passenger Air Bag Inflators Manufactured by ARC Automotive Inc. and Delphi Automotive Systems LLC, and Vehicles in Which Those Inflators Were Installed, Contain a Safety Defect pursuant to 49 U.S.C. 30118(a) and 49 CFR 554.10. 89 FR 63473 (Aug. 5, 2024). More specifically, NHTSA confirmed its initial decision of September 5, 2023, at 88 FR 62140, that certain air bag inflators manufactured by ARC Automotive Inc. (ARC) and Delphi

Automotive Systems LLC (Delphi) may rupture when the vehicle's air bag is commanded to deploy, causing metal debris to be forcefully ejected into the passenger compartment of the vehicle, and that these rupturing air bag inflators pose an unreasonable risk of serious injury or death to vehicle occupants. In accordance with 49 U.S.C. 30118(b)(1) and 49 CFR 554.10(c)(4), the Supplemental Initial Decision provided manufacturers and any interested person an opportunity to present information, views, and arguments in response to the Supplemental Initial Decision by submitting written information to the Agency. The original deadline for written submissions in response to the Supplemental Initial Decision was September 4, 2024. Based on a request received on August 7, 2024, NHTSA extended the original deadline to October 4, 2024.

Written Submission Deadline Extension Request

On October 2, 2024, NHTSA received a request from counsel representing certain unspecified motor vehicle and motor vehicle equipment manufacturers asking NHTSA to extend the period for written submissions by two weeks. The request claimed that, based on five documents in the agency's investigative file to which the manufacturers received access on October 1, 2024, the manufacturers needed more time to adequately review the documents and prepare their responses. A copy of the extension request and NHTSA's response will be added to the public docket.

Extension of Written Submission Deadline

After consideration of the request and the limited information contained in the five documents, NHTSA decided to extend the deadline to provide written submissions by one week. The prior deadline of October 4, 2024 has been extended, and written submissions from any interested person are now due before the close of business on October 11, 2024.

Authority:

49 U.S.C. 30118(a), (b); 49 CFR 554.10; delegations of authority at 49 CFR 1.50(a) and 49 CFR 501.8.

Eileen Sullivan,

Associate Administrator for Enforcement.
[FR Doc. 2024-23171 Filed 10-3-24; 4:15 pm]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the OCC, the Board, and the FDIC (collectively, the "agencies") 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. On January 19, 2024, the agencies under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to revise and extend the Foreign Branch Report of Condition (FFIEC 030) and the Abbreviated Foreign Branch Report of Condition (FFIEC 030S), which are currently approved collections of information. These proposed revisions would incorporate line items from the FR 2502q, Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks (OMB Control No. 7100-0079) into the FFIEC 030. There are no proposed revisions to the FFIEC 030S. As described in the **SUPPLEMENTARY INFORMATION** section, the agencies are proceeding with the proposed revisions, but with certain modifications. In addition, the agencies will make clarifying revisions to the instructions in response to a comment received. The agencies are giving notice that they are sending the collections to OMB for review.

DATES: Comments must be submitted on or before November 6, 2024.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the "FFIEC 030 or FFIEC 030S," will be shared among the agencies.

OCC: You may submit comments, which should refer to "FFIEC 030 or

FFIEC 030S,” by any of the following methods:

- *Email:* prainfo@occ.treas.gov.
- *Mail:* Chief Counsel’s Office, Office of the Comptroller of the Currency, Attention: 1557–0099, 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 “1557–0099” 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.

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” drop-down menu and select “Information Collection Review.” Underneath the “Currently under Review” section heading, from the drop-down menu select “Department of Treasury” and then click “submit.” This information collection can be located by searching OMB control number “1557–0099” or “FFIEC 030 or FFIEC 030S.” 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.

Board: You may submit comments, which should refer to “FFIEC 030 or FFIEC 030S,” by any of the following methods:

- *Agency website:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at: <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Email:* regs.comments@federalreserve.gov. Include “FFIEC 030

or FFIEC 030S” in the subject line of the message.

- *Fax:* (202) 395–6974.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

In general, all public comments are available on the Board’s website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, and will not be modified to remove confidential, contact or any identifying information.

FDIC: You may submit comments, which should refer to “FFIEC 030 or FFIEC 030S,” by any of the following methods:

- *Agency Website:* <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Follow the instructions for submitting comments on the FDIC’s website.

- *Email:* comments@FDIC.gov. Include “FFIEC 030 or FFIEC 030S” in the subject line of the message.

- *Mail:* Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

- *Public Inspection:* All comments received will be posted without change to <https://www.fdic.gov/resources/regulations/federal-register-publications/> including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

Written comments and recommendations for this information collection also should be sent within 30 days of publication of this document 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 further information about the proposed revisions to the information collections discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the report forms for the FFIEC 030 and FFIEC 030S can be obtained at the FFIEC’s website (https://www.ffiec.gov/ffiec_report_forms.htm).

OCC: Kevin Korzeniewski, Counsel, (202) 649–5490, Chief Counsel’s Office,

Office of the Comptroller of the Currency. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies propose to extend for three years, with revision, the FFIEC 030 and the FFIEC 030S.

I. Report Summary

Report Title: Foreign Branch Report of Condition.

Form Number: FFIEC 030 and FFIEC 030S.

Frequency of Response: Annually, and quarterly for significant branches.

Affected Public: Business of other for profit.

OCC

OMB Control Number: 1557–0099.

Estimated Number of Respondents: 57 quarterly respondents (FFIEC 030); 42 annual respondents (FFIEC 030); 12 annual respondents (FFIEC 030S).

Estimated Average Burden per Response: 3.91 burden hours (FFIEC 030 Quarterly); 2.98 burden hours (FFIEC 030 Annual); 0.95 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 1,028.04 burden hours.

Board

OMB Control Number: 7100–0071.

Estimated Number of Respondents: 21 quarterly respondents (FFIEC 030); 10 annual respondents (FFIEC 030); 9 annual respondents (FFIEC 030S).

Estimated Average Burden per Response: 3.91 burden hours (FFIEC 030 Quarterly); 2.98 burden hours (FFIEC 030 Annual); 0.95 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 366.79 burden hours.

FDIC

OMB Control Number: 3064–0011 (FDIC).

Estimated Number of Respondents: 0 quarterly respondents (FFIEC 030); 4 annual respondents (FFIEC 030); 3 annual respondents (FFIEC 030S).

Estimated Average Burden per Response: 3.91 burden hours (FFIEC 030

Quarterly); 2.98 burden hours (FFIEC 030 Annual); 0.95 burden hours (FFIEC 030S).

Estimated Total Annual Burden:
14.77 burden hours.

II. Legal Basis and Need for Collection

This information collection is mandatory: 12 U.S.C. 602 (Board); 12 U.S.C. 161 and 602 (OCC); and 12 U.S.C. 1828 (FDIC). This information collection is given confidential treatment under 5 U.S.C. 552(b)(4) and (8).

The FFIEC 030 collects asset and liability information for foreign branches of insured U.S. banks and insured U.S. savings associations (U.S. depository institutions) and is required for regulatory and supervisory purposes. The information is used to analyze the foreign operations of U.S. institutions. All foreign branches of U.S. institutions regardless of charter type file this report as provided in the instructions to the FFIEC 030 and FFIEC 030S. A U.S. depository institution generally must file a separate report for each foreign branch, but in some cases may consolidate filing for multiple foreign branches in the same country, as described below.

A branch with either total assets of at least \$2 billion or commitments to purchase foreign currencies and U.S. dollar exchange of at least \$5 billion as of the end of a calendar quarter is considered a “significant branch” and an FFIEC 030 report is required to be filed quarterly. A U.S. depository institution with a foreign branch having total assets in excess of \$250 million that does not meet either of the criteria to file quarterly must file the entire FFIEC 030 report for this foreign branch on an annual basis as of December 31, with respect to this foreign branch.

A U.S. depository institution with a foreign branch having total assets of \$50 million, but less than or equal to \$250 million that does not meet the criteria to file the FFIEC 030 report must file the FFIEC 030S report for this foreign branch on an annual basis as of December 31. A U.S. depository institution with a foreign branch having total assets of less than \$50 million is exempt from filing the FFIEC 030 and 030S reports.

III. Current Actions

On January 19, 2024, the agencies proposed revisions to the FFIEC 030 that would incorporate line items from the FR 2502q. The comment period for the January notice ended on March 19, 2024. The agencies received comments from two banking associations. These comments were generally supportive of the proposed new line items. After

reviewing the comments, the agencies are moving forward with the proposed revisions to the FFIEC 030, with certain modifications. The specific comments, the agencies’ responses, and pertinent modifications follow.

First, one commenter urged the agencies to limit the scope of respondents subject to the proposed Schedule RAL–A to those that meet the current criteria to file the FR 2502q. The commenter stated that there are significant scoping differences between the FR 2502q and the FFIEC 030. The FR 2502q reporting is limited to branches with total assets of \$2 billion or more and that are located in the United Kingdom (U.K.) or the Caribbean. The FFIEC 030 quarterly reporting requirements, however, scope in any branch with either total assets of at least \$2 billion or commitments to purchase foreign currencies and U.S. dollar exchange (a purchase of U.S. dollar exchange is equivalent to a sale of foreign currency) of at least \$5 billion as of the end of a calendar quarter. The commenter stated that the FFIEC 030’s reporting scope, without the geographic limitation to branches in the U.K. and the Caribbean, results in a much greater reporting burden on firms.

Furthermore, this commenter also stated that the proposed changes and increased granularity of the items reported would necessitate both the development of new systems, as well as modifications to existing ones. For example, the commenter noted the amount to be reported on proposed Schedule RAL–A, line item 5, “Assets that are claims on U.S. addressees other than depository institutions,” includes new sub-line items that are more granular than the amount currently reported in FR 2502q item 1.c, “U.S. addressees other than depository institutions,” and would increase burden to all filers of the FFIEC 030. This reporting burden would be greatest on respondents that have newly scoped-in entities that would be reporting this information for the first time. In light of this, the commenter requested that, if the scope of respondents on the proposed FFIEC 030 Schedule RAL–A is not limited to those that currently meet the criteria to file the FR 2502q, branches would need at least four quarters from publication of the final forms and instructions to implement the revisions. However, if the scope were limited to branches that meet the current criteria to file the FR 2502q, branches would only need two additional quarters to implement the proposal.

The agencies acknowledge that branches may need additional time to

develop their reporting systems to implement these changes. As such, the agencies will delay the implementation date based on the branch meeting the criteria to file the FR 2502q. Beginning as of the March 31, 2025, report date, all branches that are located in the U.K. or Caribbean (that are not located in a U.S. military facility), and with total assets of at least \$2 billion (as reported in Schedule RAL, item 11) as of the end of the calendar quarter, must complete new Schedule RAL–A. Beginning as of the December 31, 2025, report date, all branches required to report the FFIEC 030 on a quarterly basis must complete new Schedule RAL–A without any geographic limitation of being located in the U.K. or Caribbean. Branches that file the FFIEC 030 on an annual basis do not need to report the new items. The FFIEC 030 instructions will be updated to reflect these changes.

Second, the commenter requested that the agencies clarify the reporting of proposed Schedule RAL–A, line item 5, “Assets that are claims on U.S. addressees other than depository institutions,” by adding a Micro Data Reference Manual (MDRM) number and to include in the instructions that this line item is not an aggregate total of its sub-items. The commenter also requested that the agencies clarify whether Schedule RAL–A, line item 6, “Liabilities to U.S. addressees other than depository institutions,” is intended to extend to all liabilities or if respondents should report only deposit liabilities. In response, the agencies are revising the report form by adding a MDRM to line item 5 on Schedule RAL–A and also clarifying in the instructions that line item 5 on Schedule RAL–A is not an aggregate total of sub-items 5.a through 5.d. The agencies are also clarifying in the instructions of Scheduled RAL–A, line item 6, that it is intended to extend to all liabilities and not only to deposit liabilities.

Lastly, separate from this proposal, on June 7, 2024, the Board published in the **Federal Register** an initial notice¹ requesting public comment for 60 days on the extension with revision to the Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314). The comment period of the June notice ended on August 6, 2024, and the Board received a comment from a banking trade organization regarding the proposed changes to the FFIEC 030. Specifically, the commenter requested clarification on the reporting of claims/liabilities with related institutions on the FFIEC 030. In the proposed instructions of

¹ See 89 FR 48639.

Schedule RAL—A line items 5 and 6, it states to “Report claims/liabilities on U.S. addressees other than parent bank and other depository institutions” and contains no specific instructions on how to treat claims/liabilities with related institutions. However, on the proposed FR 2314 Schedule BS—Q line items 3 and 4, the instructions explicitly state to “exclude balances with related institutions.”

The commenter requested that the Board work with the other agencies to clarify that balances with related institutions, as defined in FFIEC 030S and reported in FFIEC 030 proposed Schedule RAL—A items 1–4, should be excluded for the purposes of FFIEC 030 Schedule RAL—A items 5 and 6. In response to the commenter, to make the instructions more parallel between the FFIEC 030 and FR 2314, the agencies will clarify in the FFIEC 030 instructions to explicitly exclude balances with related institutions from the amounts reported in Schedule RAL—A, items 5 and 6.

IV. Timing

The proposed revisions to the FFIEC 030 would be effective as of the March 31, 2025, report date for branches that currently meet the criteria to file the FR 2502q (*i.e.*, those located in the U.K. or Caribbean). For a branch that does not meet the current criteria to file the FR 2502q, but files the FFIEC 030 on a quarterly basis, the effective date for these new items will be as of December 31, 2025.

V. Request for Comment

Public comment is requested on all aspects of this joint notice. Comment is specifically invited on:

(a) Whether the information collection is necessary for the proper performance of the agencies’ functions, including

whether the information has practical utility;

(b) The accuracy of the agencies’ estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies.

Patrick T. Tierney,

Assistant Director, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System.

Benjamin W. McDonough,

Deputy Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 1, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–23125 Filed 10–4–24; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC’s Specially Designated Nationals and Blocked Persons List (“SDN List”) based on OFAC’s determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Lisa M. Palluconi, Acting Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC’s website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On September 26, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

Individual

1. IVANOV, Sergey Sergeevich (Cyrillic: ИВАНОВ, Сергей Сергеевич) (a.k.a. OMELNITSKII, Sergey Sergeevich (Cyrillic: ОМЕЛЬНИЦКИЙ, Сергей Сергеевич); a.k.a. "Taleon"; a.k.a. "UAPS"), St. Petersburg, Russia; DOB 02 Jun 1980; POB Russia; nationality Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Passport 4015431802 (Russia) (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021), as amended by Executive Order 14114 of December 22, 2023, "Taking Additional Steps With Respect to the Russian Federation's Harmful Activities," 88 FR 89271, 3 CFR, 2023 Comp., p. 271 ("E.O. 14024, as amended") for operating or having operated in the financial services sector of the Russian Federation economy.

Entity

1. CRYPTEX (a.k.a. INTERNATIONAL PAYMENT SERVICE PROVIDER LLC), Euro House, Richmond Hill Road, P.O. Box 2897, Kingstown, Saint Vincent and the Grenadines; Website cryptex.net; Digital Currency Address - XBT 13JtX4h7G5ZuNK5mFudKGq9DHLvvMFuNuz; Digital Currency Address - ETH 0x0931cA4D13BB4ba75D9B7132AB690265D749a5E7; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Digital Currency Address - LTC M8yFL6SFC6TreATegTyuSYkDfDRbisdP3; Organization Established Date 01 Dec 2021; Digital Currency Address - TRX TTUDyVhhpCC1xJoPmWzdjLAzeoPwbSABdr; Business Registration Number 1628 (Saint Vincent and the Grenadines) [CYBER2] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(ii) of Executive Order 13694 of April 1, 2015, "Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities," 80 FR 18077, 3 CFR, 2015 Comp., p. 297, as amended by Executive Order 13757 of December 28, 2016, "Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities," 82 FR 1, 3 CFR, 2016 Comp., p. 659, for being responsible for or complicit in, or to have engaged in directly or indirectly, an activity described in section 1(a)(ii)(C) of E.O. 13694, as amended.

Also designated pursuant to section 1(a)(i) of E.O. 14024, as amended, for operating or having operated in the financial services sector of the Russian Federation economy.

Dated: October 1, 2024.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024-23082 Filed 10-4-24; 8:45 am]

BILLING CODE 4810-AL-C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets

Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons

are generally prohibited from engaging in transactions with them.

DATES: This action takes effect on the date listed in Supplementary Information.

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, 202–622–2420; Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Compliance, 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Action(s)

On September 24, 2024, OFAC determined that the persons identified below meet one or more of the criteria for the imposition of sanctions set forth in section 1(a)–(c) of Executive Order 14059 of December 15, 2021, “Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,” 86 FR 71549 (December 17, 2021) (E.O. 14059). OFAC has selected to impose blocking sanctions pursuant to section 2(a)(i) of E.O. 14059 on the persons identified below.

Individuals

1. ALCARAZ MORALES, Wilder de Jesus (a.k.a. “El Indio”), Colombia; DOB 28 Feb 1989; POB Turbo, Antioquia, Colombia; Gender Male; Cedula No. 1040763025 (Colombia) (individual) [ILLICIT–DRUGS–EO14059] (Linked To: CLAN DEL GOLFO).

Determined to meet the criteria for imposition of sanctions pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, CLAN DEL GOLFO, a person sanctioned pursuant to E.O. 14059.

2. CELIS DURANGO, Alexander (a.k.a. “Bayron”), Colombia; DOB 05 Aug 1978; POB Necocli, Antioquia, Colombia; nationality Colombia; Gender Male; Cedula No. 10933010 (Colombia) (individual) [ILLICIT–DRUGS–EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

3. CORDOBA QUINTO, Jose Emilson (a.k.a. “Negro Perea”), Colombia; DOB 31 Aug 1969; POB Istmina, Choco, Colombia; nationality Colombia; Gender Male; Cedula No.

11710361 (Colombia) (individual) [ILLICIT–DRUGS–EO14059] (Linked To: CLAN DEL GOLFO).

Determined to meet the criteria for imposition of sanctions pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, CLAN DEL GOLFO, a person sanctioned pursuant to E.O. 14059.

4. DEMOYA HERNANDEZ, Jose Miguel (a.k.a. DEMOYA, JOSE MIGUEL; a.k.a. “Chirimoya”), Colombia; DOB 19 Sep 1984; nationality Colombia; Gender Male; Cedula No. 78115749 (Colombia) (individual) [ILLICIT–DRUGS–EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

5. SANCHEZ SANCHEZ, Jose Gonzalo (a.k.a. “Gonzalito”), Colombia; DOB 30 Dec 1974; POB Monteria, Cordoba, Colombia; nationality Colombia; Gender Male; Cedula No. 11002977 (Colombia) (individual) [ILLICIT–DRUGS–EO14059].

Determined to meet the criteria for imposition of sanctions pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, CLAN DEL GOLFO, a person sanctioned pursuant to E.O. 14059.

Entities

1. FARMACIA Y MINI SUPER TRINIDAD (a.k.a. FARMACIA TRINIDAD; a.k.a. “FARMACIATRINIDADNOGALES”), Calle Orizaba 81, Col. Empalme, Nogales, Sonora 84080, Mexico; Email Address farmaciatrinidadnogales@gmail.com; Phone Number +52 631 104 2274; alt. Phone Number +52 631 172 1037; Organization Type: Retail sale of pharmaceutical and medical goods, cosmetic and toilet articles in specialized stores; R.F.C. MOHA720319GT3 (Mexico) [ILLICIT–DRUGS–EO14059] (Linked To: MORGAN HUERTA, Jose Arnoldo).

Determined to meet the criteria for imposition of sanctions pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, MORGAN HUERTA, Jose Arnoldo, a person sanctioned pursuant to E.O. 14059.

2. NIEVES Y PALETAS EVI (a.k.a. “NIEVESYPALETASEVI”), Boulevard San Angel 3270, Estrella Nueva Galicia, San Benito, Culiacan, Sinaloa 80280, Mexico; Culiacan, Sinaloa, Mexico; Pueblos Unidos, Sinaloa, Mexico; Tacuichamona, Sinaloa, Mexico; Organization Established Date 09 Sep 2019; Organization Type: Retail sale of food in specialized stores [ILLICIT–DRUGS–EO14059] (Linked To: LARRANAGA HERRERA, Jesus Norberto; Linked To: LIZARRAGA SANCHEZ, Karla Gabriela).

Determined to meet the criteria for imposition of sanctions pursuant to section

(1)(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, LARRANAGA HERRERA, Jesus Norberto and LIZARRAGA SANCHEZ, Karla Gabriela, persons sanctioned pursuant to E.O. 14059.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–23043 Filed 10–4–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (“SDN List”) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Lisa M. Palluconi, Acting Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On September 27, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals:

1. ABDOLRAHIMI, Mohammad Hosein, Tehran, Iran; DOB 29 Aug 1988; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 0493278222 (Iran) (individual) [ELECTION-EO13848] (Linked To: EMENNET PASARGAD).

Designated pursuant to section 2(a)(iii) of Executive Order 13848 of September 12, 2018, "Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election," 83 FR 46843, 3 CFR, 2018 Comp., p. 869, ("E.O. 13848"), for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, EMENNET PASARGAD, a person whose property and interests in property are blocked pursuant to E.O. 13848.

2. ASKARIZADEH, Rahmatollah, Tehran, Iran; DOB 14 May 1992; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 0014603667 (Iran) (individual) [ELECTION-EO13848] (Linked To: EMENNET PASARGAD).

Designated pursuant to section 2(a)(iii) of E.O. 13848 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, EMENNET PASARGAD, a person whose property and interests in property are blocked pursuant to E.O. 13848.

3. MAHDAVIAN, Ali (Arabic: علی مهدویان) (a.k.a. HADIAN, Ali), Karaj, Shahrak Behdari Kh Faajr 13, Rejayi 21, Tehran 3148634998, Iran; DOB 11 Dec 1992; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 0015252434 (Iran) (individual) [ELECTION-EO13848] (Linked To: EMENNET PASARGAD).

Designated pursuant to section 2(a)(iii) of E.O. 13848 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, EMENNET PASARGAD, a person whose property and interests in property are blocked pursuant to E.O. 13848.

4. RAHIMI HAJJIABADI, Sayyed Mehdi (Arabic: سید مهدی رحیمی حاجی آبادی) (a.k.a. RAHIMI, Seyyed Mehdi), Kh Majidieh Southern K Salehi P 64, Iran; DOB 21 Jul 1980; POB Tehran, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male (individual) [ELECTION-EO13848] (Linked To: EMENNET PASARGAD).

Designated pursuant to section 2(a)(iii) of E.O. 13848 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, EMENNET

PASARGAD, a person whose property and interests in property are blocked pursuant to E.O. 13848.

5. SADEGHI, Fatemeh (Arabic: فاطمه صادقی) (a.k.a. SAOEGHI, Fatemeh), Iran; DOB 28 Nov 1995; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Female (individual) [ELECTION-EO13848] (Linked To: EMENNET PASARGAD).

Designated pursuant to section 2(a)(iii) of E.O. 13848 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, EMENNET PASARGAD, a person whose property and interests in property are blocked pursuant to E.O. 13848.

6. YAZDI, Elaheh (Arabic: لایه یزدی) (a.k.a. YAZDIABBASABADI, Elaheh), Bozorgrah Basij She, Road Takhti Bolvar Hejrat, Square Motahhari, Town Motahhari, Boluk 1 and 2, Tehran, Iran; DOB 23 Apr 1985; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Female; National ID No. 1262121973 (Iran) (individual) [ELECTION-EO13848] (Linked To: EMENNET PASARGAD).

Designated pursuant to section 2(a)(iii) of E.O. 13848 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, EMENNET PASARGAD, a person whose property and interests in property are blocked pursuant to E.O. 13848.

7. JALILI, Masoud, Number 3, Kagzar Alley, Shahid Hedayeti Avenue, Shahid Soleimani Expressway, Tehran 1675646611, Iran; DOB 08 Dec 1987; POB Tehran, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 0079491391 (Iran); Birth Certificate Number 49332 (Iran) (individual) [IRGC] [IFSR] [ELECTION-EO13848] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS).

Designated pursuant to section 2(a)(iii) of E.O. 13848 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, ISLAMIC REVOLUTIONARY GUARD CORPS, a person whose property and interests in property are blocked pursuant to E.O. 13848.

Dated: October 1, 2024.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024-23083 Filed 10-4-24; 8:45 am]

BILLING CODE 4810-AL-C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and property that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons and property are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel.: 202-622-2420; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On October 2, 2024, OFAC determined that the property and interests in property subject to U.S.

jurisdiction of the following persons and property are blocked under the relevant sanctions authorities listed below.

Individual

1. AL-KUHLANI, Hasan Ahmad Hasan Muhammad (a.k.a. AL-DAHRAH, Ebrahim Mohammad Ghaleb; a.k.a. "ABU-SHAHID"), Iran; DOB 1982 to 1984; nationality Yemen; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 06587863 (Yemen) expires 05 Jun 2028 (individual) [SDGT] (Linked To: ANSARALLAH).

Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism" (E.O. 13224), 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended) for having acted or purported to act for or on behalf of, directly or indirectly, ANSARALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. GEMINI MARINE LIMITED (a.k.a. GEMINI MARINE LTD-MAI), Trust Company Complex, Ajeltake Road, Majuro, Ajeltake Island 96960, Marshall Islands; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 06 Feb 2024; Identification Number IMO 6482373; Registration Number 124153 (Marshall Islands) [SDGT] [IFSR] (Linked To: SEPEHR ENERGY JAHAN NAMA PARS COMPANY).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SEPEHR ENERGY JAHAN NAMA PARS COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. SHENZHEN BOYU IMPORTS AND EXPORTS CO., LTD. (a.k.a. SHENZHEN BOYU IMPORT EXPORT COMPANY LIMITED), Cui Zhui Jie Dao Wen Jin Lu Dong Wen Jin Guang Chang Wen An Zhong, Xin, Shenzhen, Guangdong Province 51800, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 15 Mar 2010; Unified Social Credit Code (USCC) 9144030052135659Y (China) [SDGT] (Linked To: ANSARALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ANSARALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. SHENZHEN JINGHON ELECTRONICS LIMITED (a.k.a. JINGHON ELECTRONICS LIMITED; a.k.a. SHENZHEN JINGHONG

ELECTRONIC TECHNOLOGY CO. LTD.; a.k.a. "JH CIRCUITS"), #2F195, Block B, Building Gusuhuating, 38 Gushu First Road, Xixiang Street, Bao'an District, Shenzhen, Guangdong, China; Room 602, Building C, Qianwan High Technology Industrial Park, Bao'an District, Shenzhen, Guangdong, China; website www.jhcircuits.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 29 Jun 2016; Unified Social Credit Code (USCC) 91440300MA5DFHBE0X (China) [SDGT] (Linked To: ANSARALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ANSARALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. SHENZHEN RION TECHNOLOGY CO., LTD. (a.k.a. RION TECHNOLOGY), 4F, Building 1, Phase II Workshop, Fu'an Industrial City, Dayang Development Zone, Fuyong Sub-District, Baoan District, Shenzhen, Guangdong 518100, China; No. 90, Dayang Road, Fuyong Town, Baoan District, Shenzhen, Guangdong 518100, China; website www.rion-tech.net; alt. website www.rionsystem.com; Additional Sanctions Information—Subject to Secondary Sanctions; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 24 Apr 2008; Unified Social Credit Code (USCC) 914403006748114670 (China) [SDGT] [NPWMD] [IFSR] (Linked To: MINISTRY OF DEFENSE AND ARMED FORCES LOGISTICS; Linked To: ANSARALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ANSARALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Vessels

1. IZUMO (a.k.a. CATHAY PHOENIX) (TRBQ9) Crude Oil Tanker Gabon flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9249324; MMSI 626466000 (vessel) [SDGT] [IFSR] (Linked To: GEMINI MARINE LIMITED).

Identified as property in which GEMINI MARINE LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

2. FRUNZE (E5U4323) Crude Oil Tanker Cook Islands flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9263643; MMSI 518998343 (vessel) [SDGT] [IFSR] (Linked To: GEMINI MARINE LIMITED).

Identified as property in which GEMINI MARINE LIMITED, a person whose property and interests in property are blocked

pursuant to E.O. 13224, as amended, has an interest.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024-23154 Filed 10-4-24; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons whose property and interests in property have been unblocked and who have been removed from the list of Specially Designated Nationals and Blocked Persons.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On October 1, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked and they have been removed from the SDN List under the relevant sanctions authorities listed below.

Individuals

1. MARTINEZ ARANGO, Oscar Richard, c/o COMERCIALIZADORA DE CARNES CONTINENTAL MGCI LTDA., Bogota, Colombia; DOB 31 Jul 1972; Cedula No. 79634329 (Colombia) (individual) [SDNTK].

2. SLIVNIK, Uros, Malci Beliceve 36, Ljubljana, Slovenia; DOB 05 May 1979; Passport P01095514 (Slovenia) (individual) [SDNTK] (Linked To: VELINVESTMENT D.O.O.; Linked To: SAGAX INVESTMENT GROUP LTD.).

3. PEREGRINA TOBOADA, Jose Antonio (a.k.a. PEREGRINA TOBOADO, Jose

Antonio), c/o NUEVA INDUSTRIA DE GANADEROS DE CULIACAN S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o JAMARO CONSTRUCTORES S.A. DE C.V., Culiacan, Sinaloa, Mexico; Calle Pirul # 439, Privada Balcones de San Miguel, Culiacan, Sinaloa, Mexico; DOB 05 Aug 1958; POB Culiacan, Sinaloa, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. PETA580805HSLRBN09 (Mexico) (individual) [SDNTK].

4. OROZCO RODRIGUEZ, Sergio Armando (a.k.a. "CHOCHO"), Puerto Vallarta, Jalisco, Mexico; DOB 16 Feb 1967; POB Guadalajara, Jalisco, Mexico; nationality Mexico; Gender Male; C.U.R.P. OORS670216HJCRDR04 (Mexico) (individual) [ILLICIT-DRUGS-EO14059].

5. ROSALES MENDOZA, Carlos Alberto (a.k.a. ROSALES MENDOZA, Carlos), Michoacan, Mexico; Petacalco, Guerrero, Mexico; DOB 12 Feb 1963; POB Guerrero, Michoacan; alt. POB El Naranjito, La Union, Guerrero, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. ROMC630212HGRSNR09 (Mexico) (individual) [SDNTK].

Entity

1. COMERCIALIZADORA DE CARNES CONTINENTAL MGCI LTDA. (a.k.a. CARNES EL PROVEEDOR C F P; a.k.a. CARNES LA MUNDIAL M.A.), Aut. Sur No. 66-78 of. 74, Bogota, Colombia; NIT # 830108927-9 (Colombia) [SDNTK].

Dated: October 1, 2024.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2024-23040 Filed 10-4-24; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List ("SDN List") based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons

are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Lisa M. Palluconi, Acting Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On October 1, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810-AL-P

Individuals

1. POGODIN, Vadim Gennadievich (Cyrillic: ПОГОДИН, Вадим Геннадьевич) (a.k.a. “BIBA”; a.k.a. “SHGRYUV”), Moscow, Russia; DOB 19 Mar 1986; POB Moscow, Russia; nationality Russia; Gender Male; Passport 642774845 (Russia); National ID No. 4508703790 (Russia) (individual) [CYBER2] (Linked To: EVIL CORP).

Designated pursuant to section I(a)(iii)(B) of Executive Order 13694 of April 1, 2015, “Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities,” 80 FR 18077, 3 CFR, 2015 Comp., p. 297, as amended by Executive Order 13757 of December 28, 2016, “Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities,” 82 FR 1, 3 CFR, 2016 Comp., p. 659 (“E.O. 13694, as amended”), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, EVIL CORP, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

2. RAMAZANOV, Beyat Enverovich (Cyrillic: РАМАЗАНОВ, Бейат Энверович) (a.k.a. RAMAZANOV, Beiat (Cyrillic: РАМАЗАНОВ, Бейат)), Moscow, Russia; DOB 05 Jan 1988; POB Moscow, Russia; nationality Russia; Gender Male; Passport 735947775 (Russia); alt. Passport 641209339 (Russia); National ID No. 4509701463 (Russia); Tax ID No. 77017321838 (Russia) (individual) [CYBER2] (Linked To: EVIL CORP).

Designated pursuant to section I(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, EVIL CORP, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

3. RYZHENKOV, Aleksandr Viktorovich (a.k.a. “CHERDAKMUDAK”; a.k.a. “GUESTER”; a.k.a. “MALOY, Sanya”; a.k.a. “MALOY, Sasha”), Russia; DOB 26 May 1993; nationality Russia; Gender Male; Passport 643501126 (Russia) (individual) [CYBER2] (Linked To: EVIL CORP).

Designated pursuant to section I(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, EVIL CORP, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

4. RYZHENKOV, Sergey Viktorovich (a.k.a. “MALOY, Serega”; a.k.a. “POCH”; a.k.a. “STEN”), Moscow, Russia; DOB 15 Feb 1989; POB Uzbekistan; nationality Russia;

Gender Male; Passport 712199247 (Russia); National ID No. 3609048460 (Russia) (individual) [CYBER2] (Linked To: EVIL CORP).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, EVIL CORP, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

5. SHCHETININ, Aleksey Yevgenevich (a.k.a. SCHETININ, Alex; a.k.a. SHCHETININ, Alexey; a.k.a. "SHCHETININ, Lesha"), Russia; DOB 22 Aug 1987; nationality Russia; Gender Male; Passport 760960574 (Russia); alt. Passport 713133176 (Russia); National ID No. 4509396564 (Russia) (individual) [CYBER2] (Linked To: EVIL CORP).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, EVIL CORP, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

6. YAKUBETS, Viktor Grigoryevich (Cyrillic: ЯКУБЕЦ, Виктор Григорьевич) (a.k.a. YAKUBETS, Victor), Russia; DOB 19 Feb 1964; nationality Russia; Gender Male (individual) [CYBER2] [RUSSIA-EO14024] (Linked To: EVIL CORP).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, EVIL CORP, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

7. BENDERSKIY, Eduard Vitalyevich (Cyrillic: БЕНДЕРСКИЙ, Эдуард Витальевич) (a.k.a. BENDERSKI, Eduard Vitalevich; a.k.a. BENDERSKII, Eduard Vitalyevich; a.k.a. BENDERSKY, Eduard Vitalevich), Russia; DOB 25 Jun 1970; nationality Russia; citizen Russia; Gender Male; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Tax ID No. 500103441868 (Russia) (individual) [CYBER2] [RUSSIA-EO14024] (Linked To: YAKUBETS, Maksim Viktorovich).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13694, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, YAKUBETS, Maksim Viktorovich, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(vii) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021), as amended by Executive Order 14114 of December 22, 2023, "Taking Additional Steps With Respect to the Russian Federation's Harmful Activities," 88 FR 89271, 3 CFR, 2023 Comp., p. 271 ("E.O. 14024") for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

Entities

1. SOLAR-INVEST LLC (Cyrillic: ООО СОЛАР-ИНВЕСТ) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTENNOSTYU SOLAR-INVEST), Ul. Usacheva D. 29, K. 9, pom. IV, Komn. 16, Moscow 119048, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 04 Aug 2020; Tax ID No. 9704025618 (Russia); Registration Number 1207700271701 (Russia) [CYBER2] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, BENDERSKIY, Eduard Vitalyevich, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, BENDERSKIY, Eduard Vitalyevich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

2. VYMPEL-ASSISTANCE LLC (Cyrillic: ООО ВЫМПЕЛ-СОДЕЙСТВИЕ) (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU VYMPEL-SODEISTVIE; f.k.a. ООО VYMPEL-DETEKTIV; a.k.a. VYMPEL-SODEISTVIE), Ul. Bobruiskaya, d.1, Moscow 121351, Russia; Per. Afanasevski B., d. 5/12, str. 7, Moscow, Russia; Secondary sanctions risk: See Section 11 of Executive Order 14024.; Organization Established Date 18 Dec 2007; Tax ID No. 7731582597 (Russia); Registration Number 1077764001424 (Russia) [CYBER2] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(C) of E.O. 13694, as amended, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, BENDERSKIY, Eduard Vitalyevich, a person whose property and interests in property are blocked pursuant to E.O. 13694, as amended.

Also designated pursuant to section 1(a)(vii) E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, BENDERSKIY, Eduard Vitalyevich, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Dated: October 1, 2024.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–23084 Filed 10–4–24; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for TD 8395**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning, Special Valuation Rules.

DATES: Written comments should be received on or before December 6, 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 Number 1545–1241—Special Valuation Rules” in the subject line of the message.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Special Valuation Rules.

OMB Number: 1545–1241.

Regulation Project Number: 8395.

Abstract: Section 2701 of the Internal Revenue Code allows various elections by family members who make gifts of common stock or partnership interests and retain senior interest. This regulation provides guidance on how taxpayers make these elections, what information is required, and how the transfer is to be disclosed on the gift tax return (Form 709). Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Time per Respondent: 25 mins.

Estimated Total Annual Burden Hours: 496.

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. Comments will be 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 has 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 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: October 1, 2024.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2024–23107 Filed 10–4–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 461**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning, Limitation on Business Losses.

DATES: Written comments should be received on or before December 6, 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 Number 1545–2283—Limitation on Business Losses” in the subject line of the message.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Limitation on Business Losses.

OMB Number: 1545–2283.

Form Number: 461.

Abstract: Form 461 and its separate instructions calculates the limitation on business losses, and the excess business losses that will be treated as net operating loss (NOL) carried forward to subsequent taxable years. In the case of a partnership or S corporation, the provision applies at the partner or shareholder level. This form is used by noncorporate taxpayers and will be attached to a tax return (F1040, 1040NR, 1041, 1041–QFT, 1041–N, or 990–T).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organization, and not-for-profit institutions.

Estimated Number of Responses: 2,909,026.

Estimated Time per Response: 22 mins.

Estimated Total Annual Burden Hours: 1,105,430.

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. Comments will be 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 has 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 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: October 1, 2024.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2024–23102 Filed 10–4–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY**Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds**

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning October 1, 2024, and ending on December 31, 2024, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is 3 per centum per annum.

DATES: Rates are applicable October 1, 2024, to December 31, 2024.

ADDRESSES: Comments or inquiries may be mailed to Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal

Services, Parkersburg, West Virginia 26106–1328.

You can download this notice at the following internet addresses: <https://www.treasury.gov> or <https://www.federalregister.gov>.

FOR FURTHER INFORMATION CONTACT:

Ryan Hanna, Manager, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 261006–1328, (304) 480–5120; Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be “at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.” 8 U.S.C. 1363(a). Related Federal regulations state that “Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.” 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [FR Doc. 2015–18545]. In addition to this notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the Treasury Direct website.

The Deputy Assistant Secretary for Public Finance, Gary Grippo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Heidi Cohen, Federal Register Liaison for the Department, for purposes of publication in the **Federal Register**.

Heidi Cohen,

Federal Register Liaison.

[FR Doc. 2024–23068 Filed 10–4–24; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. app. 2, section 10(a)(2), that a meeting will be held at the United

States Treasury Department, 15th Street and Pennsylvania Avenue NW, Washington, DC on October 29, 2024, at 9:00 a.m., of the following debt management advisory committee:

Treasury Borrowing Advisory Committee.

At this meeting, the Treasury is seeking advice from the Committee on topics related to the economy, financial markets, Treasury financing, and debt management. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. app. 2, section 10(d) and Public Law 103–202, section 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. app. 2, section 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, section 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. app. 2, section 3.

Although the Treasury’s final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee’s deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of

Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: October 2, 2024.

Frederick E. Pietrangeli,

Director (for Office of Debt Management).

[FR Doc. 2024–23087 Filed 10–4–24; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; New Proposed Information Collection Request; Request for Comments; Digital Asset Proceeds From Broker Transactions

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning information collection requirements related to digital asset proceeds from broker transactions.

DATES: Comments should be received on or before November 6, 2024 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Melody Braswell by emailing PRA@treasury.gov, calling (202) 622–1035, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Digital Asset Proceeds from Broker Transactions.

OMB Number Control No.: 1545–NEW.

Form Numbers: 1099–DA.

Abstract: Form 1099-DA is used by brokers to report proceeds from (and in some cases, basis for) digital asset dispositions to taxpayers and to the IRS (Internal Revenue Code section 6045(a)). Taxpayers may be required to recognize gain from these dispositions of digital assets. Reporting is also required when brokers know or have reason to know that a corporation in which a taxpayer owns digital assets, that is also stock, has had a reportable change in control or capital structure. Taxpayers may be required to recognize gain from the receipt of cash, services, digital assets, or other property that was exchanged for a digital asset that is also the corporation's stock.

Type of Review: New collection.
Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.
Estimated Number of Respondents: 5,300.
Estimated Number of Responses per Respondents: 2,736.
Estimated Time per Response: 0.15 hours.
Estimated Total Annual Burden Hours: 2,252,500 hours.
Authority: U.S.C. 3501 et seq.

Melody Braswell,
Treasury PRA Clearance Officer.
[FR Doc. 2024-23118 Filed 10-4-24; 8:45 am]
BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS
Advisory Committee on Cemeteries and Memorials; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. Ch. 10, that the Advisory Committee on Cemeteries and Memorials will conduct meeting sessions to be held October 29–30, 2024. The meeting sessions will begin and end as follows:

Date(s):	Time(s):	Location(s)	Open to the public
October 29, 2024.	9:00 a.m. to 2:45 p.m. Eastern Standard Time (EST)	Library of Congress Jefferson Building, Room J119, Washington, DC 20540.	Yes.
October 30, 2024.	9:00 a.m. to 4:00 p.m. EST	Library of Congress Jefferson Building, Room J119, Washington, DC 20540.	Yes.

The meeting sessions are open to the public.
The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee makes recommendations to the Secretary regarding such activities.
On Wednesday, October 29, 2024, the agenda will include opening remarks from the Committee Chair, and other VA officials. There will be remarks by the Department of Veterans Affairs Chief of Staff, National Cemetery Administration Acting Under Secretary for Memorial Affairs, and updates from the Pension and Fiduciary Services, Veterans Benefits Administration, Survivor Assistance Memorial Support Office, Veterans Health Administration.
On Thursday, October 30, 2024, the agenda will include a tour and presentation on the Library of Congress, a briefing from the Director, National Archives and Administration, National Personnel Records Center, the status of committee recommendations, public comments, subcommittee updates, proposed recommendations, and open discussion. Additionally, time will be allotted for the public to provide comments starting at 2:45 p.m. EST and ending no later than 3:45 p.m. EST. The comment period may end sooner, if there are no comments presented or they are exhausted before the end time. Individuals interested in providing

comments during the public comment period are allowed no more than three minutes for their statements.
Any member of the public seeking additional information should contact Ms. Faith Hopkins, Designated Federal Officer, at 202-603-4499. Please leave a voice mail message no later than close of business, October 25, 2024. The Committee will also accept written comments. Comments may be transmitted electronically to the Committee at faith.hopkins@va.gov. In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent.
Any member of the public who wishes to attend the meeting virtually, use the following Cisco Webex Meeting Link:
Join On Your Computer Or Mobile App: <https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m36c2db38720b307ba7761d97e03bb015>.
Meeting number: 2819 557 6428
Password: MSvuV69Kf@7
Join by phone: (404) 397-1596
Access code: 281 955 76428

Dated: October 2, 2024.
Jelessa M. Burney,
Federal Advisory Committee Management Officer.
[FR Doc. 2024-23155 Filed 10-4-24; 8:45 am]
BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS
[OMB Control No. 2900-0491]
Agency Information Collection Activity: Community Residential Care (CRC) Program—Recordkeeping, Incident Reporting, Applications

AGENCY: Veterans Health Administration, Department of Veterans Affairs.
ACTION: Notice.

SUMMARY: Veterans Health Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.
DATES: Comments must be received on or before December 6, 2024.
ADDRESSES: Comments must be submitted through www.regulations.gov.
FOR FURTHER INFORMATION CONTACT:
Program-Specific information: Rebecca Mimmall, 202-695-9434, vhacopra@va.gov.
VA PRA information: Maribel Aponte, 202-461-8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Community Residential Care (CRC) Program—Recordkeeping, Incident Reporting, Applications (VA Forms 10-2407 and 10-387).

OMB Control Number: 2900-0491.
<https://www.reginfo.gov/public/do/PRAsearch> (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: Revision of a currently approved collection.

Abstract: VA is authorized under 38 U.S.C. 1730 to assist veterans by referring them for placement, and aiding veterans in obtaining placement, in Community Residential Care (CRC) facilities, which include Medical Foster Homes (MFHs). One of the standards a CRC facility must meet is the requirement to maintain records on each resident in a secure place. Under 38 CFR 17.63(i), facility records must include emergency notification procedures and a copy of all signed agreements with the resident. These records must be maintained by the CRC facility, and the CRC facility must make those records available for VA inspection upon request. An MFH is a subtype of CRC and, under 38 CFR 17.74(q), is required to comply with the recordkeeping requirements of 38 CFR 17.63(i). In addition, the CRC facility must maintain and make available, upon request of the approving official, records related to CRC staff requirements and provide that the CRC facility has sufficient, qualified staff on duty and available to care for the residents and ensure the health and safety of each resident.

VA is adding to this collection the requirement under 38 CFR 17.63(j)(3) that CRC facilities and MFHs report alleged violations involving mistreatment, neglect, or abuse of a veteran to the approving official. VA requires the CRC facility to document and investigate evidence of an alleged violation, including misappropriation of resident property. VA views the reporting, documenting, and investigating of an alleged incident and the subsequent report of the results of the investigation to be one collection of information.

VA Forms 10-2407 and 10-387 also are being included in this collection. The 10-2407 form is the CRC application used by residential care home sponsors seeking VA approval to provide care to veterans. The 10-387 form is the MFH application used by medical foster home caregivers seeking VA approval to provide care to veterans. The applicants supply references and agree to a VA inspection of the home, a monthly rate, and compliance with other VA standards for residential care. In addition, MFH applicants submit copies of applicable licenses with the application. This information is collected under the authority of 38 U.S.C. 1720 and 38 U.S.C. 1730.

Total Annual Burden: 4,484 hours.
Total Annual Responses: 3,400.

Recordkeeping

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,425 hours.

Estimated Average Burden per Respondent: 90 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 950.

Incident Reporting

Affected Public: Individuals or Households.

Estimated Annual Burden: 2,850 hours.

Estimated Average Burden per Respondent: 180 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 950.

CRC Application—VA Form 10-2407

Affected Public: Individuals or Households.

Estimated Annual Burden: 42 hours.
Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 500.

MFH Application—VA Form 10-387

Affected Public: Individuals or Households.

Estimated Annual Burden: 167 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 1,000.

(Authority: 44 U.S.C. 3501 *et seq.*)

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024-23052 Filed 10-4-24; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0618]

Agency Information Collection Activity Under OMB Review: Application by Insured Terminally Ill Person for Accelerated Benefit

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by November 6, 2024.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: www.reginfo.gov/public/do/PRAMain, select "Currently under Review—Open for Public Comments", then search the list for the information collection by Title or "OMB Control No. 2900-0618."

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, (202) 461-8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION:

Title: Application by Insured Terminally Ill Person for Accelerated

Benefit Forms SGLV 8284 and SGLV 8284A.

OMB Control Number: 2900–0618
https://www.reginfo.gov/public/do/PRASearch

Type of Review: Extension of a currently approved collection.

Abstract: VA has amended regulations for the Servicemembers' Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) programs to add accelerated death benefit (Accelerated Benefit) provisions that permit terminally ill policyholders access to the death benefits of their policies before they die. Traditionally, an individual purchases life insurance in order to safeguard his or her dependents against major financial loss due to his or her death. Life insurance serves to

replace the lost income of an insured and to provide for his or her final expenses. In recent years, the insurance industry has recognized the financial needs of terminally ill policyholders and has begun offering policies with accelerated benefit provisions. A recent statutory amendment (section 302 of the Veterans Programs Enhancement Act of 1998, Public Law 105–368, 112 Stat. 3315, 3332–3333) added section 1980 to title 38, United States Code, which extends an accelerated benefit option to terminally ill persons insured in the SGLI and VGLI programs.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register**

Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 63254, August 2, 2024.

Affected Public: Individuals or Households.

Estimated Annual Burden: 40 hours.

Estimated Average Burden per

Respondent: 12 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 200.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–23059 Filed 10–4–24; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

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Part II

Department of Homeland Security

Rural Business-Cooperative Service

Department of Justice

Executive Office for Immigration Review

8 CFR Parts 208, 225, and 1208

Securing the Border; Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 208 and 235

[CIS No. 2778–24; Docket No: USCIS–2024–0006]

RIN 1615–AC92

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1208

[A.G. Order No. 6053–2024]

RIN 1125–AB32

Securing the Border

AGENCY: U.S. Citizenship and Immigration Services (“USCIS”), Department of Homeland Security (“DHS”); Executive Office for Immigration Review (“EOIR”), Department of Justice (“DOJ”).

ACTION: Final rule; request for comments.

SUMMARY: On June 3, 2024, the President signed a Proclamation under sections 212(f) and 215(a) of the Immigration and Nationality Act (“INA”) suspending and limiting the entry of certain noncitizens into the United States during emergency border circumstances. DHS and DOJ (“the Departments”) issued a complementary interim final rule (“IFR”) shortly thereafter. This final rule responds to public comments received on the IFR, makes certain revisions to the regulatory text, and seeks comment on potential changes to the Circumvention of Lawful Pathways rule as well as changes that parallel modifications made by the subsequent Proclamation.

DATES:

Effective date: This rule is effective at 12:01 a.m. eastern daylight time on October 1, 2024.

Comment period for solicited comments: Comments on the extended and expanded applicability of the Circumvention of Lawful Pathways rebuttable presumption in Section IV of this preamble and changes that parallel modifications made by the subsequent Proclamation described in Section II.C.1 of this preamble must be submitted on or before November 6, 2024.

The electronic Federal Docket Management System will accept comments prior to midnight eastern time at the end of that day.

ADDRESSES:

Docket: To view comments on the IFR that preceded this rule, search for

docket number USCIS–2024–0006 on the Federal eRulemaking Portal at <https://www.regulations.gov>.

Comment period for solicited additional comments: You may submit comments on the specific issues identified in Sections II.C.1 and IV of this preamble via the electronic Federal Docket Management System at <https://www.regulations.gov>, to DHS Docket Number USCIS–2024–0006. Follow the website instructions for submitting comments. Comments submitted in a manner other than the one listed above, including emails or letters sent to the Departments’ officials, will not be considered comments on the rulemaking and may not receive a response from the Departments. Please note that the Departments cannot accept any comments that are hand-delivered or couriered. In addition, the Departments cannot accept comments contained on any form of digital media storage device, such as CDs/DVDs and USB drives. The Departments are not accepting mailed comments at this time. If you cannot submit your comment by using <https://www.regulations.gov>, please contact the Regulatory Coordination Division, Office of Policy and Strategy, USCIS, DHS, by telephone at (240) 721–3000 for alternate instructions.

FOR FURTHER INFORMATION CONTACT:

For DHS: Daniel Delgado, Acting Deputy Assistant Secretary for Immigration Policy, Office of Strategy, Policy, and Plans, DHS; telephone (202) 447–3459 (not a toll-free call).

For EOIR: Lauren Alder Reid, Assistant Director, Office of Policy, EOIR, DOJ, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305–0289 (not a toll-free call).

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 - I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
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 - K. Paperwork Reduction Act

List of Abbreviations

AO	Asylum Officer
AMI	Asylum Merits Interview
APA	Administrative Procedure Act
BIA	Board of Immigration Appeals (DOJ, EOIR)
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBP	U.S. Customs and Border Protection
CBP One app	CBP One mobile application
CDC	Centers for Disease Control and Prevention
CHNV	Cuba, Haiti, Nicaragua, and Venezuela
DHS	Department of Homeland Security
DOJ	Department of Justice
EOIR	Executive Office for Immigration Review
ERO	Enforcement and Removal Operations
FARRA	Foreign Affairs Reform and Restructuring Act of 1998
FERM	Family Expedited Removal Management
FY	Fiscal Year
HSA	Homeland Security Act of 2002
ICE	U.S. Immigration and Customs Enforcement
IFR	Interim Final Rule
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act of 1996
IJ	Immigration Judge
INA	or the Act Immigration and Nationality Act
LGBTQI+	Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, and Intersex
MPP	Migrant Protection Protocols
NGO	Non-Governmental Organization
NEPA	National Environmental Policy Act of 1969
NTA	Notice to Appear
OFO	Office of Field Operations
OHSS	Office of Homeland Security Statistics
POE	Port of Entry
RFA	Regulatory Flexibility Act
SWB	Southwest Land Border
TCO	Transnational Criminal Organization
TVPA	Trafficking Victims Protection Act of 2000
UC	Unaccompanied Child, having the same meaning as Unaccompanied Alien Child as defined at 6 U.S.C. 279(g)(2)
UDHR	Universal Declaration of Human Rights
UIP	U.S. Customs and Border Protection Unified Immigration Portal
UMRA	Unfunded Mandates Reform Act of 1995
UNHCR	United Nations High Commissioner for Refugees
USBP	U.S. Border Patrol
USCIS	U.S. Citizenship and Immigration Services
USCG	U.S. Coast Guard

I. Public Participation

Interested persons are invited to submit comments on the specific issues identified in Sections II.C.1 and IV of this preamble by submitting relevant written data, views, comments, and arguments by the deadline stated above. To provide the most assistance to the

Departments, comments should explain the reason for any recommendation and include data, information, or authority that supports the recommended course of action. Comments must be submitted in English, or an English translation must be provided. Comments submitted in a manner other than pursuant to the instructions, including emails or letters sent to the Departments’ officials, will not be considered comments on the rule and may not receive a response from the Departments.

Instructions: If you submit a comment, you must include the USCIS Docket No. USCIS–2024–0006 for this rulemaking. All submissions may be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to the Departments. The Departments may withhold information provided in comments from public viewing that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at <https://www.regulations.gov>.

Docket: For access to the docket and to read background documents or comments received, go to <https://www.regulations.gov>, referencing USCIS Docket No. USCIS–2024–0006. You may also sign up for email alerts on the online docket to be notified when comments are posted, or a final rule is published.

II. Executive Summary

A. Background and Purpose

1. Basis for the IFR

On June 3, 2024, the President signed Proclamation 10773 (“June 3 Proclamation”)¹ under sections 212(f) and 215(a) of the INA, 8 U.S.C. 1182(f) and 1185(a), finding that because the border security and immigration systems of the United States were unduly strained, the entry into the United States of certain categories of noncitizens was detrimental to the interests of the United States, and

¹ As discussed in Section II.C.1 of this preamble, the President has since issued a proclamation amending portions of the June 3 Proclamation. That amending proclamation is referred to as the “September 27 Proclamation” in this preamble. Where the preamble refers to “the Proclamation” without specifying a date, it is referring to Proclamation 10773 as amended by the September 27 Proclamation.

suspending and limiting the entry of such noncitizens. 89 FR 48487, 48487–91 (June 7, 2024). The June 3 Proclamation directed DHS and DOJ to promptly consider issuing regulations addressing the circumstances at the southern border of the United States, including any warranted limitations and conditions on asylum eligibility. *Id.* at 48492. The Departments subsequently promulgated an IFR, effective June 5, 2024, “designed to implement the policies and objectives of the Proclamation by enhancing the Departments’ ability to address historic levels of migration and efficiently process migrants arriving at the southern border during emergency border circumstances.”² Securing the Border, 89 FR 48710, 48718 (June 7, 2024) (“the IFR”).

The June 3 Proclamation and the IFR explain that, since 2021, as a result of political and economic conditions globally, there have been substantial levels of migration throughout the Western Hemisphere, including at the southwest land border (“SWB”). 89 FR at 48487; *id.* at 48711 & n.3. In December 2023, migration levels at the SWB surged to the highest monthly total on record.³ *Id.* at 48712 n.5. DHS assessed that the surge in late 2023 was likely the result of a number of factors, including the growing understanding by smugglers and migrants that DHS’s capacity to impose consequences at the border is limited by the lack of resources and tools made available by Congress and the Government of Mexico’s operational constraints caused by a lack of funding at the end of the 2023 calendar year, which limited its ability to enforce its own immigration laws. *Id.* at 48725 & n.115.

These sustained high encounter rates outstripped the Departments’ abilities—based on available resources—to deliver

timely decisions and consequences in significant numbers for those without a legal basis to remain in the United States. 89 FR at 48714. Due to its funding shortfall, DHS lacked adequate resources such as sufficient USCIS asylum officers (“AOs”) to conduct fear screenings and sufficient temporary processing facilities, often called “soft-sides.” *Id.* These factors limited DHS’s ability to conduct credible fear interviews for individuals in U.S. Customs and Border Protection (“CBP”) custody and to process and hold individuals in U.S. Immigration and Customs Enforcement (“ICE”) custody during the expedited removal process. *Id.* The substantial migration throughout the hemisphere, combined with inadequate resources and tools to keep pace, limited DHS’s ability to impose timely consequences through expedited removal, the main consequence Congress has made available at the border under title 8 authorities. 89 FR at 48713–14. Consistent with past practice prior to the Title 42 public health Order, individuals who are subject to but cannot be processed under expedited removal due to resource constraints are instead generally released, after screening and vetting, pending removal proceedings under section 240 of the INA, 8 U.S.C. 1229a (“section 240 removal proceedings”), before an immigration judge (“IJ”).

These higher encounter rates also place significant strain on the immigration courts. Recently, despite significant increases in the total number of IJs and case completions since Fiscal Year (“FY”) 2021, newly initiated cases have far outpaced such completions.⁴ Placing more noncitizens in section 240 removal proceedings before an IJ—rather than processing eligible noncitizens through the expedited removal process—only further contributes to the immigration court backlog, and those cases can take several years to conclude.⁵ This strain is

also particularly acute in light of EOIR’s current underfunding. Rather than increase funding to support IJ team hiring, EOIR’s FY 2024 budget was \$16 million less than in FY 2023 and was \$94.3 million less than its inflation-adjusted funding requirements (referred to as “Current Services”).⁶

The Departments reasoned that their capacity to predictably deliver timely decisions and consequences is jeopardized by emergency border circumstances, which, left unmitigated, further add to the incentives and motivations for migrants to make the dangerous journey to the SWB, regardless of their ultimate likelihood of success on an asylum or protection application, and that the current immigration and asylum systems had become a driver for irregular migration⁷ throughout the region and an increasingly lucrative source of income for dangerous transnational criminal organizations (“TCOs”). 89 FR at 48714. Despite the Departments’ efforts to address these substantial levels of migration, strengthen the consequences in place at the border, and enhance the overall functioning of the immigration system, including through the

strategic-plan/strategic-context/current-operating-environment (last visited Sept. 20, 2024) (“EOIR . . . suffered operational setbacks during the COVID–19 pandemic years of FY 2020 through FY 2022, including declining case completions due to health closures and scheduling complications and delays in agency efforts to transition to electronic records and the efficiencies they represent. While the challenges of the pandemic were overcome by adaptive measures taken during those years, the pandemic’s impact on the pending caseload is still being felt.”). Although EOIR does not report statistics on pending median completion times for removal proceedings in general, it does report median completion times for certain types of cases, such as detained cases and cases involving unaccompanied children (“UCs”). See, e.g., EOIR, *Median Unaccompanied Noncitizen Child (UAC) Case Completion and Case Pending Time* (Apr. 19, 2024), <https://www.justice.gov/eoir/media/1344951/dl?inline> (median completion time of 1,254 days); EOIR, *Median Completion Times for Detained Cases* (Apr. 19, 2024), <https://www.justice.gov/eoir/media/1344866/dl?inline> (median completion time of 46 days in the second quarter of 2024 for removal, deportation, exclusion, asylum-only, and withholding-only cases); EOIR, *Percentage of DHS-Detained Cases Completed within Six Months* (Apr. 19, 2024), <https://www.justice.gov/eoir/media/1344886/dl?inline> (reporting seven percent of detained cases not completed within six months).

⁶ See Consolidated Appropriations Act, 2024, Public Law 118–42, 138 Stat. 25, 133; EOIR, *FY 2024 Budget Request at a Glance*, https://www.justice.gov/d9/2023-03/eoir_fy_24_budsum_ii_omb_cleared_03.08.23.pdf.

⁷ As used in this preamble, “irregular migration” refers to the movement of people into another country unlawfully or without authorization. With respect to the United States’ borders, the term “irregular” is used in this preamble to refer to physically entering between POEs or otherwise entering without documents sufficient for lawful admission, unless entering with advance authorization to travel or at a pre-scheduled time and place to present at a POE.

² The Departments use the term “emergency border circumstances” in this preamble to generally refer to situations in which high levels of encounters at the southern border exceed the Department of Homeland Security’s (“DHS’s”) capacity to deliver timely consequences to most individuals who cross irregularly into the United States and cannot establish a legal basis to remain in the United States. See 89 FR at 48711 & n.2.

³ There were nearly 302,000 U.S. Customs and Border Protection (“CBP”) encounters at and between ports of entry (“POEs”) along the southwest land border (“SWB”) in December 2023, higher than any previous month on record. Office of Homeland Security Statistics (“OHSS”) analysis of July 2024 OHSS Persist Dataset [Encounters Fiscal Year (“FY”) 2000–2024]; 89 FR at 48714 n.21; see also OHSS, *Immigration Enforcement and Legal Processes Monthly Tables* (last updated Sept. 6, 2024), <https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables> (SWB encounters from FY 2014 through December 2023). OHSS figures are generally rounded throughout this preamble.

⁴ See Executive Office of Immigration Review (“EOIR”), *Adjudication Statistics: New Cases and Total Completions* (July 2024), <https://www.justice.gov/eoir/media/1344796/dl?inline>; EOIR, *Adjudication Statistics: Immigration Judge (IJ) Hiring* (July 2024), <https://www.justice.gov/eoir/media/1344911/dl?inline>.

⁵ EOIR decisions completed in July 2024 were, on average, initiated in February 2022, during the significant operational disruptions caused by the COVID–19 pandemic (with encounters several months earlier than that), but 60 percent of EOIR cases initiated during that time were still pending as of July 2024, so the final mean processing time (once all such cases are complete) will be longer. OHSS analysis of EOIR data as of July 2024 (Mean EOIR Filed Dates tab); EOIR, *EOIR Strategic Plan 2024, EOIR’s Strategic Context, Current Operating Environment*, <https://www.justice.gov/eoir/>

Circumvention of Lawful Pathways rule, 88 FR 31314 (May 16, 2023), these circumstances still existed as a direct result of Congress's failure to update outdated immigration laws and provide needed funding and resources for the efficient operation of the border security and immigration systems. 89 FR at 48711–13, 48715.

In the absence of congressional action, and consistent with the President's direction in the June 3 Proclamation to consider issuing regulations, the Departments adopted the provisions in the IFR, which were intended to address the emergency border circumstances and to substantially improve the Departments' ability to deliver timely decisions and consequences during such circumstances. *See* 89 FR at 48710. The IFR established a limitation on asylum eligibility that applies to certain individuals who enter irregularly across the southern border during emergency border circumstances and revised certain procedures applicable to the expedited removal process during such periods to reduce the time required to apply consequences to those individuals and remove noncitizens who do not have a legal basis to remain in the United States. *Id.* at 48715. The IFR was expected to achieve several benefits: reduce strains on limited Federal Government immigration processing and enforcement resources; preserve the Departments' continued ability to safely, humanely, and effectively enforce and administer the immigration laws; protect against overcrowding in border facilities; and reduce the ability of exploitative TCOs and smugglers to operate. *Id.* at 48745, 48767.

2. The Departments' Experience With the IFR

The IFR's limitation on asylum eligibility and revised procedures are working as intended, though as discussed below, the Departments have determined that modest adjustments to the threshold calculations are warranted. As explained in the paragraphs that follow, in the weeks since June 5, 2024, U.S. Border Patrol ("USBP") encounters between the ports of entry ("POEs") have dropped markedly. Although the Departments believe that this has occurred for a range of reasons, one important reason is that the rule itself has significantly shifted incentives at the southern border. As explained further below, and consistent with the explanation provided in the IFR, the rule has, at least in part, significantly improved DHS's ability to place into expedited removal a majority of single adults and individuals in family units encountered by USBP; to

avoid large-scale releases of such individuals into the United States pending section 240 removal proceedings; and to allow for swift resolution of such individuals' cases and, where appropriate, their removal. *See id.* At the same time, the Departments have continued to implement the largest expansion of lawful, safe, and orderly pathways and processes⁸ for individuals to come to the United States and to uphold the United States' non-refoulement obligations under international law.

In the period between June 5, 2024, and August 31, 2024, average daily total encounters between POEs at the SWB under the Proclamation and IFR have fallen 59 percent from the level of average daily encounters during the immediate post-pandemic period, *i.e.*, the period after the Circumvention of Lawful Pathways rule began to apply on May 12, 2023,⁹ and before the IFR entered into effect on June 5, 2024.¹⁰ This dramatic decrease in encounters has spanned multiple demographic categories. For instance, DHS has observed a drop in encounters of family units, a demographic category that presents particular operational challenges. During the immediate post-pandemic period, DHS experienced an average of about 2,000 daily encounters of individuals in family units.¹¹ Since the Departments issued the IFR, that daily average has dropped 70 percent to

⁸ The terms "lawful pathways," "lawful, safe, and orderly pathways," "lawful pathways and processes," and "lawful, safe, and orderly pathways and processes," as used in this preamble, refer to the range of pathways and processes by which migrants are able to enter the United States or other countries in a lawful, safe, and orderly manner, including to seek asylum and other forms of protection or other immigration benefits for which they may be eligible.

⁹ While the rule's effective date was May 11, 2023, 88 FR at 31314, the rule only applies to noncitizens who enter the United States "[s]ubsequent to the end of implementation of the Title 42 public health Order[.]" 8 CFR 208.33(a)(1)(ii), which expired at 11:59 p.m. on May 11, 2023, *see* DHS, *Fact Sheet: Department of State and Department of Homeland Security Announce Additional Security Measures to Humanely Manage Border through Deterrence, Enforcement, and Diplomacy* (May 10, 2023), <https://www.dhs.gov/news/2023/05/10/fact-sheet-additional-sweeping-measures-humanely-manage-border>. Therefore, the Circumvention of Lawful Pathways rule began to apply on May 12, 2023.

¹⁰ OHSS analysis of July 2024 OHSS Persist Dataset and data downloaded from the U.S. Customs and Border Protection Unified Immigration Portal ("UIP") on September 3, 2024 (Summary Statistics tab). There was an average of about 2,100 total encounters per day (including all demographic groups) between POEs at the SWB from June 5, 2024, to August 31, 2024, compared to around 5,100 per day during the immediate post-pandemic period, defined as May 12, 2023, through June 4, 2024. *Id.*

¹¹ OHSS analysis of July 2024 Persist Dataset (Summary Statistics tab).

about 600 individuals in family units encountered daily.¹² Other significant drops in encounter numbers occurred with single adults and unaccompanied children ("UCs").¹³

In contrast to processing before the IFR, DHS is now placing the majority of single adults and individuals in family units encountered by USBP at the SWB into expedited removal. Between June 5, 2024, and August 31, 2024, DHS placed 59 percent of these noncitizens into expedited removal proceedings, compared to 18 percent of such noncitizens during the immediate post-pandemic period following the end of the Title 42 public health Order.¹⁴ In the pre-pandemic period,¹⁵ DHS placed 41 percent of such noncitizens into expedited removal proceedings.¹⁶ The decrease in the number of encounters at the SWB directly enabled DHS's increased placement rate of noncitizens into expedited removal proceedings. Because encounter levels have decreased, DHS is able to use its operational resources to refer a higher percentage of noncitizens into expedited removal proceedings and deliver timely consequences in a greater proportion of cases.¹⁷ The IFR is remedying the

¹² OHSS analysis data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

¹³ OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

¹⁴ OHSS analysis of data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

¹⁵ Throughout this preamble the "pre-pandemic period" refers to FY 2014 to FY 2019.

¹⁶ OHSS analysis of July 2024 Persist Dataset (Summary Statistics tab). DHS reinstated removal orders for a larger share of single adults and individuals in family units during the pre-pandemic period (26 percent during the pre-pandemic period compared to 14 percent under the interim final rule ("IFR")), which is unsurprising given that the Departments are seeing fewer repeat encounters as a result of the higher proportion of non-Mexicans/non-northern Central Americans—with more limited migration histories—as a share of total encounters. *Id.*; 89 FR at 48721 n.49. Notably, the sum of reinstatements and expedited removals is still higher during the IFR (a combined 73 percent) than it was during the pre-pandemic period (67 percent). OHSS analysis of July 2024 Persist Dataset (Summary Statistics tab).

¹⁷ The most effective way to deliver timely consequences to noncitizens who enter irregularly is through the expedited removal system, but DHS's capacity to use that system on a large scale is subject to resource constraints. One such constraint is space to hold noncitizens in DHS custody during the expedited removal process. Because noncitizens in expedited removal are subject to detention, including during the pendency of their credible fear proceedings, the use of expedited removal may lead to an increase in the time that an individual spends in CBP custody. This is particularly the case when the individual is receiving their credible fear interview while in CBP custody. When there are high numbers of individuals placed in expedited removal, the number of individuals who remain in CBP custody for a lengthier period can increase rapidly, leading to overcrowded conditions. In

negative effects of the previously sustained high encounter numbers described in the IFR and in this rule. *See, e.g.*, 89 FR at 48749 (“In order to maximize the consequences for those who cross unlawfully or without authorization, DHS endeavors to deliver consequences swiftly to the highest proportion of individuals who fail to establish a legal basis to remain in the United States. This includes, subject to available resources, referring the maximum number of eligible individuals possible into expedited removal to quickly adjudicate their claims.”).

Relatedly, the IFR has also significantly reduced the percentage of noncitizens encountered between POEs at the SWB who are released into the United States pending completion of their section 240 removal proceedings. For instance, from June 5, 2024, through August 31, 2024, USBP placed 25 percent of noncitizens encountered at the SWB into section 240 removal proceedings.¹⁸ This is down 41 percentage points from the immediate post-pandemic period, when USBP placed 66 percent of such noncitizens into section 240 removal proceedings, translating to a reduction of over 60 percent.¹⁹ Similarly, between June 5, 2024, and August 31, 2024, 33 percent of all noncitizens encountered at the SWB were sent to Enforcement and Removal Operations (“ERO”); this figure is up from 19 percent during the immediate post-pandemic period.²⁰

addition, given the nature of CBP facilities—which are designed for short-term temporary holding—CBP endeavors to move all individuals out of custody in an expeditious manner and to avoid overcrowding.

Thus, if high encounter levels result in a significant number of individuals in CBP custody, or if those individuals have been in custody for a significant period of time, CBP may lose optionality: having lost the capacity to place additional noncitizens into the expedited removal process, CBP generally must take steps to release some individuals from custody to ensure safe and sanitary conditions and appropriate time in custody. In cases when release is appropriate or warranted, CBP generally issues an individual a Notice to Appear (“NTA”) before an immigration judge (“IJ”) prior to their release from custody. Although in some circumstances transfer of such noncitizens to U.S. Immigration and Customs Enforcement (“ICE”) for detention for the duration of the credible fear process is possible, the ability to do so is dependent on the availability of space in ICE’s already significantly strained detention network. Therefore, when ICE detention space is unavailable, noncitizens must then be processed by CBP through non-expedited removal pathways.

¹⁸ OHSS analysis of data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

¹⁹ OHSS analysis of July 2024 Persist Dataset (Summary Statistics tab).

²⁰ OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

The IFR’s change to how DHS immigration officers identify and refer noncitizens for credible fear interviews has resulted in a reduction of such referrals. Under the IFR, during emergency border circumstances, instead of asking specific questions about fear or providing lengthy advisals, DHS refers a noncitizen for such an interview if the noncitizen manifests a fear of return, expresses an intention to apply for asylum or protection, or expresses a fear of persecution or torture or a fear of return to the noncitizen’s country or the country of removal. From June 5, 2024, through August 31, 2024, 27 percent of noncitizens encountered between POEs at the SWB and processed for expedited removal indicated an intention to apply for asylum or a fear of persecution or torture, compared with a 37 percent fear-claim rate during the pre-pandemic period and 57 percent during the immediate post-pandemic period.²¹ In the IFR, DHS explained that based on its extensive experience administering the expedited removal process, it concluded that the affirmative questions asked under steady state operations are suggestive and account for part of the high rates of referrals and screen-ins that do not ultimately result in a grant of asylum or protection. 89 FR at 48743.²² The shift to a manifestation standard has, as intended, reduced the gap between high rates of referrals and screen-ins and historic ultimate grant rates as well as increased processing efficiency for DHS, and noncitizens who manifest or claim a fear, or who indicate an intention to apply for asylum, still have their claims adjudicated as required by the INA.

The shift to a “reasonable probability” standard for screening for statutory withholding of removal and protection under the regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), Dec. 10, 1984, S. Treaty Doc. No. 100–20 (1988), 1465

²¹ OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

²² From FY 2014 through 2019, of total SWB encounters processed for expedited removal and then referred to section 240 proceedings, only 18 percent of EOIR case completions ultimately resulted in a grant of protection or relief. 89 FR at 48743 n.219; OHSS analysis of June 2024 Enforcement Lifecycle dataset (Historic ERF Results tab). During that same period, 37 percent of SWB encounters processed for expedited removal claimed fear, and 76 percent of those who claimed fear were screened in and referred to section 240 removal proceedings. OHSS analysis of July 2024 Persist Dataset (Summary Statistics tab).

U.N.T.S 85,²³ has further reduced the difference between high screen-in rates and historically low ultimate grant rates of protection or relief. Overall, of those USBP has referred for credible fear interviews, the comprehensive screen-in rate has dropped to 57 percent, compared to 83 percent during the pre-pandemic period and 62 percent during the immediate post-pandemic period.²⁴ Of USBP encounters screened by USCIS under the rule’s “reasonable probability” standard, the screen-in rate has decreased to approximately 48 percent²⁵ compared to 76 percent²⁶ under the “significant possibility” standard during the pre-pandemic period, and approximately 51 percent²⁷ for those screened under the Circumvention of Lawful Pathway rule’s lower “reasonable possibility” standard.²⁸ The Departments believe the lower screen-in rate under the IFR better

²³ In this preamble, consistent with the IFR, the Departments generally refer to protection under the regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) as “CAT protection.” *See, e.g.*, 89 FR at 48716.

²⁴ OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (Summary Statistics tab). Data for immediate post-pandemic and IFR periods are limited to SWB encounters between POEs. The comprehensive screen-in rate includes positive determinations issued by U.S. Citizenship and Immigration Services (“USCIS”), cases where an IJ vacated USCIS’s negative determination, and cases administratively closed by USCIS in which a discretionary NTA was issued. For cases processed under either the Circumvention of Lawful Pathways rule or the IFR, the comprehensive screen-in rate encompasses cases where USCIS or an IJ determined that the noncitizen was found not subject to the Circumvention of Lawful Pathways rule’s rebuttable presumption or the IFR’s limitation on asylum eligibility under the significant possibility standard, in addition to cases screened-in under the “reasonable possibility” or “reasonable probability” standards, as applicable.

²⁵ OHSS analysis of data downloaded from UIP on September 3, 2024 (Fear Screening—STB tab, Line 9 divided by Line 8). Data are limited to SWB encounters between POEs.

²⁶ OHSS analysis of June 2024 Enforcement Lifecycle dataset (Historic ERF Results tab). Data are limited to SWB encounters between POEs.

²⁷ OHSS analysis of July 2024 Persist Dataset (Fear Screening—CLP tab, Line 13 divided by Line 12). Data are limited to SWB encounters between POEs.

²⁸ OHSS analysis of data downloaded from UIP on September 3, 2024 (Summary Statistics tab). Although in the preamble to the IFR, DHS anticipated that the manifestation approach “will likely lead to a higher proportion of those referred having colorable claims for protection[.]” *see* 89 FR at 48743, USCIS screen-in rates have dropped slightly, as noted above, *see* OHSS analysis of June 2024 Enforcement Lifecycle dataset, July 2024 Persist Dataset, and data downloaded from UIP on September 3, 2024 (Historic ERF Results, Fear Screening—STB, and Fear Screening—CLP tabs). There could be multiple reasons for this development, including the effects of the “manifestation” and “reasonable probability” provisions, which are difficult to disentangle.

aligns with the percentage of noncitizens who have historically been granted protection or relief. That is to say, noncitizens screened under the higher “reasonable probability” standard that receive positive findings are more likely to have meritorious claims in ultimate adjudications.

As a result of the IFR, DHS is able to more quickly remove a greater percentage of those who do not have a legal basis to remain in the United States. In the pre-pandemic period, the median processing time for a noncitizen encountered by USBP with a negative fear determination in expedited removal was 75 days from encounter to removal.²⁹ During the immediate post-pandemic period, this metric dropped to 44 days.³⁰ From June 5, 2024, through August 31, 2024, the metric dropped again to 32 days.³¹ Similarly, the processing time from when a noncitizen is referred for a credible fear interview to when the noncitizen receives a fear determination is down 58 percent compared to the immediate post-pandemic period and down 71 percent compared to the pandemic period.³² The Departments attribute the decreased processing time to key provisions of the IFR. For instance, the manifestation of fear provision has resulted in streamlined processing and a lower percentage of individuals indicating fear, thereby shortening the average processing time as those who do not indicate fear do not receive a screening by an AO or review by an IJ prior to removal. Then, for those who indicate fear, following a minimum consultation period that DHS reduced through separate guidance,³³ AOs, supervisory

AOs, and IJs have been applying the IFR’s reasonable probability screening standard. In addition, between June 5, 2024, and August 31, 2024, 32 percent of all noncitizens encountered at the SWB were removed or returned to their home country or to Mexico directly from USBP custody.³⁴ This is double the rate of repatriations from USBP custody (16 percent) that occurred during the immediate post-pandemic period.³⁵ Overall, from June 5, 2024, through August 31, 2024, DHS has removed or returned 70 percent of single adults and individuals in family units encountered by USBP.³⁶ This contrasts with a 28-percent rate during the immediate post-pandemic period.³⁷ Viewed in terms of daily averages, under the IFR through August 31, 2024, there have been about 1,880 daily encounters of single adults and individuals in family units.³⁸ And DHS has averaged about 1,320 total daily repatriations and 580 releases from CBP custody pending immigration proceedings over that time frame.³⁹

Faster repatriations free up DHS resources and capacity for processing new arrivals, allowing for further increases in the use of expedited removal and fewer releases pending completion of section 240 removal proceedings. These successes disrupt the “vicious cycle” the Departments sought to counteract in issuing the IFR. 89 FR at 48714; *see id.* at 48751 (“This reality contributes to the vicious cycle . . . in which increasing numbers of releases lead to increased migration, fueled by the narrative, pushed by smugglers, that migrants who are

encountered at the border will be allowed to remain and work in the United States for long periods of time.”).

Meanwhile, noncitizens have continued to use lawful, safe, and orderly pathways and processes to seek entry to the United States. For example, the use of the CBP One mobile application (“CBP One app”) to schedule an appointment at a SWB POE is an available tool that permits noncitizens to present themselves at the border in a lawful, safe, and orderly manner. From June 5, 2024, through August 31, 2024, approximately 123,500 noncitizens with CBP One appointments presented at SWB POEs and were accordingly processed outside of the procedures set forth in the IFR.⁴⁰ *See* 8 CFR 208.35(a)(1), 1208.35(a)(1); section 3(b)(v)(D) of the Proclamation. During the pre-pandemic period, approximately 300 encounters were processed at SWB POEs per day.⁴¹ Since the launch of the CBP One app in January 2023, approximately 1,500 encounters have been processed at SWB POEs each day (with and without CBP One appointments).⁴² And from the start of FY 2024 through August 31, 2024, that average increased to approximately 1,700 per day.⁴³ Other lawful pathways that continue to be available include expanded parole processes for specific populations and demographics such as nationals of Cuba, Haiti, Nicaragua, and Venezuela (“CHNV”), which allow certain individuals with U.S.-based supporters to seek parole on a case-by-case basis for urgent humanitarian reasons or significant public benefit;⁴⁴ the Safe Mobility Offices in Colombia, Costa Rica, Ecuador, and Guatemala, which provide, among other services, access to information and referrals for humanitarian and family parole processes, labor pathways, expedited refugee processing, and other lawful, safe, and orderly pathways for eligible

²⁹ OHSS analysis of June 2024 Enforcement Lifecycle dataset (Summary Statistics tab).

³⁰ OHSS analysis of July 2024 Persist Dataset (Summary Statistics tab).

³¹ OHSS analysis of data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

³² OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

³³ The Immigration and Nationality Act (“INA”) requires that the noncitizen be given information about the credible fear interview and provides the right for noncitizens in the credible fear process to consult with a person or persons of their choosing prior to the interview, so long as the consultation is conducted “according to [duly prescribed] regulations.” INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv); *see* INA 103(a), 8 U.S.C. 1103(a); 6 U.S.C. 557. Under those regulations, including during circumstances in which the measures in the IFR apply, consultation shall be at no expense to the Government, and consultations “shall be made available in accordance with the policies and procedures of the detention facility where the alien is detained, . . . and shall not unreasonably delay the process.” 8 CFR 235.3(b)(4)(ii), 235.15(a). The regulations do not require that the noncitizen be allowed a particular amount of time to consult with the person or persons of their choosing. *Id.* On June 4, 2024, to support implementation of the

Proclamation and IFR, as a matter of internal policy, USCIS reduced the minimum consultation period for noncitizens subject to the rule’s provisions from at least 24 hours to at least 4 hours beginning at the time ICE or CBP provides the noncitizen with the opportunity to consult and continuing only during the hours of 7 a.m. and 7 p.m. local time. *See* Memorandum for Jennifer B. Higgins, Deputy Dir., USCIS, from Ted Kim, Assoc. Dir., Refugee, Asylum, and Int’l Operations Directorate, USCIS, *Re: Scheduling of Credible Fear Interviews While the Measures in the Securing the Border Interim Final Rule Apply* (June 4, 2024).

³⁴ OHSS analysis of data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

³⁵ OHSS analysis of July 2024 Persist Dataset (Summary Statistics tab).

³⁶ DHS encountered 165,000 single adults and individuals in family units between June 4, 2024, and August 31, 2024, and had repatriated 119,000 of them as of September 3, 2024. OHSS analysis of data downloaded from UIP on Sept. 3, 2024 (IFR Details tab).

³⁷ During that time period, there were 1.87 million such encounters with noncitizens other than UCs, of which 511,000 noncitizens were repatriated. OHSS analysis of July 2024 OHSS Persist Dataset (Immediate Post-Pandemic Details tab).

³⁸ OHSS analysis of data downloaded from UIP on September 3, 2024 (IFR Details tab).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ OHSS analysis of July 2024 Persist Dataset (OFO Encounters tab).

⁴² *Id.* On June 30, 2023, CBP announced the expansion of available appointments for noncitizens through the CBP One mobile application (“CBP One app”) to 1,450 per day, up from 1,250. Cumulatively, the expansion to 1,450 appointments represented a nearly 50 percent increase from May 12, 2023, when CBP processed 1,000 appointments per day. *See* CBP, *CBP One™ Appointments Increased to 1,450 Per Day* (June 30, 2023), <https://www.cbp.gov/newsroom/national-media-release/cbp-one-appointments-increased-1450-day>.

⁴³ OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (OFO Encounters tab).

⁴⁴ USCIS, *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans* (last reviewed/updated Aug. 29, 2024), <https://www.uscis.gov/CHNV>.

individuals to the United States and other countries;⁴⁵ country-specific family reunification parole processes for certain nationals of Colombia, Cuba, Ecuador, El Salvador, Guatemala, Haiti, and Honduras who have qualifying U.S. citizen relatives in the United States;⁴⁶ and temporary nonimmigrant worker visas, which provide employment opportunities for eligible individuals.⁴⁷

Thus, the provisions of the IFR and other measures taken to assist in the IFR's implementation are effective tools in managing levels of irregular migration that, absent key policy interventions like this rule, severely strain the Departments' abilities to safely, effectively, and humanely enforce and administer U.S. immigration laws. The historically high level of encounters that DHS experienced in the months before the IFR's implementation has decreased markedly, and DHS's ability to expeditiously process noncitizens and deliver swift consequences to those who do not establish a legal basis to remain in the United States has therefore improved significantly.

B. Legal Authority

The Secretary and the Attorney General jointly issue this rule pursuant to their shared and respective authorities concerning consideration of claims for asylum, statutory withholding of removal, and protection under regulations implemented pursuant to U.S. obligations under Article 3 of the CAT. The Homeland Security Act of 2002 ("HSA"), Public Law 107–296, 116 Stat. 2135, as amended, created DHS and transferred to the Secretary of Homeland Security many functions related to the administration and enforcement of Federal immigration law while maintaining some functions and authorities with the Attorney General, including some shared concurrently with the Secretary.⁴⁸

The INA, as amended by the HSA, charges the Secretary "with the administration and enforcement of [the INA] and all other laws relating to the immigration and naturalization of aliens," except insofar as those laws assign functions to certain other officers. INA 103(a)(1), 8 U.S.C. 1103(a)(1). The INA grants the Secretary the authority to establish regulations and take other actions that the Secretary deems "necessary for carrying out" the Secretary's authority under the immigration laws. INA 103(a)(3), 8 U.S.C. 1103(a)(3); *see also* 6 U.S.C. 202.

The HSA provides the Attorney General with "such authorities and functions under [the INA] and all other laws relating to the immigration and naturalization of aliens as were [previously] exercised by [EOIR], or by the Attorney General with respect to [EOIR]." INA 103(g)(1), 8 U.S.C. 1103(g)(1); *see also* 6 U.S.C. 521(a). In addition, under the HSA, the Attorney General retains authority to "establish such regulations, . . . issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out" the Attorney General's authorities under the immigration laws. INA 103(g)(2), 8 U.S.C. 1103(g)(2).

Under the HSA, the Attorney General retains authority over the conduct of section 240 removal proceedings. These adjudications are conducted by IJs within DOJ's EOIR. *See* 6 U.S.C. 521(a); INA 103(g)(1), 8 U.S.C. 1103(g)(1); 8 CFR 1240.1. With limited exceptions, IJs adjudicate asylum, statutory withholding of removal, and CAT protection applications filed by noncitizens during the pendency of section 240 removal proceedings, including asylum applications referred by USCIS to the immigration court. INA 101(b)(4), 8 U.S.C. 1101(b)(4); INA 240(a)(1), 8 U.S.C. 1229a(a)(1); INA 241(b)(3), 8 U.S.C. 1231(b)(3); 8 CFR 1208.2(b), 1240.1(a); *see also* *Dhakal v. Sessions*, 895 F.3d 532, 536–37 (7th Cir. 2018) (describing affirmative and defensive asylum processes). The Board of Immigration Appeals ("BIA"), also within DOJ's EOIR, in turn hears appeals from IJ decisions. *See* 8 CFR 1003.1(a)(1), (b)(3); *see also* *Garland v. Ming Dai*, 593 U.S. 357, 366–67 (2021) (describing appeals from IJs to the BIA). And the INA provides that the "determination and ruling by the Attorney General with respect to all questions of law shall be controlling." INA 103(a)(1), 8 U.S.C. 1103(a)(1).

In addition to the separate authorities discussed above, the Attorney General and the Secretary share some authorities. Section 208 of the INA, 8 U.S.C. 1158, authorizes the "Secretary of Homeland Security or the Attorney General" to "grant asylum" to a noncitizen "who has applied for asylum in accordance with the requirements and procedures established by" the Secretary or the Attorney General under section 208 if the Secretary or the Attorney General determines that the noncitizen is a "refugee" within the meaning of section 101(a)(42)(A) of the INA, 8 U.S.C. 1101(a)(42)(A). INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A). Section 208 thereby authorizes the Secretary and the Attorney General to "establish[]" "requirements and procedures" to govern asylum applications. *Id.* The statute further authorizes them to "establish," "by regulation," "additional limitations and conditions, consistent with" section 208, under which a noncitizen "shall be ineligible for asylum." INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C); *see also* INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B) (authorizing the Secretary and the Attorney General to "provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with [the INA]").⁴⁹ The INA also provides the Secretary and the Attorney General authority to publish regulations governing their respective roles regarding apprehension, inspection and admission, detention and removal, withholding of removal, deferral of removal, and release of noncitizens encountered in the interior of the United States or at or between POEs. *See* INA 103(a)(3), (g)(2), 8 U.S.C. 1103(a)(3), (g)(2); *see also, e.g.,* INA 235(b)(1)(B)(iii)(III), (B)(iv), (C), 8 U.S.C. 1225(b)(1)(B)(iii)(III), (B)(iv), (C).

The INA and HSA grant DHS the authority to adjudicate asylum applications and to conduct credible fear interviews, make credible fear determinations in expedited removal proceedings, and establish procedures for further consideration of asylum applications after an individual is found to have a credible fear. INA 103(a)(1), (a)(3), 8 U.S.C. 1103(a)(1), (a)(3); INA 208(b)(1)(A), (d)(1), (d)(5)(B), 8 U.S.C. 1158(b)(1)(A), (d)(1), (d)(5)(B); INA 235(b)(1)(B), 8 U.S.C. 1225(b)(1)(B); *see also* 6 U.S.C. 271(b)(3) (providing for the transfer of adjudication of asylum and

⁴⁵ U.S. Dep't of State, *Safe Mobility Initiative: Helping Those in Need and Reducing Irregular Migration in the Americas*, <https://www.state.gov/safe-mobility-initiative/> (last visited Aug. 23, 2024).

⁴⁶ *See* USCIS, *Family Reunification Parole Processes* (last reviewed/updated Sept. 10, 2024), <https://www.uscis.gov/FRP>.

⁴⁷ *See* USCIS, *Temporary (Nonimmigrant) Workers* (last reviewed/updated July 24, 2024), <https://www.uscis.gov/working-in-the-united-states/temporary-nonimmigrant-workers>.

⁴⁸ The Homeland Security Act of 2002 ("HSA") further provides, "Nothing in this Act, any amendment made by this Act, or in section 103 of the [INA], as amended . . . , shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General." 116 Stat. at 2274 (codified at 6 U.S.C. 522).

⁴⁹ Under the HSA, the references to the "Attorney General" in the INA also encompass the Secretary with respect to statutory authorities vested in the Secretary by the HSA or subsequent legislation, including in relation to immigration proceedings before DHS. 6 U.S.C. 251, 271(b)(3), (5), 557.

refugee applications from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services, now USCIS); 6 U.S.C. 557 (providing that references to any officer from whom functions are transferred under the HSA are to be understood as referring to the Secretary of Homeland Security). Within DHS, AOs conduct credible fear interviews, make credible fear determinations, and determine whether a noncitizen's asylum application should be granted, all of which are subject to review by a supervisory AO. *See* 8 CFR 208.2(a), 208.9, 208.14(b), 208.30(b), (e)(6)(i), (e)(8). The INA grants IJs the authority to review AO negative credible fear determinations. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III).

The United States is a party to the 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (“Refugee Protocol”), which incorporates Articles 2 through 34 of the 1951 Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 (“Refugee Convention”). Article 33.1 of the Refugee Convention generally prohibits parties to the Convention from expelling or returning (“refouling”) “a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” Refugee Convention, 19 U.S.T. at 6276, 189 U.N.T.S. at 176.

Because the Refugee Protocol is not self-executing,⁵⁰ Congress implemented these non-refoulement obligations through the INA, as amended by the Refugee Act of 1980, Public Law 96–212, 94 Stat. 102 (“Refugee Act”). *See* 8 U.S.C. 1253(h) (1952); *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 174–77 (1993) (describing the history of the statutory withholding provision and the Refugee Act amendments). The Supreme Court has long recognized that the United States implements its non-refoulement obligations under Article 33 of the Refugee Convention (via the Refugee Protocol) through the statutory withholding of removal provision in section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3) (“statutory withholding of removal”), which provides that a noncitizen may not be removed to a country where their life or freedom would be threatened on account of one

of the protected grounds listed in Article 33 of the Refugee Convention.⁵¹ *See* INA 241(b)(3), 8 U.S.C. 1231(b)(3); *see also* 8 CFR 208.16, 1208.16. The INA also authorizes the Secretary and the Attorney General to implement statutory withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3). *See* INA 103(a)(1), (3), (g)(1)–(2), 8 U.S.C. 1103(a)(1), (3), (g)(1)–(2).

The Departments also have authority to implement Article 3 of the CAT, which is likewise not self-executing.⁵² The Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”) delegates to the Departments the authority to “prescribe regulations to implement the obligations of the United States under Article 3 of the [CAT], subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.” Public Law 105–277, div. G, sec. 2242(b), 112 Stat. 2681, 2681 (codified at 8 U.S.C. 1231 note). Consistent with FARRA, DHS and DOJ have implemented in the Code of Federal Regulations the United States’ obligations under Article 3 of the CAT. *See, e.g.*, 8 CFR 208.16(c)–208.18, 1208.16(c)–1208.18; Regulations Concerning the Convention Against Torture, 64 FR 8478 (Feb. 19, 1999), amended by 64 FR 13881 (Mar. 23, 1999).

This rule is necessary because, although the Proclamation recognizes that the asylum system has contributed to the border emergency, the Proclamation itself does not and cannot affect noncitizens’ right to apply for asylum, their eligibility for asylum, or asylum procedures. This recognition that section 212(f) does not affect the right to pursue a claim for asylum has been the Executive Branch’s consistent position for four decades.⁵³ That

longstanding understanding follows from the text and structure of the governing statutes. Section 212(f) provides that under certain circumstances, the President may “suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.” INA 212(f), 8 U.S.C. 1182(f). Although this provision—first enacted in 1952—“grants the President broad discretion,” it “operate[s]” only within its “sphere.” *Trump v. Hawaii*, 585 U.S. 667, 683–84, 695 (2018). Section 212 of the INA, 8 U.S.C. 1182 (entitled “Inadmissible aliens”), generally “defines the universe of aliens who are admissible” and “sets the boundaries of admissibility into the United States.” *Id.* at 695. Hence, when section 212(f) authorizes the President to suspend “entry,” it “enabl[es] the President to supplement the other grounds of inadmissibility in the INA,” *id.* at 684 (citing *Abourezk v. Reagan*, 785 F.2d 1043, 1049 n.2 (D.C. Cir. 1986)), and to bar individuals from entry into the United States.

This authority, though broad, does not authorize the President to override the asylum statute.⁵⁴ First enacted in the Refugee Act, the asylum statute today provides that “[a]ny alien who is physically present in the United States or who arrives in the United States[,]

proclamation, but who nonetheless reaches U.S. soil contrary to the President’s determination that the alien should not be in the United States, would remain subject to various procedures under immigration laws[.]” including “expedited-removal proceedings” where they could “raise any claims for protection[.]” *Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims*, 83 FR 55934, 55940 (Nov. 9, 2018). Although Presidents have invoked section 212(f) at least 90 times since 1981, to the Departments’ knowledge, none of those proclamations were understood to affect the right of noncitizens on U.S. soil to apply for, or noncitizens’ statutory eligibility to receive, asylum. Kelsey Y. Santamaria et al., Cong. Rsch. Serv., *Presidential Authority to Suspend Entry of Aliens Under 8 U.S.C. 1182(f)* (updated Feb. 21, 2024). At the same time, nothing in the proclamations or the INA has precluded the Departments from considering as an adverse discretionary criterion that a noncitizen is described in a section 212(f) proclamation.

⁵⁴ The Supreme Court, though it has never squarely addressed this issue, has also never indicated that section 212(f) confers power to affect asylum rights of those present in the United States. *Cf., e.g., Sale*, 509 U.S. at 164 n.13, 174–77, 187–88 (upholding a Coast Guard program of intercepting migrant vessels and returning migrants to their home country, authorized in part by section 212(f), on the basis that statutory rights under the withholding of removal statute did not have “extraterritorial application” to migrants who were not physically present); *Hawaii*, 585 U.S. at 689, 695 (assuming, without deciding, that section 212(f) “does not allow the President to expressly override particular provisions of the INA[.]” while emphasizing the particular “sphere[.]” in which it operates).

⁵⁰ *E.g., Al-Fara v. Gonzales*, 404 F.3d 733, 743 (3d Cir. 2005) (“The 1967 Protocol is not self-executing, nor does it confer any rights beyond those granted by implementing domestic legislation.” (citations omitted)).

⁵¹ *See INS v. Aguirre-Aguirre*, 526 U.S. 415, 426–27 (1999); *see also INS v. Cardoza-Fonseca*, 480 U.S. 421, 440–41 (1987) (distinguishing between Article 33’s non-refoulement prohibition, which aligns with what was then called withholding of deportation, and Article 34’s call to “facilitate the assimilation and naturalization of refugees[.]” which the Court found aligned with the discretionary provision in section 208 of the INA, 8 U.S.C. 1158).

⁵² *Omar v. McHugh*, 646 F.3d 13, 17 (D.C. Cir. 2011) (“This multilateral treaty is non-self-executing and thus does not itself create any rights enforceable in U.S. courts.” (citation omitted)).

⁵³ In 1984, then-Assistant Attorney General for the Office of Legal Counsel Theodore B. Olson advised that section 212(f) did not permit the President to eliminate the asylum rights of noncitizens who had hijacked a plane and, as a condition of the plane’s release, been flown to the United States. And in 2018, the Departments reaffirmed that “[a]n alien whose entry is suspended or restricted under . . . a [section 212(f)]

. . . irrespective of such alien's status, may apply for asylum." INA 208(a)(1), 8 U.S.C. 1158(a)(1). The right to apply for asylum thus turns on whether a noncitizen is "physically present" or has "arrive[d] in the United States."⁵⁵ *Id.* As a result, the power under section 212(f) to suspend "entry" does not authorize the President to override the asylum rights of noncitizens who have already physically entered the United States and who are entitled to an adjudication of eligibility under the applicable statutory and regulatory rules and standards.⁵⁶

⁵⁵ Section 212(f) of the INA, 8 U.S.C. 1182(f), contrasts with 42 U.S.C. 265, which authorizes the Centers for Disease Control and Prevention ("CDC") to temporarily suspend "the right to introduce . . . persons and property" into the United States if such suspension "is required in the interest of the public health." During the COVID-19 pandemic and to prevent the "serious danger of the introduction of [the] disease into the United States," 42 U.S.C. 265, the CDC issued a public health Order invoking section 265 to expel certain noncitizens generally without title 8 protections, including asylum applications. As the final rule implementing section 265 explained, that provision originates in a "broad public health statute" that Congress intended to "operate[] separately and independently of the immigration power" and authorizes the CDC "to temporarily suspend the effect of any law[] . . . by which a person would otherwise have the right to be introduced . . . into the U.S.," *Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right To Introduce and Prohibition of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes*, 85 FR 56424, 56426, 56442 (Sept. 11, 2020), including the immigration laws, *id.* at 56426 (noting that legislative history indicates that section 265's predecessor was intended to suspend immigration if public health required it). The drafting history of section 265 also confirms that Congress conferred authority to prohibit "the introduction of persons" in order to broaden this provision and that this provision subsumed but was not limited to the authority to "suspend immigration[.]" *Br. for Appellants at 41–43, Huisha-Huisha v. Mayorkas*, 27 F.4th 718 (D.C. Cir. 2022) (No. 21–5200); *see Huisha-Huisha*, 27 F.4th at 730–31 (determining plaintiffs not likely to succeed on their challenge to the CDC Order on the ground that it improperly suspended migrants' right to apply for asylum). Section 265 is a public-health authority under the Public Health Service Act. Its grant of authority to allow the CDC to temporarily suspend immigration laws in case of a public health emergency has no relevance to the interpretation of section 212(f), which is in title 8.

⁵⁶ For similar reasons, section 215(a) of the INA, 8 U.S.C. 1185(a), which the Proclamation also invokes, does not authorize the President to impose the condition and limitation on asylum eligibility created by this rule. *Cf. United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 540–47 (1950) (holding that under the precursor to section 215(a)(1) of the INA and the presidential proclamation and regulations issued pursuant to that provision, which during times of national emergency made it unlawful for "any alien to . . . enter or attempt to . . . enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe[.]" the Attorney General could issue regulations governing entry during such an emergency to "deny [certain noncitizens] a hearing . . . in special cases" notwithstanding the ordinary exclusion hearing

This rule, as discussed in the IFR and this preamble, is authorized because Congress has conferred upon the Secretary and the Attorney General express rulemaking power to create new conditions and limitations on asylum eligibility and create certain procedures for adjudicating asylum claims. INA 103(a)(1), (a)(3), (g), 8 U.S.C. 1103(a)(1), (a)(3), (g); INA 208(b)(1)(A), (b)(2)(C), (d)(5)(B), 8 U.S.C. 1158(b)(1)(A), (b)(2)(C), (d)(5)(B); INA 235(b)(1)(B)(iii)(III), (iv), 8 U.S.C. 1225(b)(1)(B)(iii)(III), (iv).

C. Changes From the IFR to Final Rule

The Departments issued the IFR, effective June 5, 2024, adopting provisions at 8 CFR 208.13(g), 208.35, 235.15, 1208.13(g), and 1208.35 that effectuated three key changes to eligibility for asylum and the expedited removal process for noncitizens who are encountered at the southern border during the emergency border circumstances giving rise to the suspension and limitation on entry under the June 3 Proclamation: (1) adding a limitation on asylum eligibility, subject to an exception for exceptionally compelling circumstances, that is considered during credible fear screenings in addition to its application during adjudications on the merits; (2) rather than asking specific questions of every noncitizen encountered and processed for expedited removal, providing general notice regarding the process for seeking asylum, statutory withholding of removal, or CAT protection and referring a noncitizen for a credible fear interview only if the noncitizen manifests a fear of return, expresses an intention to apply for asylum or protection, or expresses a fear of persecution or torture or a fear of return to his or her country or the country of removal; and (3) for those found not to have a credible fear of persecution for asylum purposes because they could not establish a significant possibility that they are not subject to or are exempt from the limitation on asylum eligibility, screening for potential eligibility for statutory withholding of removal and CAT protection under a "reasonable probability" standard.

Following careful consideration of public comments received and the Departments' experiences implementing the IFR's provisions since early June 2024, the Departments have made

provisions governing entry). This does not mean, however, that the President is prohibited from invoking section 215(a) as authority to impose reasonable rules, regulations, and orders on asylum applicants and asylees, such as travel document requirements for re-entry and departure controls.

modifications to the regulatory text adopted in the IFR, as described below. The rationale for the provisions adopted in the IFR and the reasoning provided in the IFR's preamble remain valid, except as distinguished in this regulatory preamble.

1. Changes to the IFR's Thresholds

On September 27, 2024, the President issued a proclamation amending the June 3 Proclamation. *See Presidential Proclamation of September 27, 2024, Amending Proclamation 10773* ("September 27 Proclamation"). Following the issuance of the IFR, the Departments have closely monitored its implementation and results across the southern border. The Departments recommended to the President adjustments to the Proclamation based on their experiences implementing the Proclamation and IFR. Following those recommendations, the President issued the September 27 Proclamation, which amended section 2 of the June 3 Proclamation in two ways. First, section 2(a) of the June 3 Proclamation provided that the suspension and limitation on entry would be discontinued at 12:01 a.m. eastern time on the date that is 14-calendar-days after the Secretary makes a factual determination that there has been a 7-consecutive-calendar-day average of fewer than 1,500 encounters between POEs. As amended by the September 27 Proclamation, the 7-consecutive-calendar-day average must remain below 1,500 encounters between POEs for 28-consecutive-calendar-days before the 14-calendar-day waiting period is triggered.⁵⁷ Second, the September 27 Proclamation deleted section 2(c) of the June 3 Proclamation, which provided that UCs⁵⁸ from non-contiguous countries shall not be included in calculating the number of encounters for purposes of section 2(a) and 2(b) of the June 3 Proclamation.

The Departments are implementing changes in this final rule that parallel those made in the September 27 Proclamation. Specifically, the Departments are revising §§ 208.13(g) and 1208.13(g) to refer to "the Presidential Proclamation of June 3, 2024, as defined in paragraph (h) of this section." Paragraph (h) of each section now defines "Presidential Proclamation of June 3, 2024" as referring to

⁵⁷ As an illustration, for any given day, DHS will calculate the average number of encounters for that day and the prior 6 calendar days *i.e.*, the 7-consecutive-calendar-day average. If that average remains below 1,500 for 28 consecutive calendar days, the 14-day waiting period will begin.

⁵⁸ In this preamble, as in the Proclamation, the terms "unaccompanied children" or "UCs" have the same meaning as the term "unaccompanied alien child[ren]" under 6 U.S.C. 279(g)(2).

“Proclamation 10773 of June 3, 2024, as amended by the Presidential Proclamation of September 27, 2024[]” for the purpose of §§ 208.13(g), 208.35, and 235.15 (in the case of § 208.13(h)) and §§ 1208.13(g) and 1208.35 (in the case of § 1208.13(h)). The Departments are also making conforming changes in §§ 208.35, 235.15, and 1208.35. To ensure that the rule can function even if the September 27 Proclamation were rendered inoperative by court order, and consistent with the September 27 Proclamation, the Departments have also included a severability clause in both §§ 208.13(h) and 1208.13(h).

The Departments believe that shifting to the 28-consecutive-calendar-day requirement for this rule, in parallel with the changes made in the September 27 Proclamation, is necessary to ensure that the rule’s measures discontinue only once there has been a durable and sustained decrease in encounters at the southern border such that the emergency border circumstances have in fact abated. Premature and frequent discontinuations of the rule’s measures, as discussed below, would increase the risk of sizeable and disruptive surges and could undermine the message the Departments intend the rule to send, which is to discourage noncitizens from utilizing irregular migration and the services of smugglers and TCOs to enter the United States. In the IFR, the Departments explained that at 1,500 daily encounters between POEs, “DHS would be able to swiftly deliver a consequence to enough individuals to meaningfully impact migratory decisions and deter unlawful entries.” 89 FR at 48752. The Departments further explained that “[t]he 14-day waiting period prior to a discontinuation provides time for the Departments to complete processing of noncitizens encountered during emergency border circumstances and to confirm that a downward trend in encounters is sustained.” 89 FR at 48749 n.248. The changes made here further both purposes.

Requiring the 7-consecutive-calendar-day average to remain below 1,500 encounters for 28 consecutive calendar days instead of one calendar day will guard against a circumstance in which the threshold for discontinuation is met solely due to a short-term, erratic decrease (such as a short-term holiday downturn⁵⁹ or a decrease due to an

extreme weather event) that does not signal a meaningful reduction in overall migration pressures. Such short-term decreases could force the provisions of the rule to trigger on and off more frequently, causing operational strain while also signaling to migrants that emergency border circumstances are so temporal and episodic that the rule’s measures can be avoided by waiting in Mexico for a short period of time—which could lead to a cycle of surges that significantly disrupt border processing. Moreover, if the Departments had opted for a substantially smaller number of consecutive days, there is a significant risk that the rule would deactivate due to a transient drop due to holidays, weather, or another cause, which can lead to several weeks of uncharacteristically low encounters. At the same time, a 28-day period is still a short enough period to ensure a timely response when an actual, sustained downturn occurs. The Departments have therefore decided that 28 days strikes an appropriate balance.

The Departments’ experience since the IFR’s implementation has informed their view that the limited changes made by this rule are necessary to provide greater assurance that a decrease is likely to be sustained and to guard against costly toggling of the rule when a brief decrease proves not to be sustained. For one thing, this experience highlights the risk that under an approach that looks only to a 7-consecutive-calendar-day average, the rule might discontinue even though a reduction is unlikely to be sustained. Comparing the week ending June 4, 2024, to the week ending August 31, 2024, the Departments observed (as expected) a significant decrease in encounters at the southern border, but Mexico’s government reported a much smaller decrease in encounters within Mexico.⁶⁰ This trend suggests that even

increase of 41 percent in the two weeks between January 5 and January 18. See OHSS analysis of July 2024 Persist Dataset (USBP Encounters—Holiday Dip tab). Although the January rebound was less dramatic in 2023 and 2024, this historic pattern suggests that if average encounters heading into the holidays are even as low as the mid-2000s—well above the intended threshold for discontinuation of emergency circumstances—a short-term decrease could push the 7-day average number of encounters below 1,500 even though the fundamental drivers of high levels of migration have not changed. A metric based on a 7-day average would trigger a discontinuation of emergency circumstances in this scenario, but the likely January rebound means a 28-day metric would not.

⁶⁰ See OHSS analysis of data downloaded from UIP on September 3, 2024, and data provided by the Government of Mexico as of August 31, 2024 (Mexican Enforcement tab) (showing that comparing the week ending June 4, 2024, to the week ending August 31, 2024, total Mexican

though the IFR has affected incentives for migrants to try to cross the U.S. border, migrants continue to travel towards the U.S. border in large numbers, and that even if the 7-consecutive-calendar-day average dropped below 1,500 encounters, that drop likely would not be sustained given the large and growing population of migrants in Mexico who could relatively quickly reach the U.S. border. Moreover, if the IFR’s provisions did deactivate, that large and growing population in Mexico would be a ready target for smugglers and TCOs, increasing the risk of a surge following a discontinuation that does not reflect a truly sustained decrease in migration flows.

Adding this rule’s 28-consecutive-day requirement reduces those concerns by providing for greater stability. With that change, the rule’s provisions will not be discontinued unless there has been a 7-consecutive-calendar-day average of less than 1,500 encounters that is sustained over a period of 28 days. The Departments expect that this change, coupled with the IFR’s 14-day waiting period after the Secretary makes the factual determination necessary to discontinue the suspension and limitation on asylum eligibility, will reduce any perceived incentive to remain close to the U.S.-Mexico border in anticipation of a rapid change in policy. Although the Departments recognize that this change does not eliminate the risk of the rule discontinuing even when regional migration flows remain high, they assess that this rule’s approach better balances this risk against this rule’s purpose as an exceptional measure to address emergency border circumstances that should not apply when encounters have fallen for a sustained period. The Departments further discuss later in this subsection why the rule’s approach appropriately balances those considerations.

The Departments’ concern is also consistent with some of the public comments received on the IFR. For instance, one commenter remarked that some migrants had concluded that they should congregate near the border in preparation for the Proclamation and IFR’s measures to discontinue. Other commenters expressed concern regarding potential misunderstandings about the threshold for discontinuation. Given the reality that a surge remains possible, the Departments seek to avoid a situation where the emergency

enforcement apprehensions dropped 19 percent, while total U.S. Border Patrol (“USBP”) encounters dropped 48 percent).

⁵⁹ Short-term decreases that are not associated with changes in the fundamental drivers of migration have been especially notable during the end-of-year holiday season. From FY 2013 through FY 2024, SWB encounters fell by an average of 42 percent in the two weeks between December 23 and January 5, only to be followed by an average

measures in this rule are discontinued prematurely.

The Departments note that the existing 14-day waiting period before discontinuation once this threshold is reached will continue to help the Departments complete processing of noncitizens encountered during emergency border circumstances and to confirm that a sustained downward trend in encounters has been achieved. *See* 89 FR at 48749 n.248. At the same time, under the prior standard for discontinuation, a rapid shift between discontinuing and reactivating the rule's provisions would remain possible.⁶¹ Such a shift would pose significant operational challenges.

Experience with the IFR suggests that rapidly switching between the rule's provisions discontinuing and reactivating would result in harmful operational burdens. For instance, upon implementation of the Proclamation and IFR, the Departments had to prioritize processing of individuals encountered prior to June 5. Therefore, USBP was unable to immediately maximize processing of the desired number of noncitizens through expedited removals.⁶² USBP took 6 days to ramp up processing for expedited removal under the IFR, from about 60 encounters processed under the rule on June 5 to about 1,500 on June 10, which was the first day that a majority of encounters were processed for expedited removal under the rule.⁶³ Similarly, USBP released an average of about 930 post-June 4 encounters per day between June 5 and June 17, including 8 days of over 1,000 releases, before releases fell to an average of about 510 per day between June 18 and August 31, including an average of about 410 per day in August.⁶⁴ And although ICE repatriated approximately 38,500 single adults and members of family units from June 5 through July 31, 2024, only around

15,400 (40 percent) of them were encountered by USBP after June 4, 2024.⁶⁵ The rest were pre-June 5th USBP SWB encounters and pre- and post-June 5th Office of Field Operations ("OFO") encounters (39 percent) or non-SWB encounters and interior enforcement (21 percent).⁶⁶ USCIS did not complete its first credible fear interview under the IFR until June 9, 2024, and completed an average of about 20 interviews per day for the first two weeks after June 4, compared to an average of roughly 330 per day in the month of August.⁶⁷ EOIR did not conduct its first review of an adverse credible fear determination under the IFR until June 11, 2024, and averaged approximately 9 reviews per day in the first 3 weeks after June 4 compared to an average of about 90 per day in August.⁶⁸ The lag between the rule's activation and the Departments' ability to fully avail themselves of the rule's efficiencies means that when the provisions of the rule discontinue and then reactivate, the Departments' abilities to deliver timely decisions and consequences consistent with the rule's purpose may be unnecessarily impaired.

In addition, although the Departments continue to believe that the burden of shifting between applying this rule and the Circumvention of Lawful Pathways rule is warranted when there has been a sustained reduction in irregular migration, such a burden is much harder to justify in the context of a short-lived reduction in encounters followed by very high levels of encounters. For instance, USCIS required time to provide training, procedures, and guidance to the field before its staff could process credible fear referrals under the IFR. Additionally, EOIR required time to ensure IJs have sufficient docket capacity for any increase in credible fear reviews in response to any increased number of expedited removal cases. EOIR also required time to provide training to IJs who conduct credible fear reviews or who adjudicate cases involving individuals who enter the United States while the Proclamation and rule are in effect. To be sure, subsequent reactivation of the rule's measures will be easier given that the Departments' personnel will have become familiar with the rule's provisions. Nonetheless, reactivation will always require resources and

coordination within the workforce necessitating the need to ensure that discontinuations and reactivations do not occur with undue frequency.⁶⁹

The Departments have also determined that it is appropriate and necessary to include UCs from non-contiguous countries in the encounter calculations relevant to discontinuing and continuing or reactivating the provisions of this rule, in parallel with the changes made in the September 27 Proclamation. Under the June 3 Proclamation and the IFR, the thresholds for such discontinuation and continuation or reactivation did not include encounters of such UCs. But as some commenters on the IFR correctly noted, excluding such encounters results in an unrealistic assessment of the Departments' resources and capabilities. All UCs (regardless of whether they came from a contiguous country or a non-contiguous country) require a greater proportion of resources to process and hold safely in CBP facilities and merit inclusion in the threshold calculations to accurately reflect this reality. For example, UCs in CBP custody generally must be referred to the Department of Health and Human Services' Office of Refugee Resettlement and transferred to its care within 72 hours after determining that the noncitizen is a UC, absent exceptional circumstances. 8 U.S.C. 1232(b)(3); *see also* 6 U.S.C. 279. Because of this, UCs are generally prioritized for processing in CBP facilities. The processing and treatment of UCs also include a number of other unique legal and policy requirements, such as conducting a thorough screening for trafficking and any claims of fear of return.⁷⁰ During their time in custody, UCs receive medical screenings and child-appropriate activities and humanitarian supplies. They also must generally be held separately from unrelated adults, impacting CBP's holding capacity. This means that DHS must expend resources to quickly process, refer, and transfer UCs to the Office of Refugee Resettlement's care. This time-consuming and resource-intensive process must always be followed for

⁶¹ From FY 2013 through FY 2019, there were 2,014 days where the 7-consecutive-calendar-day average of USBP encounters (including encounters of UCs from non-contiguous countries) was below 1,500. OHSS analysis of July 2024 Persist Dataset (Trigger Analysis tab). Of those 2,014 days, 1,813 days (90 percent of the total) were also part of a period of time when the 7-consecutive-calendar-day average had remained below 1,500 for 28 consecutive days. *Id.* Thus, considering hypothetical lower-bound thresholds for the period FY 2013 through FY 2019, switching from the IFR's approach to this rule's approach would have reduced the number of below-threshold days by only 10 percent. *Id.* While it is too early in the post-IFR period to know the precise reduction in volatility it has brought about, requiring the 7-day average to remain below 1,500 encounters for 28 consecutive days may have a broadly similar effect.

⁶² OHSS analysis of data downloaded from UIP on September 3, 2024 (IFR Ramp Up tab).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ OHSS analysis of July 2024 Persist Dataset (IFR Ramp Up tab).

⁶⁶ OHSS analysis of data downloaded from UIP on September 3, 2024 (IFR Ramp Up tab).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ The Departments acknowledge that they have not made a similar change to require 28 consecutive days of a 7-day average of encounters above 2,500 for the rule's provisions to be reactivated. The absence of a similar requirement prior to reactivation reflects the operational exigencies in a circumstance where there has been a 7-consecutive-calendar-day average of more than 2,500 encounters. *See* 89 FR at 48749 n.248. The Departments have determined that those operational exigencies require the rule's provisions to be reactivated and outweigh the resources and coordination that reactivation requires.

⁷⁰ *See* 8 U.S.C. 1232(a)(2)(A)(ii).

UCs encountered at the southern border, regardless of whether emergency border circumstances are present.

In addition, UCs who are nationals or habitual residents of a contiguous country may, in certain circumstances, be permitted to withdraw their applications for admission and voluntarily return to their respective countries of nationality or habitual residence. *See* 8 U.S.C. 1232(a)(2). To determine whether such an outcome is permissible, such UCs are screened for indicators of trafficking or credible evidence that they are at risk of being trafficked upon return, whether they are able to make an independent decision to withdraw their applications, and whether they have any fear of return owing to a credible fear of persecution. *See* 8 U.S.C. 1232(a)(2)(A), (a)(4). However, as a matter of longstanding policy, CBP screens all UCs—even those from non-contiguous countries—in this manner.

Because one of the primary purposes of the rule is to alleviate undue strain on the limited resources of the border security and immigration systems, the Departments found that they must consider the operational burden that results from all UC encounters at the border. That is why UC encounters from all countries, not just from contiguous countries, should be considered by the Secretary when making a factual determination that average daily encounters at the southern border have exceeded or fallen below the requisite thresholds contained in the rule and the Proclamation.

Also informing the Departments' decision to reconsider the IFR's approach is that in recent months, encounters of UCs from non-contiguous countries have grown relative to other encounters. That growth, which adds operational burdens separate from those inherent in the processing of individuals for expedited removal, increases the distorting effects of excluding these UCs. Specifically, the Departments had observed from June 2023 through May 2024 that rates of encounters of UCs from non-contiguous countries had generally accounted for about 6.5 percent of total encounters of all non-contiguous nationalities, and comprised about 15 percent of encounters of nationals of El Salvador, Guatemala, and Honduras.⁷¹ However, while encounters of UCs from non-contiguous countries have decreased in absolute terms since June 2024, such

encounters have not decreased in proportion with the decreases seen among single adults and individuals in family units. Rather, the UCs' share of total non-contiguous encounters has increased to 8.9 percent, including 24 percent of all encounters of nationals of El Salvador, Guatemala, and Honduras.⁷² As a result, the share of total encounters attributable to UCs from non-contiguous countries increased from 4.6 percent from June 2023 to May 2024 to 6.4 percent from June 2024 to August 2024, and the share of all UCs increased from 6.2 percent to 9.4 percent.⁷³

With the two changes just described, the rule will continue to serve the purposes that the IFR pursued from the start. First, the rule continues to target emergency border circumstances exceeding the Departments' capacity to effectively process, detain, and remove, as appropriate, the noncitizens encountered; Section III.D.1 of this preamble describes why the rule's thresholds continue to reflect those circumstances, accounting for the inclusion of UCs from non-contiguous countries.

Second, the rule will continue to deactivate when a decrease in encounters means that those emergency border circumstances no longer exist. Although the change to require that the 7-consecutive-calendar-day average must remain below 1,500 encounters for 28 consecutive days appropriately ensures that the rule does not deactivate prematurely, the rule will continue to deactivate where a decrease is likely to be genuinely sustained. Encounter levels are driven by a variety of factors, many of which are external to the United States and difficult to predict, such as natural disasters, economic changes, and political instability. However, the Departments believe, based on past experience, that the Departments may experience an average daily encounter rate below 1,500 for 28 consecutive days. In fact, from FY 2013 through FY 2019, the 7-consecutive-calendar-day USBP encounter average was below 1,500 encounters for 28 consecutive days 71 percent of the

time.⁷⁴ Even since the IFR was promulgated, encounters have dropped to levels indicating that the threshold in section 2(a) of the Proclamation will be met if migration dynamics change for a sustained period. If, consistent with the June 3 Proclamation, one excludes UCs from non-contiguous countries, the Departments have observed 40 separate days between June 5, 2024, and August 31, 2024, with encounters within 15 percent of 1,500 (*i.e.*, below 1,725).⁷⁵ And if, consistent with the September 27 Proclamation, one includes such UCs, the Departments have observed 15 such days.⁷⁶ These single-day figures suggest that the threshold for discontinuation, as revised, will be met if migration dynamics change for a sustained period.

2. Clarifying Changes to Regulatory Text

This final rule also makes clarifying changes to the regulatory text. In §§ 208.35(b)(2) and 1208.35(b)(2)(iii), the Departments removed from the definition of "reasonable probability" the clause: "that the alien would be persecuted because of his or her race, religion, nationality, membership in a particular social group or political opinion, or tortured, with respect to the designated country or countries of removal." The Departments believe that the remaining definition of "reasonable probability"—"substantially more than a reasonable possibility, but somewhat less than more likely than not"—accurately defines the reasonable probability standard. The deleted clause describes what the AO or IJ is assessing for rather than what the standard means, so it need not be part of the standard's definition.

3. Other Technical Changes

The final rule also implements two technical changes. First, the rule replaces the term "alien" with "noncitizen" where it appears in 8 CFR 1208.35. *See* 8 CFR 1001.1(gg). Second, the rule amends 8 CFR 208.35(a)(2)(i)(C) and 1208.35(a)(2)(i)(C) as well as the provisions of the Circumvention of Lawful Pathways rule at 8 CFR 208.33(a)(3)(i)(C) and 1208.33(a)(3)(i)(C) to update the cross-references to the definition of "victim of a severe form of trafficking in persons." Specifically, the rule replaces the cross-references to 8

⁷¹ *See* OHSS analysis of July 2024 OHSS Persist Dataset and data downloaded from UIP on September 3, 2024 (USBP Encounters by Fam Status tab).

⁷² *See* OHSS analysis of July 2024 OHSS Persist Dataset and data downloaded from UIP on September 3, 2024 (USBP Encounters by Fam Status tab). While the monthly average single adult encounters fell 53 percent between June 2023–May 2024 and June 2024–August 2024, and the monthly average number of encounters of individuals in family units fell 69 percent, encounters of non-contiguous UCs fell just 42 percent, and encounters of UCs overall fell just 37 percent. *Id.*

⁷³ OHSS analysis of July 2024 OHSS Persist Dataset and data downloaded from UIP on September 3, 2024 (USBP Encounters by Fam status tab).

⁷⁴ *See* OHSS analysis of July 2024 OHSS Persist Dataset (Trigger Analysis tab). The Departments rely on data from FY 2013 through FY 2019 and not data from the pandemic period given the unique circumstances dictating migratory trends during the latter time.

⁷⁵ *See* OHSS analysis of data downloaded from UIP on September 3, 2024 (Section 2c Encounters tab).

⁷⁶ *See id.*

CFR 214.11 with cross-references to 8 CFR 214.201. This change recognizes that on August 28, 2024, after the Departments published the IFR, DHS's rule Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, 89 FR 34864 (Apr. 30, 2024),⁷⁷ became effective, which moved the definition of "victim of a severe form of trafficking in persons" from § 214.11 to § 214.201. *See id.* at 34931–32.

D. Rule Provisions

The rule contains the following key provisions:

- The rule applies to certain individuals who seek asylum, statutory withholding of removal, or CAT protection during emergency border circumstances giving rise to this rule and to the suspension and limitation on entry under the June 3 Proclamation, as amended by the September 27 Proclamation. *See* 8 CFR 208.13(g), 208.35, 235.15, 1208.13(g), 1208.35.
- The rule establishes that those who enter across the southern border during emergency border circumstances and who are not described in section 3(b) of the June 3 Proclamation will be ineligible for asylum unless they demonstrate by a preponderance of the evidence that exceptionally compelling circumstances exist, including if the noncitizen demonstrates that they or a member of their family as described in 8 CFR 208.30(c) with whom they are traveling: (1) faced an acute medical emergency; (2) faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or (3) satisfied the definition of "victim of a severe form of trafficking in persons" provided in 8 CFR 214.201. *See* 8 CFR 208.13(g), 208.35(a), 1208.13(g), 1208.35(a). Exceptionally compelling circumstances may also be established for noncitizens in section 240 removal proceedings or the asylum merits interview ("AMI") process under specified conditions to ensure family unity. *See* 8 CFR 208.35(c), 1208.35(c).
- The rule also establishes that, during emergency border circumstances, rather than asking specific questions of every noncitizen encountered and processed for expedited removal to elicit whether the noncitizen may have a fear of persecution or an intent to apply for asylum, for those who enter across the southern border and are not described in section 3(b) of the June 3 Proclamation, DHS will provide general notice regarding the process for seeking

asylum, statutory withholding of removal, and protection under the CAT and will refer a noncitizen for a credible fear interview only if the noncitizen manifests a fear of return, expresses an intention to apply for asylum or protection, or expresses a fear of persecution or torture or a fear of return to their country or the country of removal. *See* 8 CFR 235.15.

- The limitation on asylum eligibility will be applied during credible fear interviews and reviews, and those who enter across the southern border during emergency border circumstances and are not described in section 3(b) of the June 3 Proclamation will receive a negative credible fear determination with respect to their asylum claim unless there is a significant possibility that the noncitizen would ultimately be able to demonstrate by a preponderance of the evidence that the limitation does not apply or that they meet an exception. Such noncitizens will thereafter be screened for a reasonable probability of persecution because of a protected ground or torture, a higher standard than that applied to noncitizens in a similar posture under the Circumvention of Lawful Pathways rule. The "reasonable probability" standard is defined to mean substantially more than a "reasonable possibility" but somewhat less than more likely than not. 8 CFR 208.35(b), 1208.35(b).

E. Severability

As stated in 8 CFR 208.13(h), 208.35(b)(3), 208.35(e), 235.15(g), 1208.13(h), 1208.35(b)(4), and 1208.35(e), the Departments intend for the provisions of the rule to be severable from each other and to be given effect to the maximum extent possible, such that if a court holds that any provision is invalid or unenforceable as to a particular person or circumstance, the other provisions will remain in effect as to any other person or circumstance.⁷⁸ *See* 89 FR at 48757–59. During emergency border circumstances, the Departments' abilities to refer and safely process noncitizens through expedited removal is overwhelmed and prevents the border security and immigration systems from delivering timely decisions and consequences to noncitizens arriving at the southern border. *See* 89 FR at 48714. Consequently, each provision of the rule

is designed to function sensibly without the others, and the Departments intend for them to be severable so that each can operate independently.

For example, the Departments intend for the "reasonable probability" screening standard to be used—even in the absence of a limitation on asylum eligibility, the manifestation of fear procedures, or the Proclamation—to screen for statutory withholding of removal and CAT protection claims if a noncitizen was otherwise unable to establish a credible fear of persecution for asylum purposes due to the Lawful Pathways rebuttable presumption. 8 CFR 208.35(b)(3), 1208.35(b)(4); *see* 8 CFR 208.35(b)(2), (e), 1208.35(b)(2), (e), 235.15(g); 89 FR at 48757. That approach ensures that, during emergency border circumstances, the Departments will continue to be able to benefit from the higher screening standard, even without the limitation on asylum eligibility this rule adopts.

To maintain operational flexibility, DHS similarly intends for manifestation of fear procedures under 8 CFR 235.15 to remain in effect, even without a limitation on asylum eligibility, the reasonable probability standard, or the Proclamation. *See* 8 CFR 235.15(g). As with the reasonable probability standard, allowing for the continued use of the manifestation of fear provisions absent the other portions of the rule or Proclamation ensures that such a tool remains available to the Departments during emergency border circumstances.

Finally, the Departments intend for the limitation on asylum eligibility to be severable from the manifestation of fear procedures, the reasonable probability standard, and the Proclamation because the limitation on asylum eligibility operates independently of those provisions and the Proclamation, and in the absence of those tools would likewise continue to be an important tool for addressing emergency border circumstances at the southern border. *See* 8 CFR 208.35(e), 1208.35(e).

III. Public Comments and Responses

The Departments received 1,067 comments on the IFR, the majority of which expressed opposition. A range of governmental and non-governmental entities, public officials, and private persons submitted comments. The Departments summarize and respond to the public comments below.

A. Legal Authority and Background

1. Legality Concerns

a. General Comments on Domestic Law

Comment: Commenters asserted that the rule violates domestic law and

⁷⁷ *See also* 89 FR 68081 (Aug. 23, 2024) (making corrections).

⁷⁸ Courts have uniformly held that the Administrative Procedure Act ("APA"), 5 U.S.C. 706(2), authorizes courts to sever and set aside "only the offending parts of the rule." *Carlson v. Postal Regulatory Comm'n*, 938 F.3d 337, 351 (D.C. Cir. 2019); *see, e.g., K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 294 (1988).

emphasized that U.S. law allows noncitizens to apply for asylum regardless of where they entered the United States. Some commenters described a fundamental right to apply for asylum for anyone inside the United States and stated that analysis of an asylum application should focus on the applicant's reasonable fear of persecution rather than manner of entry, criticizing what a commenter characterized as a categorical exclusion of those "apprehended between ports of entry from asylum eligibility, barring narrow exceptions." Commenters asserted that entering the United States either through a POE or across the southern border between POEs and asking for asylum constitutes a "lawful pathway." Other commenters stated that the Departments should not and cannot categorically deny asylum for reasons unrelated to the merits of the claim itself. One commenter claimed that the rule effectively closes the border and asserted that closing the border is unconstitutional.

Although some commenters agreed that the rule is within the scope of the Departments' authority and is consistent with the INA, other commenters claimed that the rule would violate the Refugee Act of 1980 and the INA, specifically section 208 of the INA, 8 U.S.C. 1158. Commenters claimed that the rule conflicts with the plain language of these provisions, which permit a noncitizen "physically present in the United States" to apply for asylum. Refugee Act of 1980, 94 Stat. at 105; INA 208(a)(1), 8 U.S.C. 1158(a)(1). Commenters asserted that the INA does not require those seeking protection to apply before entering or at a POE or to schedule an appointment through a website or app in order to make an application, but instead allows applications from anywhere along the border. Commenters also stated that, although Congress gave the Attorney General and the Secretary authority to impose additional limitations on asylum eligibility, such limitations must be consistent with legislation and congressional intent. Along the same lines, a commenter stated that the IFR undermines the separation of powers between Congress and the Executive Branch because it is Congress, not the Executive Branch, that enacts laws, and the IFR rewrites the INA.

Response: The Departments disagree that this rule is inconsistent with U.S. law or congressional intent. The rule does not effectively close the border, require the Departments to turn away migrants at the southern border, or categorically deny all asylum applications filed by noncitizens who

enter the United States across the southern border. Nor does the rule prohibit any noncitizen from seeking protection solely because of the manner or location of their entry into the United States. Rather, the rule is a limitation on asylum eligibility, as authorized by sections 208(b)(2)(C) and (d)(5)(B) of the INA, 8 U.S.C. 1158(b)(2)(C) and (d)(5)(B), and the Departments' other discretionary authorities, e.g., sections 103(a)(3), (g)(2), and 208(b)(1)(A) of the INA, 8 U.S.C. 1103(a)(3), (g)(2), and 1158(b)(1)(A). Given these authorities for the Departments to act, the Departments disagree that the IFR (or the final rule) violates the principle of separation of powers.

The rule's limitation on asylum eligibility does not prevent anyone from pursuing a claim for asylum, nor does it categorically foreclose eligibility for asylum. The Departments have authority to impose limitations on asylum eligibility. As explained above, the INA authorizes the Secretary and the Attorney General to establish, by regulation, "additional limitations and conditions, consistent with" section 208, under which a noncitizen "shall be ineligible for asylum." INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C); *see also* INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B) (authorizing the Secretary and the Attorney General to "provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with [the INA]"). And section 208(b)(1)(A) of the INA, 8 U.S.C. 1158(b)(1)(A), authorizes the Secretary or the Attorney General to grant asylum in their discretion. The INA also provides the Secretary and the Attorney General authority to publish regulations governing their respective roles regarding apprehension, inspection and admission, detention and removal, withholding of removal, deferral of removal, and release of noncitizens encountered in the interior of the United States or at or between POEs. *See* INA 103(a)(3), (g)(2), 235(b)(1)(B)(iii)(III), (B)(iv), (C), 241(a)(3), (d)(2)(B), 8 U.S.C. 1103(a)(3), (g)(2), 1225(b)(1)(B)(iii)(III), (B)(iv), (C), 1231(a)(3), (d)(2)(B); *see also* INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A).

Consistent with these authorities, the Departments have promulgated other limitations or conditions on asylum eligibility, including some provisions that Congress later adopted and codified in the INA. *See* Aliens and Nationality; Refugee and Asylum Procedures, 45 FR 37392, 37392 (June 2, 1980) (imposing firm resettlement bar); Aliens and Nationality; Asylum and Withholding of Deportation Procedures, 55 FR 30674,

30678, 30683 (July 27, 1990) (promulgating 8 CFR 208.14(c) (1990), which provided for mandatory regulatory bars to asylum for those convicted in the United States of a particularly serious crime or those who constitute a danger to the security of the United States while retaining a prior regulatory bar to asylum for noncitizens who were firmly resettled in a third country prior to arriving in the United States); Asylum Procedures, 65 FR 76121, 76134 (Dec. 6, 2000) (providing that an applicant does not have a well-founded fear of persecution if they could avoid persecution by internally relocating); *see also*, e.g., *Afriyie v. Holder*, 613 F.3d 924, 934–36 (9th Cir. 2010) (discussing internal relocation), *overruled on other grounds by Bringas-Rodriguez v. Sessions*, 850 F.3d 1051 (9th Cir. 2017) (en banc); *Yang v. INS*, 79 F.3d 932, 935–36 (9th Cir. 1996) (holding that the regulatory firm resettlement limitation was a permissible exercise of the Attorney General's authority under the asylum statute). Restraining the Departments' authority to promulgate additional limitations and conditions on the ability to establish eligibility for asylum consistent with section 208 of the INA, 8 U.S.C. 1158, would be contrary to Congress' intent that the Departments' only constraint be that additional limitations and conditions are consistent with section 208, 8 U.S.C. 1158, and "this chapter." INA 208(b)(2)(C), (d)(5)(B), 8 U.S.C. 1158(b)(2)(C), (d)(5)(B); *see also* *DHS v. Thuraissigiam*, 591 U.S. 103, 112 (2020) (recognizing that the "theme" of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") "was to protect the Executive's discretion from undue interference by the courts" (alteration and internal quotation marks omitted)); *R-S-C v. Sessions*, 869 F.3d 1176, 1187 (10th Cir. 2017) (reasoning that the "delegation of authority" in section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C), "means that Congress was prepared to accept administrative dilution" of section 208(a)(1) of the INA, 8 U.S.C. 1158(a)(1)); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 444–45 (1987); Circumvention of Lawful Pathways, 88 FR 11704, 11740 (Feb. 23, 2023).

The rule is within the scope of the Departments' authority and does not conflict with the statutory requirement that noncitizens "physically present in the United States" be permitted to apply for asylum because it adds a limitation on asylum eligibility as permitted under section 208(b)(2)(C) and (d)(5)(B) of the INA, 8 U.S.C. 1158(b)(2)(C) and

(d)(5)(B). The limitation is not a sweeping categorical bar that would preclude a grant of asylum solely based on manner of entry, which some courts have found to conflict with section 208(a)(1) of the INA, 8 U.S.C. 1158(a)(1). *E.g., East Bay Sanctuary Covenant v. Biden (East Bay III)*, 993 F.3d 640, 669–70 (9th Cir. 2021) (concluding that a prior regulation that enacted a bar on asylum eligibility for those who entered the United States between designated POEs was “effectively a categorical ban” on migrants based on their method of entering the United States, in conflict with section 208(a)(1) of the INA, 8 U.S.C. 1158(a)(1)).

Under this rule—and contrary to commenter assertions—manner of entry alone is never dispositive. Rather, the rule’s limitation on asylum eligibility does not apply if a noncitizen establishes that exceptionally compelling circumstances exist. *See* 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i). The rule provides that such exceptionally compelling circumstances include where the noncitizen, or a family member with whom they are traveling, faced an acute medical emergency; faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or was a victim of a severe form of trafficking in persons. 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i).

Specifically, the limitation at issue here turns on whether—during the emergency border circumstances described in the Proclamation and this rule—an individual has followed the lawful, safe, and orderly pathways that the United States Government has established, or shown exceptionally compelling circumstances, when it is essential that noncitizens use such pathways to ensure the Government’s ability to manage the border.

Limitations and conditions on asylum eligibility do not need to directly relate to whether a noncitizen satisfies the definition of a “refugee” within the meaning of section 101(a)(42)(A) of the INA, 8 U.S.C. 1101(a)(42)(A), but instead can embrace policy considerations that justify a finding of ineligibility. *See, e.g., Zheng v. Mukasey*, 509 F.3d 869, 871 (8th Cir. 2007) (noting that IIRIRA included several provisions, including the one-year bar, “intended to reduce delays and curb perceived abuses in removal proceedings”); *Ali v. Reno*, 237 F.3d 591, 594 (6th Cir. 2001) (recognizing that asylum law “was never intended to open the United States to refugees who had found shelter in another nation and had begun to build new lives” (internal quotation marks and citation omitted));

Matter of Negusie, 28 I&N Dec. 120, 125 (A.G. 2020) (discussing the persecutor bar, and noting that Congress intended to make “certain forms of immigration relief,” including asylum, “unavailable to persecutors”), *stayed by Matter of Negusie*, 28 I&N Dec. 399, 399 (A.G. 2021); *Singh v. Nelson*, 623 F. Supp. 545, 556 (S.D.N.Y. 1985) (“[A]ttempting to discourage people from entering the United States without permission . . . provides a rational basis for distinguishing among categories” of noncitizens who are not lawfully present.).

In sum, as with other conditions and limitations imposed by section 208(b)(2) of the INA, 8 U.S.C. 1158(b)(2), this rule is grounded in important policy objectives, including providing those with meritorious asylum claims an opportunity to have their claims heard in a timely fashion, preventing an increased flow of migrants arriving at the southern border that will overwhelm the Departments’ ability to provide safe and orderly processing, and reducing the role of exploitative TCOs and smugglers. In seeking to enhance the overall functioning of the immigration system and to improve processing of asylum applications, the Departments are, in the exercise of their authority to promulgate limitations on asylum eligibility and in recognition of the limited resources provided by Congress, electing to implement a limitation on asylum eligibility that places greater weight on manner of entry. This limitation on asylum eligibility is expected to disincentivize irregular migration by those unlikely to establish exceptionally compelling circumstances during times when encounters exceed certain benchmarks and therefore challenge the Departments’ ability to swiftly process single adults and individuals in family units encountered by USBP at the SWB through expedited removal. *See* Section II.A.2 of this preamble for further discussion of the Departments’ experience with the IFR.

Comment: Commenters claim that the rule violates the principles of non-refoulement and nondiscrimination in the Refugee Act and other U.S. laws. Some commenters claimed the rule conflicts with congressional intent to create a uniform procedure for noncitizens applying for asylum regardless of manner of entry.

Response: The Departments disagree that the rule conflicts with U.S. law or congressional intent. The rule does not violate the principles of non-refoulement and nondiscrimination. And the rule does not conflict with what commenters describe as a congressional intent to create a uniform

procedure for noncitizens applying for asylum. *See Cazun v. Att’y Gen. U.S.*, 856 F.3d 249, 258 (3d Cir. 2017). The Departments may create additional substantive limitations and conditions on asylum eligibility—as Congress itself has done, and as Congress expressly authorized the Departments to do. INA 208(b)(2)(A), (b)(2)(C), 8 U.S.C. 1158(b)(2)(A), (b)(2)(C). Moreover, all noncitizens to whom the rule applies are subject to the same procedures for adjudicating their asylum claims as those who are not subject to the rule. The United States has implemented its non-refoulement obligations through section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3) (which is referred to as statutory withholding of removal) and the regulations implementing U.S. obligations under Article 3 of the CAT at 8 CFR 208.16(c), 208.17, 208.18, 1208.16(c), 1208.17, and 1208.18. The INA’s provision in section 208, 8 U.S.C. 1158, for the discretionary granting of asylum instead aligns with Article 34 of the Refugee Convention, which is precatory and does not require any signatory to actually grant asylum to all those who are eligible. *See, e.g., Cardoza-Fonseca*, 480 U.S. at 441.

Comment: Commenters asserted that, under *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987), manner of entry may not be the dispositive factor in deciding whether a noncitizen is eligible for asylum. Similarly, commenters argued that *Matter of Pula* is binding precedent and precludes consideration of manner of entry over all other factors. A commenter claimed that manner of entry can only be considered in determining whether a noncitizen merits asylum as a matter of discretion and not in determining whether the noncitizen is eligible for asylum.

Response: The rule is consistent with historical consideration of manner of entry as a relevant factor in considering whether to grant asylum as a matter of discretion. In *Matter of Pula*, the BIA identified—as relevant factors as to whether a noncitizen warrants the favorable exercise of discretion in granting asylum—the noncitizen’s “circumvention of orderly refugee procedures,” including their “manner of entry or attempted entry”; whether they “passed through any other countries or arrived in the United States directly”; “whether orderly refugee procedures were in fact available to help” in any transit countries; and whether they “made any attempts to seek asylum before coming to the United States.” 19 I&N Dec. at 473–74. The BIA explained that section 208(a) of the INA, 8 U.S.C. 1158(a), required the Attorney General to establish procedures for adjudicating

applications filed by any noncitizen, “irrespective of such alien’s status,” but the BIA did not preclude consideration of the manner of entry in assessing whether to grant asylum. *Id.* at 473. The BIA also stated that while the manner of entry could “be a serious adverse factor, . . . it should not be considered in such a way that the practical effect is to deny relief in virtually all cases.” *Id.* at 473. The BIA cautioned against placing “too much emphasis on the circumvention of orderly refugee procedures” as “the danger of persecution should generally outweigh all but the most egregious of adverse factors.” *Id.* at 473–74.

While the Departments acknowledge that the rule places greater weight on manner of entry under certain emergency circumstances, this decades-old precedent establishes that the Departments can permissibly take into account manner of entry. Both how much weight to place on that factor and whether to do so in weighing asylum eligibility fall well within the broad discretion conferred on the Departments by section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C). *Cf. Lopez v. Davis*, 531 U.S. 230, 243–44 (2001) (government can rely on rulemaking to “resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority” (quoting *Am. Hosp. Ass’n v. NLRB*, 499 U.S. 606, 612 (1991)); *Reno v. Flores*, 507 U.S. 292, 313 (1993) (noting that INS need not “forswear use of reasonable presumptions and generic rules” even where the statute “requires some level of individualized determination” (citations and quotation marks omitted)).

Under this rule, manner of entry, standing alone, is never dispositive. Rather, the limitation at issue here turns on whether—during the emergency border circumstances described in the Proclamation and this rule—an individual has followed the lawful, safe, and orderly pathways that the United States has established when it is essential that noncitizens use such pathways to ensure the United States’ ability to manage the border. And even during these situations, the rule’s limitation on asylum eligibility does not apply if a noncitizen establishes that exceptionally compelling circumstances exist. *See* 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i). The rule provides that such exceptionally compelling circumstances include where the noncitizen, or a family member with whom they are traveling, faced an acute medical emergency; faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or was

a victim of a severe form of trafficking in persons. 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i).

In line with *Matter of Pula*, then, the rule considers factors other than manner of entry. And, like *Matter of Pula*, this rule provides for consideration of manner of entry in assessing eligibility for some asylum seekers in “a way that the practical effect is” not “to deny relief in virtually all cases.” 19 I&N Dec. at 473. Rather, the manner of entry reduces the availability of relief only in limited circumstances—during emergency border circumstances described in the Proclamation and this rule—and only for those unable to establish exceptionally compelling circumstances.

The Departments also recognize that the specific analysis discussed in *Matter of Pula* (considering manner of entry in the discretionary decision of whether to grant asylum) is distinct from how this rule considers manner of entry (as part of provisions governing asylum eligibility). *See* 19 I&N Dec. at 472. The Departments, in exercising their broad discretion to issue regulations adopting additional limitations on asylum eligibility, are not bound to consider manner of entry only as a factor contributing to whether a particular noncitizen warrants a favorable exercise of discretion. While *Matter of Pula* allows manner of entry to be one factor in the consideration of whether a noncitizen merits a grant of asylum as a matter of discretion, it does not purport to restrict the Departments from considering a noncitizen’s manner of entry in assessing eligibility. *Id.* at 473–74.

Moreover, while *Matter of Pula* considered manner of entry for purposes of a discretionary grant whereas the rule considers manner of entry as a limitation on asylum eligibility, adjudicators are not precluded from considering the same facts when evaluating both eligibility and discretion. Indeed, it is possible for a single fact to be relevant to both determinations. *See Kankamalage v. INS*, 335 F.3d 858, 864 (9th Cir. 2003) (concluding that a conviction did not render a noncitizen ineligible for asylum, but stating that the Board was “not prohibited from taking into account Kankamalage’s robbery conviction when it decides whether or not to grant asylum as a matter of discretion”); *Matter of Jean*, 23 I&N Dec. 373, 385 (A.G. 2002) (concluding that even a noncitizen who “qualifies as a ‘refugee’” and whose criminal conviction did “not preclude her eligibility” for asylum could

nevertheless be “manifestly unfit for a discretionary grant of relief”).

The Departments conclude that this rule does not conflict with *Matter of Pula*, which remains the applicable standard for discretionary determinations in the absence of a regulation that otherwise governs the discretionary determination. *See, e.g., Thamotar v. U.S. Att’y Gen.*, 1 F.4th 958, 970–71 (11th Cir. 2021) (observing that discretionary asylum determinations continue to be governed by *Matter of Pula*); *Hussam F. v. Sessions*, 897 F.3d 707, 718 (6th Cir. 2018) (stating that “circumvention [of proper immigration procedures] may be taken into account as a ‘serious adverse factor’” (quoting *Matter of Pula*, 19 I&N Dec. at 473)); *see also Andriasian v. INS*, 180 F.3d 1033, 1043–44 (9th Cir. 1999) (finding that reliance on certain *Matter of Pula* factors was inappropriate once regulations controlling discretionary denials of asylum on the basis of a petitioner’s stay or opportunity to stay in a third country had been promulgated). And the Departments view *Matter of Pula* as providing support for the proposition that it is lawful to consider manner of entry for asylum applicants.

b. Statutory Conditions and Limitations on Asylum Eligibility

Comment: Commenters stated that the rule would be inconsistent with or would otherwise render superfluous the statutory firm-resettlement bar and safe-third-country bar. *See* INA 208(b)(2)(A)(vi), 8 U.S.C. 1158(b)(2)(A)(vi); INA 208(a)(2)(A), 8 U.S.C. 1158(a)(2)(A).

Response: This rule is within the Departments’ broad authority to create new limitations on asylum eligibility, and the Departments disagree that the rule conflicts with any of the exceptions to a noncitizen’s ability to apply for asylum or limitations on a noncitizen’s eligibility for a grant of asylum under section 208(a)(2) or (b)(2) of the INA, 8 U.S.C. 1158(a)(2) or (b)(2).

The INA’s firm-resettlement provision precludes a noncitizen who “was firmly resettled in another country prior to arriving in the United States” from demonstrating eligibility for asylum. INA 208(b)(2)(A)(vi), 8 U.S.C. 1158(b)(2)(A)(vi); *see also* 8 CFR 208.15, 1208.15 (2020).⁷⁹ The INA’s safe-third-

⁷⁹ These regulations were amended by *Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review*, 85 FR 80274 (Dec. 11, 2020), but the amendments were preliminarily enjoined. *See Pangea Legal Servs. v. U.S. Dep’t of Homeland Sec.*, 512 F. Supp. 3d 966, 969 (N.D. Cal. 2021). This order remains in effect,

country provision prohibits a noncitizen from applying for asylum if the noncitizen “may be removed, pursuant to a bilateral or multilateral agreement” to a safe third country in which the noncitizen would not be subject to persecution and “would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection.” INA 208(a)(2)(A), 8 U.S.C. 1158(a)(2)(A).

The rule does not conflict with or otherwise render the firm-resettlement bar or safe-third-country bar superfluous; instead, this rule and the statutory bars apply independently.

First, this rule has a different scope. In contrast to those statutory bars, this limitation on asylum eligibility only applies to those who enter the United States during emergency border circumstances. *See* 8 CFR 208.35(a)(1), 1208.35(a)(1). Additionally, unlike those who are subject to the firm-resettlement or safe-third-country bars, those who are subject to this limitation on asylum eligibility are not categorically barred from applying for asylum or from being eligible for asylum, as application of the rule’s limitation on asylum eligibility will be considered on a case-by-case basis, including to determine if exceptional circumstances apply to overcome this limitation.

The rule also serves a different purpose than those statutory bars. The INA’s firm resettlement and safe-third-country provisions limit asylum eligibility and applications, respectively, for noncitizens who have available sustained protection in another country, and they help protect against forum shopping. *See Rosenberg v. Yee Chien Woo*, 402 U.S. 49, 55–56 (1971) (noting that the concept of firm resettlement is historically rooted in the notion of providing “a haven for the world’s homeless people” while encouraging “other nations to do likewise”); *see also Maharaj v. Gonzales*, 450 F.3d 961, 988–89 (9th Cir. 2006) (en banc) (O’Scannlain, J., concurring in part and dissenting in part) (recognizing that the firm-resettlement provision protects against forum shopping, an issue “that our immigration laws have long sought to avoid”). The limitation on asylum eligibility adopted in this rule, by contrast, seeks to streamline the Departments’ processing of noncitizens while upholding all screening and protection requirements, thereby conserving limited resources during the emergency border circumstances

described in the Proclamation and this rule and allowing for enough resources to continue to process lawful cross-border trade and travel and noncitizens who present in a safe and orderly manner at a POE. The rule is also designed to encourage noncitizens to use lawful, safe, and orderly pathways to the United States during emergency border circumstances or to wait until such circumstances have abated, to the extent possible. Thus, the limitation has a different object and purpose, and it is consistent with those statutory provisions.

Moreover, the INA permits the Attorney General and the Secretary to create new eligibility limitations and does not limit this authority from overlapping with existing statutory conditions. *See R–S–C*, 869 F.3d at 1187 (noting that Congress’s delegation of authority in section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C), “means that Congress was prepared to accept administrative dilution” of the right to seek asylum); *cf. Hawaii*, 585 U.S. at 690–91 (recognizing that the existence of the Visa Waiver Program “did not implicitly foreclose the Executive from imposing tighter restrictions” in “similar” areas).

Indeed, section 208(b)(2)(C) and (d)(5)(B) of the INA, 8 U.S.C. 1158(b)(2)(C) and (d)(5)(B), provide no subject-matter limit other than requiring any regulation be “consistent with” section 208 of the INA, 8 U.S.C. 1158, and the INA generally. *See R–S–C*, 869 F.3d at 1187 n.9. The limitation on asylum eligibility established by this rule is consistent with section 208 of the INA, 8 U.S.C. 1158, as a whole, and the INA generally, and it is consistent with the firm-resettlement and safe-third-country bars in particular.

c. Expedited Removal

Comment: Several commenters claimed that the rule conflicts with the expedited removal process created by Congress in IIRIRA. Commenters noted that the statutory framework provides for preliminary screening of noncitizens in credible fear interviews, where noncitizens may apply for asylum after demonstrating a “significant possibility” that the noncitizen could establish eligibility for asylum. In this regard, one commenter asserted that Congress had intended the “significant possibility” standard to be a “low screening standard,” but that the IFR “would convert the preliminary screening into a full adjudication” of whether the IFR applied and would eliminate the “significant possibility” standard “entirely for all asylum seekers covered[,] . . . forc[ing] them to meet an

even higher ‘reasonable probability’ standard.” Commenters asserted that the rule’s requirement that noncitizens instead show a “reasonable probability” of persecution or torture is in conflict with this statutory framework. Commenters further asserted that the rule effectively creates a new legal framework by which to evaluate asylum claims in conflict with the statutory process. One commenter claimed that the rule unlawfully shuts down the U.S. asylum system.

Response: The Departments disagree that the rule conflicts with the expedited removal process created by Congress. The expedited removal process is applicable to certain noncitizens arriving in the United States (and, in the discretion of the Secretary, certain other designated classes of noncitizens) who are found to be inadmissible under either section 212(a)(6)(C) of the INA, 8 U.S.C. 1182(a)(6)(C), which renders inadmissible noncitizens who make certain material misrepresentations, or section 212(a)(7) of the INA, 8 U.S.C. 1182(a)(7), which renders inadmissible noncitizens who lack documentation required for admission. INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i). Upon being subject to expedited removal, such noncitizens may be “removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution.” *Id.*

Congress created a screening process, known as “credible fear” screening, to identify potentially valid claims for asylum by noncitizens in expedited removal proceedings. *See* INA 235(b)(1)(A)(ii), (B), 8 U.S.C. 1225(b)(1)(A)(ii), (B). But Congress has not provided for such a screening for statutory withholding of removal or CAT protection. In the absence of a statutory process for screening for potential eligibility for statutory withholding of removal and CAT protection, the Departments have also used the credible fear screening process to identify potentially valid claims for such protection. *See generally* 8 CFR 208.30, 1003.42, 1208.30 (providing for screenings for potential eligibility for statutory withholding of removal and CAT protection alongside screening for potential asylum eligibility). If a noncitizen indicates a fear of persecution or torture, a fear of return, or an intention to apply for asylum during the course of the expedited removal process, DHS refers the noncitizen to an AO to determine whether the noncitizen has a credible fear of persecution or torture in the

and thus the 2020 version of these provisions—the version immediately preceding the enjoined amendment—is currently effective.

country of nationality or removal. INA 235(b)(1)(A)(ii), (B), 8 U.S.C. 1225(b)(1)(A)(ii), (B); *see also* 8 CFR 208.30(e)(2), 235.3(b)(4); *id.* 208.13(b)(1)–(2), 1208.13(b)(1)–(2) (defining the grounds for asylum eligibility); *id.* 208.16(b)–(c), 1208.16(b)–(c) (defining the grounds for statutory withholding of removal and CAT protection). A noncitizen has a “credible fear of persecution” if “there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum.” INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v).

Just as the statute is silent on the availability of screening procedures for statutory withholding of removal and CAT protection, it is also silent on the standard applied during such screenings. By regulation, the Departments have applied the “significant possibility” standard to also screen for potential eligibility for statutory withholding of removal and CAT protection, *see* 8 CFR 208.30(e)(2)–(3), 1003.42(d): AOs must determine whether “there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien can establish eligibility . . . for withholding of removal under section 241(b)(3) of the Act,” 8 CFR 208.30(e)(2), and whether the noncitizen “shows that there is a significant possibility that the alien is eligible for withholding of removal or deferral of removal under the Convention Against Torture, pursuant to § 208.16 or § 208.17,” 8 CFR 208.30(e)(3). If the AO determines that the noncitizen does not have a credible fear of persecution or torture in the proposed country of removal, the noncitizen may request that an IJ review that determination. *See* INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III); 8 CFR 208.16(b)–(c), 208.30(g), 208.33(b)(2)(v), 1208.16(b)–(c), 1208.30(g).

To the extent commenters allege that the Departments are not applying the “significant possibility” standard to screen for asylum eligibility—such as for application of the limitation on asylum eligibility—the commenters are mistaken. Under this rule, the AO or IJ determines whether there is a significant possibility that the noncitizen would ultimately be able to demonstrate by a preponderance of the evidence that the limitation does not apply or that they meet the exception

for exceptionally compelling circumstances. The “significant possibility” standard applies by statute, section 235(b)(1)(B)(v) of the INA, 8 U.S.C. 1225(b)(1)(B)(v), and the regulation does not in any way displace that standard, by its terms or otherwise. The Departments did not explicitly include this language in the regulation itself. This is because the provisions regarding credible fear screenings at 8 CFR 208.35(b) and 1208.35(b)(2) generally explain the order of operations—instructing the AO or IJ to consider the limitation first before considering the rest of the asylum claim. In other rules adopting conditions and limitations on asylum eligibility, the Departments have consistently used the regulatory text to explain the order of operations for consideration of the limitations during credible fear screenings without explicitly restating the applicable statutory standard,⁸⁰ while at the same time explaining that the “significant possibility” standard applies in the preamble.⁸¹ Deviating from the Departments’ practice here could wrongly imply that, in other regulations pertaining to the credible fear process, the default standard of proof for AO and IJ determinations is something other than the “significant

⁸⁰ For example, under the Circumvention of Lawful Pathways rule, “[t]he asylum officer shall first determine whether the alien is covered by the presumption . . . and, if so, whether the alien has rebutted the presumption[.]” 8 CFR 208.33(b)(1); *see also* 8 CFR 1208.33(b)(2) (“The immigration judge shall first determine whether the alien is covered by the presumption at 8 CFR 208.33(a)(1) and 1208.33(a)(1) and, if so, whether the alien has rebutted the presumption in accordance with 8 CFR 208.33(a)(3) and 1208.33(a)(3).”); *Asylum Eligibility and Procedure Modifications*, 84 FR 33829, 33843–45 (July 16, 2019) (interim final rule amending and adding provisions at 8 CFR 208.30(e)(5)(ii) through (iii), 1003.42(d)(2) and (3), and 1208.30(g)(1)(i) through (ii), providing the order of operations for applying two now-rescinded bars to asylum eligibility); 88 FR at 31319; *id.* at 31449 (adding amendatory instructions to remove regulatory provisions added to implement the bars to asylum eligibility adopted in two prior rules).

⁸¹ *See, e.g.*, 89 FR at 48755 (explaining that, during the credible fear interview, “the AO will first determine whether there is a significant possibility that the noncitizen is eligible for asylum in light of the [rule’s] limitation on asylum eligibility”); *id.* at 48757–58 (discussing the application of the “significant possibility” standard under the rule during IJ review of a negative credible fear determination); 84 FR at 33837 (“If there is a significant possibility that the alien is not subject to the eligibility bar (and the alien otherwise demonstrates that there is a significant possibility that he or she can establish eligibility for asylum), then the alien will have established a credible fear.”); *Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims*, 83 FR 55934, 55943 (Nov. 9, 2018) (“If there is a significant possibility that the alien is not subject to the eligibility bar (and the alien otherwise demonstrates sufficient facts pertaining to asylum eligibility), then the alien will have established a credible fear.”).

possibility” standard. To avoid that unwanted implication, the Department declines to modify the text of §§ 208.35 and 1208.35 as well. The “reasonable probability” standard does not affect or change the “significant possibility” standard used to screen for asylum eligibility, which, as discussed above, is set by statute and remains in effect for asylum claims in the credible fear process. Accordingly, the Departments disagree with the claim that the use of the “reasonable probability” standard for the purposes of screening for potential eligibility for statutory withholding of removal and CAT protection would eliminate, or in any way affect, the “significant possibility” standard as it applies to screening for asylum eligibility.

The Departments also disagree that the rule’s application of the “reasonable probability” standard to screen for potential eligibility for statutory withholding of removal or CAT protection is inconsistent with the “significant possibility” standard under the expedited removal statute. As the Departments observed previously, “Congress clearly expressed its intent that the ‘significant possibility’ standard be used to screen for asylum eligibility but did not express any clear intent as to which standard should apply to other applications.” 88 FR at 11742. Section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), and FARRA section 2242 are silent as to what screening standards and procedures are to be employed in determining potential eligibility for statutory withholding of removal or CAT protection, and the INA elsewhere confers broad discretionary authority to establish rules and procedures for implementing those provisions. *See, e.g.*, INA 103(a)(3), (g)(2), 8 U.S.C. 1103(a)(3), (g)(2). Accordingly, the Departments have some discretion to articulate the screening standard for claims for statutory withholding of removal and CAT protection. As further discussed in Section III.C.3 of this preamble, the Departments continue to believe that during the emergency border circumstances described in the IFR and this rule, the “reasonable probability” screening standard is more appropriate in light of the ultimate burden of proof for statutory withholding of removal and CAT protection and better captures the population of noncitizens with potentially valid claims for such protection. *See* 89 FR at 48745–47.

Thus, despite the claims of some commentators, the rule does not effectively shut down the U.S. asylum system or deviate from applicable statutory standards. Noncitizens still

may seek asylum and protection in the United States.

d. General Comments on International Law

Comment: Commenters generally asserted that the rule violates international law. A commenter wrote that seeking asylum is a human right guaranteed by international law and the rule unjustly denies people this right. In this regard, a commenter asserted that the use of emergency border circumstances as a justification for promulgating the rule is insufficient to justify violating international law and that the lack of a time frame or sunset provision denies access to migrants seeking asylum and places them at risk of refoulement. Commenters claimed that the rule imposes prohibited penalties on asylum seekers, bars refugees from a path to citizenship, and impermissibly discriminates based on manner of entry, race, and nationality. A commenter stated that regulations that deny access to asylum based on arbitrary factors that do not relate to a person's status as a refugee are inconsistent with the Refugee Convention and that the United States has an obligation under the Convention to provide a "fair and efficient refugee status determination procedure" to individuals in the U.S. asylum process.

Commenters were concerned that the rule violates the United States's non-refoulement obligations under the Refugee Convention (through the Refugee Protocol) and Article 3 of the CAT. For example, commenters predicted many noncitizens would not be able to satisfy the comparatively higher standards of proof for statutory withholding of removal and CAT protection claims and that, in turn, would lead to the refoulement of persons who, if not for the rule's limitation on asylum eligibility, would have been granted asylum. Several of these commenters also asserted that statutory withholding of removal and CAT protection are insufficient to satisfy the United States's non-refoulement obligations because they afford lesser protection than asylum. Commenters expressed apprehension that the rule would result in the turning away of migrants who seek refuge at the southern border.

Another commenter wrote that the rule is consistent with U.S. commitments under the Refugee Protocol and the CAT, reasoning that neither is self-executing and therefore the United States is bound only by its own law implementing these treaties. The commenter acknowledged that the United States implements its non-

refoulement obligations through the withholding of removal statute at section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3). Another commenter, however, asserted that the argument that asylum is discretionary under U.S. law and therefore the rule does not violate the Refugee Protocol is incorrect as a matter of international law, even if true under domestic law, because parties to the Refugee Convention must provide asylum and protection from refoulement to those who meet the definition of "refugee."

Response: This rule is consistent with the United States' international treaty obligations. Three primary documents govern the rights of refugees and corresponding obligations of states in international law: the Refugee Convention; the Refugee Protocol, which incorporates Articles 2 through 34 of the Refugee Convention; and the CAT. 88 FR at 31384. Together, these documents provide a framework for states to provide protection to noncitizens fleeing persecution or torture and establish the principle of non-refoulement, which prohibits states from returning refugees to territories in specific circumstances. *Id.*

These treaties, however, do not prescribe or impose any particular minimum procedures for implementation of non-refoulement obligations. Although the United States is a party to the 1967 Refugee Protocol⁸² and the CAT, these treaties are not directly enforceable in U.S. law. *See INS v. Stevic*, 467 U.S. 407, 428 & n.22 (1984); *Al-Fara v. Gonzales*, 404 F.3d 733, 743 (3d Cir. 2005) ("The 1967 Protocol is not self-executing, nor does it confer any rights beyond those granted by implementing domestic legislation."); *Omar v. McHugh*, 646 F.3d 13, 17 (D.C. Cir. 2011) (explaining that the CAT "is non-self-executing and thus does not itself create any rights enforceable in U.S. courts"). Instead, the United States has implemented its obligations through domestic legislation and implementing regulations. The Refugee Convention's non-refoulement obligation is contained in Article 33.1, which prohibits contracting states from returning a refugee to a territory "where his life or freedom would be threatened" on account of an enumerated ground. 19 U.S.T. at 6276,

189 U.N.T.S. at 176. The United States has implemented the non-refoulement provisions of Article 33.1 of the Refugee Convention through the withholding of removal provisions at section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), rather than through the asylum provisions at section 208 of the INA, 8 U.S.C. 1158. *See Cardoza-Fonseca*, 480 U.S. at 429, 440–41. The CAT's non-refoulement provision is in Article 3, which prohibits the return of a person to a country where there are "substantial grounds for believing" the person will be tortured. S. Treaty Doc. No. 100–20 at 20, 1465 U.N.T.S. 85, 114. The United States has implemented its obligations under Article 3 of the CAT through regulations. *See* FARRA, Public Law 105–277, sec. 2242(b), 112 Stat. 2681–761, 2681–822 (codified at 8 U.S.C. 1231 note); *see also, e.g.*, 8 CFR 208.16(c), 208.17, 208.18, 1208.16(c), 1208.17, 1208.18. The rule does not change or limit ultimate eligibility for statutory withholding of removal or CAT protection. Instead, applicants subject to the rule's limitation on asylum eligibility will be screened for potential eligibility for statutory withholding of removal and CAT protection under a "reasonable probability" standard, which is lower than the ultimate statutory or regulatory standard of proof for those forms of protection.

The rule will limit asylum eligibility for some noncitizens. But, as the Supreme Court has explained, asylum "does not correspond to Article 33 of the Convention, but instead corresponds to Article 34[,]" which provides that contracting countries "shall as far as possible facilitate the assimilation and naturalization of refugees." *Cardoza-Fonseca*, 480 U.S. at 441 (quoting Refugee Convention art. 34, 19 U.S.T. at 6276, 189 U.N.T.S. at 176); *see also* United Nations High Commissioner for Refugees ("UNHCR"), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* 16 para. 25 (2019 ed.) ("[T]he granting of asylum is not dealt with in the 1951 Convention or the 1967 Protocol"). Article 34 "is precatory; it does not require the implementing authority actually to grant asylum to all those who are eligible." *Cardoza-Fonseca*, 480 U.S. at 441. Because the limitation on asylum eligibility does not affect ultimate eligibility for statutory withholding of removal or protection under the CAT regulations, the rule is consistent with U.S. non-refoulement obligations under the Refugee Protocol (incorporating,

⁸² *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 169 n.19 (1993) ("Although the United States is not a signatory to the [1951 Refugee] Convention itself, in 1968 it acceded to the United Nations Protocol Relating to the Status of Refugees, which bound the parties to comply with Articles 2 through 34 of the Convention as to persons who had become refugees because of events taking place after January 1, 1951." (citation omitted)).

among other things, Article 33 of the Refugee Convention) and the CAT. *See R-S-C*, 869 F.3d at 1188 n.11 (explaining that “the Refugee Convention’s nonrefoulement principle—which prohibits the deportation of aliens to countries where the alien will experience persecution—is given full effect by the Attorney General’s withholding-only rule”); *Cazun v. Att’y Gen. U.S.*, 856 F.3d 249, 257 & n.16 (3d Cir. 2017); *Ramirez-Mejia v. Lynch*, 813 F.3d 240, 241 (5th Cir. 2016).

The Departments agree that asylum is an important form of protection and acknowledge that the right to seek asylum has been recognized under the Universal Declaration of Human Rights (“UDHR”), art. 14, G.A. Res. 217A (III), U.N. Doc. A/810 (1948). The UDHR is a nonbinding human rights resolution of the UN General Assembly, and thus it does not impose legal obligations on the United States. *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 734–35 (2004) (“[T]he [UDHR] does not of its own force impose obligations as a matter of international law.”).

Moreover, although the rule creates a limitation on eligibility for asylum, the rule does not bar those seeking asylum from taking part in procedures that protect them from refoulement. Under the rule, all noncitizens processed for expedited removal who manifest a fear of return, express an intention to apply for asylum or protection, or express a fear of persecution or torture or a fear of return to their country or the country of removal are referred for a credible fear interview. Even in those cases where the AO determines that the noncitizen has not established a significant possibility that they could ultimately demonstrate by a preponderance of the evidence that they are not subject to the limitation on asylum eligibility or are excepted from it, the noncitizen may still demonstrate credible fear by showing a reasonable probability of persecution or torture. Similarly, even if found ineligible for asylum by an IJ due to the application of the limitation on asylum eligibility, a noncitizen may still demonstrate eligibility for statutory withholding of removal or CAT protection.

The rule is also consistent with the Refugee Convention and the corresponding obligations under international law, including the specific provisions cited by commenters. The rule does not violate the nondiscrimination requirement in Article 3 of the Refugee Convention. Article 3 prohibits discrimination on the basis of “race, religion or country of origin.” 19 U.S.T. at 6264, 189 U.N.T.S.

at 156. The rule does not discriminate on the basis of any of the protected characteristics described in Article 3. This rule is limited to the southern border because that is the U.S. border where emergency circumstances exist. The Departments acknowledge that this limitation will affect those noncitizens with easier access to the southern border and not those with easier access to other borders of the United States. However, the rule does not treat such noncitizens differently on that basis; the rule applies equally based on the actions of a noncitizen during emergency border circumstances. Specifically, the application of this rule is limited to those who enter the United States across the southern border during emergency border circumstances described in the Proclamation and this rule, are not described in section 3(b) of the Proclamation, and do not establish the existence of exceptionally compelling circumstances. For the same reason, the rule does not violate other antidiscrimination principles described in other international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, arts. 2–5, Dec. 21, 1965, T.I.A.S. No. 94–1120, 660 U.N.T.S. 195, and the International Covenant on Civil and Political Rights, arts. 2–3, Dec. 16, 1966, T.I.A.S. No. 92–908, 999 U.N.T.S. 171.

Similarly, the rule is consistent with Article 31.1 of the Refugee Convention, which prohibits states from “impos[ing] penalties” on refugees based on “illegal entry or presence” if such refugees are “coming directly from a territory where their life or freedom was threatened” and “present themselves without delay to the authorities and show good cause for their illegal entry or presence.” 19 U.S.T. at 6275, 189 U.N.T.S. at 174. As the commentary to the Refugee Convention explains, the term “penalties” in Article 31.1 refers “to administrative or judicial convictions on account of illegal entry or presence, not to expulsion.” UNHCR, *The Refugee Convention, 1951: The Travaux Préparatoires Analyzed with a Commentary by Dr. Paul Weis* 219, <https://www.unhcr.org/us/media/refugee-convention-1951-travaux-preparatoires-analysed-commentary-dr-paul-weis>; *see Cazun*, 856 F.3d at 257 & n.16 (rejecting argument that the reinstatement bar on asylum was a “penalty” within the meaning of Article 31.1). The rule does not change any rules or policies relating to detention or convictions for unlawful entry or presence. The Departments acknowledge that the Ninth Circuit

concluded in *East Bay III*, 993 F.3d at 674, that the bar to asylum at issue in that case violated Article 31.1 of the Refugee Convention because it imposed a “penalty.” As described in the IFR, the rule here does not create a categorical bar to asylum, but instead a limitation on asylum eligibility, and *East Bay III* accordingly does not address the lawfulness of this rule. 89 FR at 48735. Moreover, the Ninth Circuit’s conclusion was erroneous because the denial of discretionary relief is not a penalty within the meaning of Article 31.1. *Id.* at 48736.

Comment: One commenter asserted that the IFR conflicts with the United States Supreme Court’s decisions in *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804), which generally states that ambiguous U.S. statutes should be interpreted to avoid conflicts with international law where possible, and *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436–37 (1987), which explained that “one of Congress’ primary purposes” when passing the Refugee Act of 1980 “was to bring United States refugee law into conformance with the 1967 [Refugee Protocol].”

Response: The Departments disagree with the commenter that the IFR conflicts with *Charming Betsy* or *Cardoza-Fonseca*.⁸³ As explained above, the rule is consistent with the United States’ obligations under international law, specifically the Refugee Convention, the Refugee Protocol, and the CAT. The rule does not change the ultimate eligibility requirements for statutory withholding of removal or CAT protection and is consistent with the United States’ non-refoulement obligations. Moreover, the rule does not prohibit any person from seeking asylum or, more importantly for purposes of U.S. non-refoulement obligations, from seeking or obtaining statutory withholding of removal or CAT protection. All noncitizens processed for expedited removal who manifest a fear of return, express an intention to apply for asylum or protection, or express a fear of persecution or torture or a fear of return to their country or the country of removal are entitled to a credible fear interview. Even in cases in which the AO determines that the noncitizen is subject to the limitation on eligibility for asylum, the noncitizen may still receive a positive credible fear determination by

⁸³ For purposes of this response, the Departments assume *arguendo* that the *Charming Betsy* canon applies with respect to non-self-executing treaties. *See, e.g., Saleh v. Bush*, 848 F.3d 880, 891 n.9 (9th Cir. 2017) (noting that the question remains unsettled).

showing a reasonable probability of persecution or torture. Similarly, after applying for asylum before an IJ, a noncitizen may still demonstrate eligibility for statutory withholding of removal or CAT protection.

e. UNHCR Guidelines on International Protection

Comment: Commenters stated that the rule violates UNHCR statements and guidelines and the right to seek asylum guaranteed by Article 14 of the UDHR. Commenters also claimed that the pre-screening procedures in expedited removal proceedings are contrary to UNHCR guidelines and that adjudicators must instead provide full and individualized assessments of each asylum case.

Response: The Departments agree that asylum is an important protection in international law and acknowledge that the right to seek asylum has been recognized under article 14 of the UDHR. However, the UDHR is a nonbinding human rights resolution of the UN General Assembly and does not impose legal obligations on the United States. *See Sosa*, 542 U.S. at 734–35 (“[T]he [UDHR] does not of its own force impose obligations as a matter of international law.”). Moreover, UNHCR’s interpretations of, or recommendations regarding, the Refugee Convention and Refugee Protocol are “not binding on the Attorney General, the BIA, or United States courts.” *INS v. Aguirre-Aguirre*, 526 U.S. 415, 427 (1999). UNHCR’s Handbook on Procedures and Criteria for Determining Refugee Status “itself disclaims such force, explaining that ‘the determination of refugee status under the 1951 Convention and the 1967 Protocol . . . is incumbent upon the Contracting State in whose territory the refugee finds himself.’” *Id.* at 427–28 (quoting *Cardoza-Fonseca*, 480 U.S. at 439 n.22). Such guidance “may be a useful interpretative aid,” *id.* at 427, but it does not impose obligations on the United States.

Comment: Commenters stated that the rule violates the Refugee Convention because the exclusion grounds in Article 1(F) of the Refugee Convention are exhaustive, yet the rule creates an exclusion ground not found in Article 1(F). The commenters acknowledged that the rule’s limitation on asylum eligibility contains an exception but asserted that the exception is insufficient to comply with the Refugee Convention. Along the same lines, a commenter asserted that such exclusionary grounds should only be considered after an assessment of whether the noncitizen is a “refugee”

and be balanced against the need for protection itself, as is the order of procedures in a full merits hearing.

Response: The Departments disagree with the commenters’ characterization of the limitation on asylum eligibility in this rule as a ground of exclusion like those in Article 1(F) of the Refugee Convention. Article 1(F) of the Refugee Convention provides that the provisions of the Convention “shall not apply to any person with respect to whom there are serious reasons for considering that” they have: (1) “committed a crime against peace, a war crime, or a crime against humanity”; (2) “committed a serious non-political crime outside the country of refuge prior to [their] admission to that country as a refugee”; or (3) “been guilty of acts contrary to the purposes and principles of the United Nations.” As explained above, the United States has implemented the non-refoulement provisions of Article 33.1 of the Refugee Convention through the withholding of removal provisions at section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), rather than through the asylum provisions at section 208 of the INA, 8 U.S.C. 1158. This rule’s limitation on asylum eligibility does not extend to statutory withholding of removal and therefore does not implicate the application of the Convention’s exclusion grounds to the mandatory non-refoulement obligation of Article 33. *See R–S–C*, 869 F.3d at 1188 n.11 (explaining that “the Refugee Convention’s nonrefoulement principle—which prohibits the deportation of aliens to countries where the alien will experience persecution—is given *full effect* by the Attorney General’s withholding-only rule” (emphasis added)). Nor does the rule restrict who qualifies as a refugee. *Cf.* INA 101(a)(42), 8 U.S.C. 1101(a)(42) (excluding those who “ordered, incited, assisted, or otherwise participated in the persecution of any person on account of” a protected ground from the “refugee” definition); UNHCR, *UNHCR Statement on Article 1F of the 1951 Convention* at 1 (July 2009), <https://www.unhcr.org/us/media/unhcr-statement-article-1f-1951-convention> (providing that the exclusion grounds “exclude a person from being a refugee where there are serious reasons for considering that she/he has committed certain heinous acts”).

In any event, the exclusion clauses of Article 1(F) of the Refugee Convention do not limit the United States from adopting additional or different limitations on asylum eligibility. Congress has implemented Article 1(F) in establishing mandatory bars to eligibility for statutory withholding of

removal. *See* INA 241(b)(3)(B), 8 U.S.C. 1231(b)(3)(B). Congress adopted certain parallel bars to asylum eligibility, *see, e.g.,* INA 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A), but also authorized the Departments to establish additional limitations on asylum eligibility, *see* INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). As discussed earlier in this preamble, the asylum statute implements the precatory provision in Article 34 of the Convention, but neither the mandatory nor the precatory provisions of the Convention and Protocol are directly enforceable in U.S. law. *See Stevic*, 467 U.S. at 428 & n.22; *Al-Fara*, 404 F.3d at 743 (“The 1967 Protocol is not self-executing, nor does it confer any rights beyond those granted by implementing domestic legislation.” (citations omitted)). Instead, the United States has implemented its obligations through domestic legislation and implementing regulations, and the Protocol “serves only as a useful guide in determining congressional intent in enacting the Refugee Act.” *Barapind v. Reno*, 225 F.3d 1100, 1107 (9th Cir. 2000) (citations omitted). Thus, the Refugee Protocol does not circumscribe the United States’ prerogative to establish limitations on asylum eligibility that extend beyond the exclusion grounds described in Article 1(F).

f. 2000 Protocol To Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children

Comment: A commenter stated that the rule conflicts with the United States’ obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319 (“Trafficking Protocol”), and the Trafficking Victims Protection Act of 2000 (“TVPA”), 22 U.S.C. 7101 *et seq.*, because the rule will not prevent human trafficking and will instead drive trafficking networks further underground and make people more vulnerable to exploitation. The commenter stated that the reality of human movement and escape from harm will drive people to take other routes and reported that they had handled cases involving individuals who were mistreated after being forced to take on large debts to pay smuggling networks to seek safety in the United States. The commenter also claimed the rule will exacerbate violent crime, which increases asylum seekers’ vulnerabilities to trafficking.

Response: The Departments disagree that the rule conflicts with U.S.

obligations under the Trafficking Protocol or the TVPA. At the outset, the Departments note that the Trafficking Protocol is separate from the Refugee Convention and Refugee Protocol; the Trafficking Protocol explicitly disclaims any impact upon those agreements or on the non-refoulement principle they contain. *See* Trafficking Protocol art. 14(1) (“Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including . . . , in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.”).

In addition, the rule is consistent with the Trafficking Protocol and TVPA. Nothing in the IFR or the rule is implicated by or conflicts with the provisions of the Trafficking Protocol, none of which relate to limitations on asylum eligibility. Moreover, the IFR and this rule remain in line with the purpose of the Trafficking Protocol in protecting and assisting the victims of human trafficking,⁸⁴ as they specify that any person who can demonstrate by a preponderance of the evidence that they are a “victim of a severe form of trafficking in persons” as defined in 8 CFR 214.201 will thereby show exceptionally compelling circumstances, and will therefore not be subject to the rule’s limitation on asylum eligibility. Similarly, the IFR and this rule are entirely consistent with the TVPA, which provides immigration relief to certain victims of a severe form of trafficking in persons who assist law enforcement (or meet certain exceptions), Public Law 106–386, sec. 107(e), 114 Stat. 1464, 1477, but does not otherwise implicate immigration authorities under title 8.

Regarding the commenter’s concerns about smuggling and trafficking, the Departments believe the most helpful approach to prevent migrants from falling victim to smugglers and traffickers is to both discourage attempts to enter the United States irregularly and, ultimately, to increase the availability of lawful pathways for migration.

This rule is expected to continue to reduce irregular migration, which benefits human smuggling and trafficking organizations. The rule is also expected to reduce human trafficking and smuggling by reducing overall flows of migrants, thereby allowing the Departments to better manage their limited resources while

delivering consequences more swiftly through expedited removal for those without a legal basis to remain. *Id.* at 48762, 48766–67.

Moreover, CBP immigration officers (both USBP agents and CBP officers) have extensive experience interviewing and observing individuals. *Id.* at 48744. They are trained to identify potential trafficking victims or victims of crimes and to take appropriate follow up action. *Id.* The commenter’s prediction that the rule may increase asylum seekers’ vulnerabilities to trafficking is speculative and ignores CBP immigration officers’ training and experience in combating and preventing human trafficking. Additionally, without this rule, incentives for irregular migration would likely increase, which would likely exacerbate the very vulnerabilities about which the commenter expressed concern, including by driving more migrants into the hands of human traffickers promising a pathway to the United States. *See id.* at 48714–15.

Regarding the commenter’s concerns about the safety of noncitizens attempting to enter the United States, one cause of recent surges in irregular migration is smugglers and migrants’ growing understanding that DHS’s capacity to impose consequences at the border is limited by the lack of resources and tools that Congress has made available. *Id.* at 48714. The Departments assess that the IFR has significantly increased the ability to deliver timely decisions and consequences, combating contrary messaging and perceptions. *See* Section II.A.2 of this preamble; *see also* 89 FR at 48746. Additional discussion of the rule’s incentive effects is found at Sections III.A.2 and III.B.2 of this preamble.

2. Justification and Statements on Need for the Rule

a. Rule Is Unjustified, Unsubstantiated, or Arbitrary

Comment: Several commenters argued that the Departments’ reliance on the success of the Circumvention of Lawful Pathways rule to justify the IFR is erroneous because the evidence regarding the high levels of encounters at the border does not support implementing such “extreme” measures as those contained in the IFR. One commenter stated that the Departments cannot argue that the Circumvention of Lawful Pathways rule has been successful at alleviating the stress on the border and immigration systems while at the same time arguing that the measures in the IFR are needed to

address the surge in high levels of migration at the southern border. Another commenter argued that (1) the increase in encounters prior to the end of the Title 42 public health Order does not necessarily mean that encounters would have remained high after the Title 42 public health Order ended, and (2) it is implausible that the Circumvention of Lawful Pathways rule led to higher encounters prior to its implementation and lower encounters after its implementation, as most migrants did not know what the Circumvention of Lawful Pathways rule was before it was implemented. Thus, the commenter claimed, it is more likely that the end of the Title 42 public health Order was the reason for higher encounters prior to its end and lower encounters after its end. The commenter concluded that, as there is insufficient evidence to support the asserted success of the Circumvention of Lawful Pathways rule, a fundamental justification of the IFR, it is not justifiable to institute more stringent processes under the IFR.

Another commenter similarly took issue with the effectiveness of the Circumvention of Lawful Pathways rule, stating that it is well understood that the Title 42 public health Order drove border crossings to record highs, and the end of the Title 42 public health Order would therefore have led to a substantial decrease in border crossings without further policy changes. However, the commenter said the Departments claimed, without any evidence, that crossing levels under the Title 42 public health Order were somehow predictive of crossing levels after the Title 42 public health Order ended; the commenter said this assertion is contrary to the record.

Response: The Departments disagree with commenters’ claim that there is not enough evidence demonstrating the Circumvention of Lawful Pathways rule’s impact on encounters at the SWB. In the first month following the implementation of the Circumvention of Lawful Pathways rule, encounters between POEs along the SWB decreased by 69 percent compared to their peak just before the end of the Title 42 public health Order.⁸⁵ The Departments believe that overall encounters would not have decreased after the end of the Title 42 public health Order absent their implementation of policy changes, including the Circumvention of Lawful Pathways rule, to address the level of irregular migration. The Departments

⁸⁴ Trafficking Protocol art. 2.b, 2237 U.N.T.S. at 344.

⁸⁵ *See* Decl. of Blas Nuñez-Neto ¶ 13, *E. Bay Sanctuary Covenant v. Biden*, No. 18-cv-6810 (N.D. Cal. June 16, 2023) (Dkt. 176–2).

agree with commenters that the Title 42 public health Order increased repeat crossing attempts, but as noted in the Circumvention of Lawful Pathways rule, repeat crossings were a contributing factor, but not the only reason, for the increase in overall encounters: for example, unique encounters with nationals of countries outside of Mexico and Northern Central America were also rising also increased in each of FYs 2022–2024, as compared with the pre-pandemic period.⁸⁶ In addition to the overall increase in encounters and unique encounters, several other factors caused the Departments to project a spike in average daily encounters in the run-up to the end of the Title 42 public health Order, including: (1) the prospect that DHS would no longer have a means to promptly expel migrants without a legal basis to stay in the United States following the termination of the Title 42 public health Order; (2) the presence of several large diaspora populations in Mexico and elsewhere in the hemisphere; (3) the unprecedented recent growth in migration from countries of origin not previously typically encountered; (4) the already large number of migrants in proximity to the SWB; and (5) the general uncertainty surrounding the expected impact of the termination of the Title 42 public health Order. *See* 89 FR at 48723; *see also* 88 FR at 31316. Consistent with their projections, the Departments planned for, and briefly observed, a very significant spike in average daily encounters. *See* 89 FR at 48723. Had these levels of migration persisted without the incentives put in place by the Circumvention of Lawful Pathways rule, encounters may have exceeded even the very high levels of irregular migration that the Departments observed under that rule. *See id.* at 48723–24. The Departments believe the Circumvention of Lawful Pathways rule mitigated the overall impact on the border security and immigration systems that would have been caused by an expected surge following the end of processing under the Title 42 public health Order. This is evidenced by the sharp initial drop CBP saw in overall encounters at the SWB in the weeks following the expiration of the Title 42 public health Order and when the Circumvention of Lawful Pathways rule

went into effect.⁸⁷ Instead of seeing a surge of migrants arriving at the border following the end of the Title 42 public health Order, there was a precipitous drop that lasted through June 2023.⁸⁸ At about the same time DHS assessed, and public reporting confirmed, that DHS messaging about the Circumvention of Lawful Pathways rule and associated measures were effective in dissuading potential migrants from attempting to cross the U.S. border due to the disincentives created by that rule.⁸⁹

The Departments recognize that while the Circumvention of Lawful Pathways rule is a valuable tool available to the Departments to reduce irregular migration, it is not, by itself, able to mitigate all the factors influencing migration trends. Despite the success of the Circumvention of Lawful Pathways rule and complementary measures, for much of the immediate post-pandemic period until issuance of the IFR, border encounters remained higher than the Departments' abilities to consistently deliver timely decisions and consequences.⁹⁰ Therefore, even if the

⁸⁷ Average daily CBP SWB encounters fell 68 percent from their May 12, 2023, level in the first 11 days after the CLP rule went into effect and remained at similar low levels throughout May and June 2024. OHSS analysis of July 2024 OHSS Persist Dataset (Encounters FY2000–2024 tab).

⁸⁸ *Id.* In July 2023, total monthly CBP SWB encounters remained below 200,000. While total encounters increased from August 2023 through December 2023, the same increase occurred between August 2022 and December 2022 while the Title 42 public health Order was still in place, suggesting that these surges are more consistent with seasonal migration trends than changes in U.S. immigration policy cannot unilaterally mitigate. *Id.*

⁸⁹ *See* Mary Beth Sheridan, Reyes Mata III, Maria Sacchetti & Nick Miroff, *End of Title 42 Pandemic Border Policy Brings Reset, But No Sudden Rush*, Wash. Post (May 12, 2023), <https://www.washingtonpost.com/nation/2023/05/12/title-42-pandemic-ends-border-migrants/>; *see also* Valerie Gonzalez, *Migrants Rush Across U.S. Border in Final Hours Before Title 42 Asylum Restrictions are Lifted*, PBS (May 11, 2023), <https://www.pbs.org/newshour/politics/migrants-rush-across-u-s-border-in-final-hours-before-title-42-asylum-restrictions-are-lifted>; Decl. of Blas Nuñez-Neto ¶ 22, *E. Bay Sanctuary Covenant v. Biden*, No. 18-cv-6810 (N.D. Cal. June 16, 2023) (Dkt. 176–2); *Testimony of Blas Nuñez-Neto Before U.S. House of Representatives Committee on Homeland Security Subcommittee on Border Security and Enforcement on "Examining DHS' Failure to Prepare for the Termination of Title 42"* (June 6, 2023), <https://www.congress.gov/118/meeting/house/115908/witnesses/HHRG-118-HM11-Wstate-Nuez-NetoB-20230606.pdf>.

⁹⁰ Total daily SWB encounters averaged about 5,700/day in April and May 2024 and USBP SWB encounters averaged about 4,100/day, compared to averages of 1,600 and 1,300/day, respectively, in the pre-Pandemic period (OHSS analysis of July 2024 Persist Dataset (Encounters FY2000–2024 tab). In late 2023, while the Title 42 public health Order was in place, total encounters at the SWB reached all-time highs. OHSS's analysis of July 2024 Persist Dataset (Encounters FY2000–2024 tab) shows that total SWB encounters reached over 242,000 in November 2023 and over 301,000 in December

evidence supporting the Circumvention of Lawful Pathways rule's success was inconclusive (which the Departments do not believe), the Departments would have adopted the IFR in response to the high number of migrants subsequently arriving at the southern border, overwhelming the Departments' resources and preventing them from delivering timely decisions and consequences to those who lack a lawful basis to remain.

The rule is a tailored approach designed to substantially improve the Departments' abilities to process noncitizens more expeditiously and deliver timely decisions and consequences to most noncitizens who cross between POEs into the United States during emergency border circumstances. As discussed in Section II.A.2 of this preamble, the IFR is working as intended. DHS is placing into expedited removal the majority of single adults and individuals in family units encountered by USBP at the SWB, the rule has reduced the percentage of noncitizens encountered at the SWB who are released, and DHS is more quickly removing a greater percentage of those without a legal basis to remain in the United States than during the immediate post-pandemic period, which in turn discourages additional crossings.⁹¹ Since promulgating the IFR,

2023. Total SWB encounters for the month of May 2023 were approximately 207,000. This was the month the Title 42 public health Order ended and when the Circumvention of Lawful Pathways rule went into effect. Total SWB encounters for the following month (June 2023) dropped precipitously to 145,000 encounters, but total SWB encounters climbed back to 233,000 in August 2023 and remained at highly elevated levels through December 2023.

⁹¹ OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP August 6, 2024, for encounters since May 1, 2024 (Summary Statistics tab). For encounters under the IFR through July 31, 2024, 34 percent of bookouts of single adults and individuals in family unit were releases, compared to 64 percent in the immediate post-pandemic period. Thirty percent of bookouts from CBP custody were repatriations, up from 16 percent during the immediate post-pandemic period. Overall, DHS repatriated an average of approximately 1,370 noncitizens encountered at the SWB per day during the first two months of enforcement under the IFR, up from approximately 1,360 in the immediate post-pandemic period. *Id.* This marginal increase understates the actual impact of the IFR, however, given the sharp drop in encounters: repatriations of noncitizens encountered at the SWB as a share of SWB encounters were equivalent to 26 percent in the immediate post-pandemic period compared to 62 percent under the IFR—a rate that is also slightly higher than the pandemic period (58 percent, only 5 percent of which were title 8 repatriations) and the pre-pandemic period (61 percent, at a time of much lower encounters and when Mexicans and Northern Central Americans accounted for over 90 percent of USBP encounters). *Id.* For public reporting suggesting that migrants are aware of the IFR and that it has discouraged attempts to cross

⁸⁶ Unique USBP SWB encounters of nationals of countries other than Mexico and Northern Central America were more than 30 times higher in each of FY 2022–FY 2024 (through May 2024) than in the pre-pandemic period. OHSS analysis of July 2024 Persist Dataset (USBP Encounters by Citizenship tab).

USBP has placed 59 percent of noncitizen single adults and individuals in family units encountered at the SWB into expedited removal proceedings, compared to 18 percent of such noncitizens during the immediate post-pandemic period following the end of the Title 42 public health Order,⁹² and 41 percent in the pre-pandemic period.⁹³

While more noncitizens without a legal basis to remain in the United States were removed under the Circumvention of Lawful Pathways rule than in the pre-pandemic period, the Departments recognize that the volume of noncitizens arriving at the SWB remained beyond the Departments' capacity to timely process given the resources provided by Congress.⁹⁴ As explained in the IFR's preamble, once the Departments resumed widespread processing under their title 8 authorities, it became clear that, even with the Circumvention of Lawful Pathways rule's expanded measures to impose consequences along the SWB, substantial migration throughout the hemisphere, combined with inadequate resources and tools to keep pace, limited DHS's ability to meaningfully address the historic levels of encounters at the southern border. *See* 89 FR at 48713.

The Departments did not and have not represented that the Circumvention of Lawful Pathways Rule would singlehandedly resolve migratory pressures in the region; the Departments

only represent that it would reduce the number of daily encounters at the SWB that, absent intervention, were predicted to materialize in a post-Title 42 public health Order surge. The pre-IFR status quo of the broken immigration and asylum systems had become a driver for irregular migration throughout the region and an increasingly lucrative source of income for dangerous TCOs. *See* 89 FR at 48714. Without adequate countermeasures, those TCOs will continue to grow in strength, likely resulting in even more smuggling operations and undermining democratic governance in the countries where they operate. *See id.* All of these factors, taken together, pose significant threats to the safety and security of migrants exploited into making the dangerous journey to the SWB and the U.S. communities through which many such migrants transit. *See id.* at 48715.

Moreover, the Departments do not expect the Circumvention of Lawful Pathways rule or this rule to solve every migration problem in the region. Its provisions cannot account for every factor impacting the unprecedented level of migration occurring in the Western Hemisphere, which is why the Departments have instituted complementary measures such as creating lawful, safe, and orderly pathways. Thus far, as discussed in Section II.A of this preamble, this rule has demonstrated that it helps meet its goal of allowing the Departments to deliver timely decisions and consequences during emergency border circumstances.

Comment: Several commenters argued that the rule's characterization of the situation at the border as an "emergency" is arbitrary. Commenters took issue with the rule's use of the daily encounter thresholds to identify the existence of emergency border circumstances. One commenter argued that the circumstances that give rise to "emergency border circumstances" and so trigger the provisions of the rule have been met for quite some time and are not a uniquely emergent circumstance but a reflection of an increase in migration globally. Another claimed that rather than starting with an assessment of need, looking at the number of asylum seekers and the capacities of other countries in the region, the Departments began with the current level and allocation of resources in the United States and "work[ed] backwards from there."

Commenters also argued that the rule is arbitrary because it invokes emergency authority while simultaneously asserting that border crossings are down. One commenter

argued that the existence of this emergency is undercut by an almost 50 percent drop in unauthorized border crossings since December 2023, a period during which the Departments' threshold has nonetheless been met. Citing to a statement in Section III.B.2 of the IFR's preamble, a commenter stated the Departments "concede" that the rule was based on a fear of a future emergency rather than a current one.

Finally, one commenter wrote that if a unilateral declaration of an emergency is all that is required for a Federal agency to violate statutes and court decisions, then the Executive Branch could call everything an "emergency." The commenter claimed that the IFR's limitation on asylum eligibility violates section 208(a)(1) of the INA, 8 U.S.C. 1158(a)(1), and is indistinguishable from prior regulations that imposed limitations on asylum eligibility that some courts have held unlawful. The commenter also claimed that the rule violates section 235 of the INA, 8 U.S.C. 1225, because it conditions a noncitizen's access to a credible fear interview on the ability to obtain a CBP One appointment. The commenter argued that labeling the situation at the southern border an emergency does not allow the Departments to disregard these statutes and court decisions.

Response: The Departments disagree that the numerical encounter thresholds are arbitrary and do not reflect the existence of "emergency" circumstances at the southern border. As explained in the IFR, emergency border circumstances exist when "encounters at the southern border exceed DHS's capacity to deliver timely consequences to most individuals who cross irregularly into the United States and cannot establish a legal basis to remain in the United States." 89 FR at 48711. Thus, an emergency border circumstance is a function of high levels of encounters combined with resource constraints that substantially limit DHS's ability to place eligible noncitizens into expedited removal, the primary consequence-delivery mechanism Congress has made available to the Departments for managing border encounters under title 8. *Id.* at 48714. When southern border encounters exceed DHS's ability to process noncitizens for expedited removal, DHS generally must release those noncitizens pending section 240 removal proceedings, a process that can take several years to conclude. *Id.* The comparatively abbreviated timeline of the expedited removal process serves as a powerful disincentive against the irregular migration of noncitizens without strong claims for asylum, and

into the United States irregularly, see Mariana Martínez Barbra & Caterina Morbiato, *US Border Policy Spurred Migrant Camps Hundreds of Miles Away in Mexico's Capital*, Associated Press, Sept. 1, 2024, <https://apnews.com/article/mexico-migrants-asylum-cbp-app-camps-22b49fabf6e4d7d25d2873d0637544fe>.

⁹² OHSS analysis of July 2024 OHSS Persist Dataset and data downloaded from UIP on September 3, 2024. (Summary Statistics tab).

⁹³ *Id.*

⁹⁴ OHSS analysis of July 2024 OHSS Persist Dataset (Immediate Post-Pandemic Details tab). Although sustained high encounter rates outstripped the Departments' abilities—based on available resources—to process noncitizens through expedited removal in significant numbers in the immediate post-pandemic period, between May 12, 2023, and June 4, 2024, CBP placed into expedited removal an average of about 920 individuals encountered between POEs each day on average, and USCIS conducted more than 206,000 credible fear interviews, a record number. *Id.* Between May 12, 2023, and June 4, 2024, DHS removed or returned more than 796,000 noncitizens who did not have a legal basis to remain in the United States, the vast majority of whom crossed the SWB. *Id.* USBP encounters at the SWB decreased by 16 percent compared to the previous 12 months, to an average of 5,100 per day for the period from May 12, 2023, to June 4, 2024, *id.*, and border encounters remained below the levels projected to occur in the absence of the Circumvention of Lawful Pathways rule and complementary measures. April 2023 OHSS Encounter Projection.

this disincentive is diminished when noncitizens are placed into section 240 removal proceedings, which may take several years to conclude.

Given the resources made available by Congress, the Departments determined that the daily encounter thresholds described in the June 3 Proclamation and this rule are a reasonable proxy for when such emergency border circumstances exist. *See* 89 FR at 48749–54. Specifically, when daily encounters average less than 1,500 for a sustained period, DHS anticipates that it “would be able to swiftly deliver a consequence to enough individuals to meaningfully impact migratory decisions and deter unlawful entries.” *Id.* at 48752. In contrast, when daily encounters exceed 2,500, “DHS’s ability to impose such consequences is significantly lower and decreases rapidly as encounters increase beyond that level.” *Id.* For example, as noted in the IFR, during the FY 2013 to FY 2019 pre-pandemic period, USBP encounters only exceeded 1,500 per day for a sustained period from October 2018 to August 2019. *Id.* at 48753. During that 7-year period, an average of 210 individuals were released each day in months in which daily encounters were between 1,500 and 2,500, while approximately 1,300 individuals were released each day in months in which daily encounters exceeded 2,500, with CBP releasing as many as 46 percent of the individuals it processed pending section 240 removal proceedings. *Id.* (footnote omitted). And as discussed below in Section III.D.1 of this preamble, the Departments’ demonstrated capacity during the immediate post-pandemic period confirms that these thresholds reflect current operational capacity. If Congress provides significant additional resources, the Departments may then reevaluate whether the current thresholds still serve as a reasonable proxy for when such emergency border circumstances exist.

Relatedly, the Departments disagree with commenters’ suggestion that it was arbitrary to rely on the United States’ own processing capacity and challenges as a justification for the rule without any consideration of the capacities of other countries in the region to address heightened migration. The Departments acknowledge that since 2021, due to political and economic conditions globally, there have been substantial levels of migration throughout the Western Hemisphere, which have severely strained the capacities of immigration systems in countries throughout the region. *See* 89 FR at 48722. The United States Government

has been working to address the root causes of migration and to abate adverse effects from unprecedented levels of irregular migration,⁹⁵ including by working closely with partner countries across the Western Hemisphere.⁹⁶ The Departments do not believe it would be appropriate to defer this rulemaking until foreign partners have developed enough capacity to absorb all irregular migrants, or to measure whether an emergency exists at the southern border by reference to whether such migrants have what commenters would view as sufficient opportunities to resettle elsewhere. Instead, the rule is part of the United States’ efforts to act as a regional leader in responding to increased migratory flows. *See* Section III.E.1.a of this preamble. Moreover, the rule is structured to complement those regional efforts, as success in reducing push factors and in promoting alternatives to migration to the United States would contribute to decreasing encounter levels and alleviating emergency border circumstances. The rule permissibly responds to existing challenges at our southern border by providing effective safeguards that improve the Departments’ ability to enforce the United States’ immigration laws during periods of heightened migration by creating an incentive for noncitizens to use the lawful, safe, and orderly pathways that the Departments have put in place while simultaneously imposing swift consequences on those who do not have a legal basis to remain in the United States. *See* Section II.A.2 of this preamble. And this ability to impose consequences quickly, combined with a historic expansion of lawful pathways, is a critical element of the United States’ ongoing diplomatic approach to migration management with partners in the region. *See id.* at 48759–60.

The Departments further note that the United States Government is working with regional partners in a concerted and historic effort via the groundbreaking Los Angeles Declaration on Migration and Protection to address the shared challenge of irregular migration that has strained the resources

of countries throughout the region.⁹⁷ The United States has taken steps to address migratory flows throughout the region by encouraging foreign partners to increase their enforcement efforts, integrate migrants residing in their territories, expand lawful pathways and processes, and channel intending migrants into those pathways.⁹⁸ The United States is also working to address the root causes of migration, such as a lack of opportunity, poor government and corruption, crime, and violence in countries across the region and the world.⁹⁹ However, these measures will take time to have significant impacts and have not been in effect long enough to alleviate the stress that high encounters impose on the United States border security and immigration systems. *See id.* at 48727. In the face of these challenges to the United States’ own border and immigration systems, however, the Departments believe that it is appropriate to act at the southern border while pursuing efforts to address the root causes of migration more broadly.

Second, the Departments disagree that, prior to implementation of the IFR, there had not been emergency circumstances at the southern border. During the immediate post-pandemic period, average daily encounters were at levels that significantly exceeded the Departments’ capacity to impose consequences on most noncitizens who crossed irregularly at the southern border.¹⁰⁰ As the June 3 Proclamation explains, the border security and immigration systems are badly strained and have been for many years. 89 FR at 48490. DHS processing facilities frequently become overcrowded, forcing DHS to release into the United States noncitizens who could otherwise be

⁹⁷ *See* The White House, *Press Release: Los Angeles Declaration on Migration and Protection* (June 10, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/>.

⁹⁸ *Id.*

⁹⁹ *See* Marcela X. Escobari, *FPC Briefing: Migration Policy and the Biden-Harris Administration’s Root Cause Strategy* (June 22, 2023), <https://www.state.gov/briefings-foreign-press-centers/migration-policy-and-the-biden-harris-admins-root-causes-strategy>; *see also* The White House, *Fact Sheet: Strategy to Address the Root Causes of Migration in Central America* (July 29, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/fact-sheet-strategy-to-address-the-root-causes-of-migration-in-central-america/>.

¹⁰⁰ OHSS analysis of July 2024 OHSS Persist Dataset (Summary Statistics tab) (reflecting that average daily encounters were over 5,100 per day during the immediate post-pandemic period). From May 12, 2023 through June 4, 2024, USBP referred a daily average of about 860 individuals encountered at the SWB into the expedited removal process. *See id.* (Imm Post-Pandemic ERCF tab).

⁹⁵ *See, e.g.,* The White House, *Mexico and United States Strengthen Joint Humanitarian Plan on Migration* (May 2, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration/> (committing to addressing root causes of migration).

⁹⁶ *See* The White House, *Fact Sheet: Third Ministerial Meeting on the Los Angeles Declaration on Migration and Protection in Guatemala* (May 7, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/05/07/fact-sheet-third-ministerial-meeting-on-the-los-angeles-declaration-on-migration-and-protection-in-guatemala>.

processed for expedited removal, and place them into section 240 removal proceedings, the resolution of which can take years given the pre-existing backlog. By the end of the first half of FY 2024, despite EOIR being on pace to complete a record number of cases during FY 2024 and DHS maximizing expedited removal as much as resources allow, EOIR had received over 1 million initial receipts, some of which could have been processed for expedited removal had there been sufficient resources to do so, increasing the pending caseload before EOIR to over 3.1 million cases.¹⁰¹ The Departments believe that releasing individuals who may otherwise be referred for expedited removal may inadvertently incentivize increased irregular migration and the exploitation of the asylum system, especially by human smugglers who encourage migrants to claim fear once they are encountered by USBP as it will allow them to remain in the United States for years pending resolution of their case and, where appropriate, removal. 88 FR at 31326. Moreover, maximizing credible fear screening capacity pulls resources away from USCIS processing cases in the affirmative asylum backlog, which had reached over 1.25 million cases as of the third quarter of FY 2024.¹⁰² This vicious cycle is exactly the circumstance to which the rule is responding.¹⁰³ The decrease in encounter levels after December 2023 was not an indication that emergency border circumstances had abated or the IFR was not warranted, because encounters remained well above the daily encounter thresholds that, as described above, the Departments determined reflect the existence of emergency

border circumstances.¹⁰⁴ See 89 FR at 48752. That DHS had anticipated an increase in migration absent the IFR was not a concession that the rule was unnecessary. Rather, that projection reflected the urgent need to take immediate action, without which encounters would have increased, and the emergency border circumstances that existed at the time that the IFR was issued would have continued to worsen. See 89 FR at 48726. Given that daily encounters persistently remain above 1,500—and could rise above 1,500 again, even if they decline for a time—the IFR is currently and will remain an important policy tool.

Finally, the Departments disagree with one commenter's suggestion that the Departments are characterizing the situation at the southern border as an emergency to avoid complying with their legal obligations under the INA and certain court decisions. The commenter is incorrect because the rule is fully compliant with relevant provisions of the INA and applicable judicial decisions. For the reasons discussed in Section III.A.1 of this preamble, the rule is fully consistent with section 208(a)(1) of the INA, 8 U.S.C. 1158(a)(1). Moreover, for the reasons discussed in Section III.C.1.a.i. of this preamble, the Departments also disagree that the rule conditions noncitizens' access to the credible fear process on the ability to obtain CBP One appointments in violation of section 235 of the INA, 8 U.S.C. 1225. Finally, for the reasons discussed in the IFR, see 89 FR at 48735–39, and Section III.A of this preamble, the Departments disagree with commenters' comparison between this rule and prior regulatory actions imposing a limitation on asylum eligibility that some courts have ruled unlawful.

Comment: Several commenters argued that the Departments justified the rule using mischaracterizations of asylum grant rates resulting from positive credible fear determinations. Commenters took issue with the Departments' reference to a "small proportion" of noncitizens in the credible fear process who are likely to

be granted asylum, stating that the Departments artificially deflated the grant rate by including cases where there was no decision on the merits—such as cases where the asylum application was withdrawn or not adjudicated, or the case was administratively closed—in calculating the proportion of cases where asylum was granted. Commenters argued that "the majority of people who establish a credible fear of persecution are granted asylum" when their asylum claim is adjudicated," quoting a statistic claiming that 55 percent of noncitizens whose cases were decided on the basis of their asylum claim after a positive credible fear determination were ultimately granted asylum in FY 2022 and 2023.

Commenters said that the EOIR denial rate in cases originating from a credible fear claim is an unreliable indicator of meritless asylum claims because a denial could result from factors that have nothing to do with the underlying merits of the case, including: noncitizens' lack of timely access to counsel, translation issues, noncitizens' lack of familiarity with the statutory 1-year bar to filling an asylum application after entering the United States, and the significant discretion provided to IJs by law.

One commenter took issue with the Departments' claim that an increase in positive credible fear determinations was evidence that meritorious asylum claims were still making it through the initial screening process, saying that those subject to the Circumvention of Lawful Pathways rule's presumption of ineligibility for asylum are three times more likely to receive negative credible fear determinations than individuals not subject to the presumption. The commenter said it has documented examples of individuals subjected to the Circumvention of Lawful Pathways rule in expedited removal who were wrongfully ordered removed or refouled, outcomes that the commenter stated will only become more frequent under the IFR. The commenter concluded that the available evidence makes clear that many, if not most, people subject to the IFR will have plausible, or even grantable, claims for humanitarian relief.

A commenter alleged that the Departments' focus on the gap between historical credible fear interview screen-in rates and asylum grant rates is "willfully blind to reality." The commenter stated that the Departments "simply ignore the fact that," even before the IFR, such screen-in rates had declined dramatically, and that historical asylum grant rates were for a

¹⁰¹ See EOIR, *Adjudication Statistics: Pending Cases, New Cases, and Total Completions* (Apr. 19, 2024), <https://www.justice.gov/eoir/media/1344791/dl?inline>. Initial receipts equal removal, deportation, exclusions, asylum-only, and withholding only cases.

¹⁰² USCIS, *Asylum Division Monthly Statistics Report: Fiscal Year 2024* (July 23, 2024), https://www.uscis.gov/sites/default/files/document/reports/asylumfiscalyear2024todatestats_240630.xlsx.

¹⁰³ 89 FR at 48489 ("Our broken immigration system is directly contributing to the historic migration we are seeing throughout the Western Hemisphere, exacerbated by poor economic conditions, natural disasters, and general insecurity, and this fact, combined with inadequate resources to keep pace, has once again severely strained our capacity at the border. The result is a vicious cycle in which our United States Border Patrol facilities constantly risk overcrowding, our detention system has regularly been at capacity, and our asylum system remains backlogged and cannot deliver timely decisions, all of which spurs more people to make the dangerous journey north to the United States.").

¹⁰⁴ OHSS analysis of July 2024 OHSS Persist Dataset and data downloaded from UIP on September 3, 2024. (Encounters FY2000–2024 tab). With the exception of the pandemic period (March 2020–May 2023), total SWB encounters for January 2024 and for FY 2024Q2 were the highest for the month of January and for Quarter 2 of the fiscal year since FY 2000, including over 4,000 average daily USBP encounters in January and nearly 5,000 in February (CBP SWB Encounter FY 2000–24 tab and Encounters FY2000–2024 tab). See also OHSS analysis of July 2024 OHSS Persist Dataset (USBP Encounters—Holiday Dip tab) (showing that encounters tend to dip immediately after each New Year before increasing again by the end of January).

population of people seeking asylum that, by the IFR's own admission, looked very different—and included many more single Mexican men seeking to work—than the current population of people seeking asylum. The commenter further objected that the Departments' focus on the gap between screen-in rates and merits rates ignores the fact that credible fear interviews are intended to be evaluated at a lower standard; according to the commenter, a screening interview is not, and cannot be, a merits adjudication.

Response: The Departments disagree that they have mischaracterized the data related to the percentage of EOIR asylum grants in cases originating from the credible fear process. The data consistently show that only a small percentage of cases referred for section 240 removal proceedings before EOIR after a credible fear determination ultimately result in a grant of asylum.¹⁰⁵

In the IFR, the Departments noted that from FY 2014 through FY 2019, of the total SWB encounters with positive credible fear determinations, only 18 percent of EOIR case completions ultimately resulted in a grant of protection or relief. 89 FR at 48743 n. 219. The Departments included the underlying data in the IFR docket.¹⁰⁶ The Departments acknowledge that the denominator includes cases where there was no decision on the merits of the asylum claim, such as, for example, applications that were withdrawn or not adjudicated, or where the case was administratively closed, terminated, or dismissed.¹⁰⁷ The Departments disagree, however, that this approach is misleading. The cited statistic demonstrates that the number of noncitizens who are placed in section 240 removal proceedings after the expedited removal process greatly exceeds the number of noncitizens who are ultimately granted relief or protection. Even if one excludes cases involving termination, dismissal, or administrative closure as well as in absentia removal orders, DHS and EOIR data show that from 2014 through 2019, of the total SWB encounters referred to EOIR after being processed for expedited removal, only 33 percent of

EOIR case completions ultimately resulted in a grant of relief on the merits.¹⁰⁸ The rate increases slightly to 36 percent if the "relief rate" is defined as all EOIR findings of non-removability and grants of asylum, statutory withholding of removal, CAT protection, cancellation of removal, and adjustment of status, divided by the sum of those grants and removal orders not issued in absentia.¹⁰⁹ Whether one uses the 18 percent, 33 percent, or 36 percent figure, the data demonstrate that historically there is a significant disparity between positive credible fear findings and ultimate grants of relief in section 240 removal proceedings.¹¹⁰

The Departments disagree with the statistical approach presented by at least one commenter who claimed that the majority of people (55 percent in FY 2023 and 2024) who establish a credible fear are ultimately granted asylum when their asylum claim is adjudicated. The commenter seems to have arrived at this statistic by dividing the number of asylum grants by the total number of grants and denials from a chart provided on EOIR's website.¹¹¹ But the EOIR chart also demonstrates that a large percentage of completed cases resulting from a positive credible fear determination involve noncitizens who never filed asylum applications once placed in section 240 removal proceedings or who abandoned or withdrew their applications.¹¹² The Departments believe that it is inaccurate to exclude these cases in assessing the disparity between positive credible fear findings and ultimate relief because the noncitizens in these cases did not actually pursue an asylum claim during section 240 removal proceedings even though the opportunity to pursue such a claim was the sole reason they were placed in section 240 removal proceedings rather than being removed on an expedited removal order. Instead,

¹⁰⁸ Relief on merits rate is defined as EOIR grants of asylum, conditional grants of asylum, or adjustment of status under statutory provisions divided by the sum of those grants of relief plus removal orders not issued in absentia. OHSS analysis of June 2024 Enforcement Lifecycle data (Historic ERCF Results tab).

¹⁰⁹ See *id.*

¹¹⁰ See *id.*

¹¹¹ See Human Rights First, *Correcting the Record: The Reality of U.S. Asylum Process and Outcomes* (Nov. 2023) https://humanrightsfirst.org/wp-content/uploads/2023/11/US-Asylum-process-and-outcomes-Fact-Sheet_Nov-2023.pdf (citing EOIR, *Adjudication Statistics: Asylum Decisions and Filing Rates in Cases Originating with a Credible Fear Claim* (Oct. 12, 2023), <https://www.justice.gov/eoir/page/file/1062976/download>).

¹¹² See, e.g., EOIR, *Adjudication Statistics: Asylum Decisions in Cases Originating with a Credible Fear Claim* (Apr. 19, 2024), <https://www.justice.gov/eoir/media/1344831/dl?inline> (last visited Sept. 2, 2024).

relying on the most recent version of the EOIR chart cited by the commenter, if one includes these cases, which are numerous, in the denominator (and excludes cases where the asylum application was not adjudicated or the case was administratively closed), the ultimate grant rates for cases reflect a much smaller percentage than commenter's representation of the ultimate asylum grant rate. As EOIR's adjudication statistics reflect, the asylum grant rates of cases completed by EOIR in FYs 2022 and 2023 that originated with a credible fear claim were just 23 percent and 18 percent, respectively.¹¹³

The Departments cited these data to demonstrate the general point that there is a significant disparity between positive credible fear determinations and ultimate relief in section 240 removal proceedings, which can take years to resolve. See 89 FR at 48743 n.219 (noting that from FY 2014 through FY 2019, of the total SWB encounters with positive fear determinations, only 18 percent of EOIR case completions ultimately resulted in a grant of protection or relief). That reality, as well as the length of time it can take before a removal takes place after a removal order is final, creates a strong incentive for some number of migrants without potentially meritorious claims to make the dangerous journey to the southern border to claim fear in order to take their chances on being allowed to remain in the United States for a lengthy period. And that risk is magnified by Congress's failure to provide the resources necessary to timely and effectively process and interview all those who invoke credible fear procedures through the expedited removal process at the southern border, particularly during periods of high encounters. The rule's limitation on asylum eligibility is intended in part to reduce this incentive and encourage migrants with meritorious asylum claims to use the lawful, safe, and orderly pathways that the United States Government has provided. See 89 FR at 48732.

Regarding commenters' concerns that the data cited include noncitizens whose asylum applications may have been denied for reasons unrelated to the meritoriousness of their underlying claim—such as noncitizens' lack of access to counsel, translation issues, noncitizens' lack of knowledge about the one-year bar, and IJ discretion—the Departments disagree that these potential issues would undermine the Departments' reliance on DHS and EOIR

¹¹³ See *id.*

¹⁰⁵ See, e.g., EOIR, *Adjudication Statistics: Asylum Decisions in Cases Originating with a Credible Fear Claim* (Apr. 19, 2024), <https://www.justice.gov/eoir/media/1344831/dl?inline>; see also OHSS analysis of June 2024 Enforcement Lifecycle data (Historic ERCF Results Tab).

¹⁰⁶ See OHSS Data Spreadsheet Data for Securing the Border IFR, tab 219 (June 2024), <https://www.regulations.gov/document/USCIS-2024-0006-0003>.

¹⁰⁷ See *id.*; see also OHSS analysis of June 2024 Enforcement Lifecycle data (Historic ERCF Results tab).

data to demonstrate the disparity between positive credible fear determinations and ultimate relief in section 240 removal proceedings. The factors cited by commenters exist in the absence of the rule and are not impacted by the rule. Furthermore, the Departments' procedures aimed at mitigating these concerns remain unchanged and are expected to continue mitigating those concerns. For example, all AOs are trained to elicit testimony and, even with this rule's changes to the credible fear screening process, the type of information sought to be elicited during a credible fear interview and IJ review is generally well within a noncitizen's knowledge, such that having an attorney is not necessary to secure a positive outcome. *See* Section III.B.2.a.ii of this preamble. USCIS also has language access policies in place to ensure that noncitizens have an interpreter for a language they understand during credible fear interviews and procedures to address interpretation and rare language issues. *See* 8 CFR 208.30(d)(5). Additionally, EOIR provides interpreters for noncitizens in section 240 removal proceedings.¹¹⁴ Those long existing procedures remain in place under this rule. Nor have any of the procedural requirements for filing an asylum application changed, including the requirement that noncitizens must generally file their application within one year of their arrival in the United States, *see* section 208(a)(2)(B) of the INA, 8 U.S.C. 1158(a)(2)(B), and must show that they should be granted relief in the exercise of discretion. *See Delgado v. Mukasey*, 508 F.3d 702, 705 (2d Cir. 2007) ("Asylum is a discretionary form of relief . . . Once an applicant has established eligibility . . . it remains within the Attorney General's discretion to deny asylum.").

The Departments agree that credible fear screenings are not meant to mirror ultimate merits adjudications and that, by design, these screenings will result in some noncitizens being screened in who ultimately are not granted asylum or protection. However, the number of noncitizens who are granted asylum or other protection following a screening necessarily reflects the effectiveness of those screenings; the gap between the screen-in rate and the rate of those granted asylum or other protection matters. With a screening standard that is more likely to identify meritorious claims, the Departments expect to see a

higher share of screened in noncitizens ultimately granted relief or protection. While a credible fear screening in the expedited removal process takes place shortly after entry into the United States, the ultimate adjudication of an asylum (or other protection) claim may be months or years later. The outcome of the screening compared with the outcome of the asylum application's ultimate adjudication on the merits is an important measure of the credible fear interview's effectiveness at ensuring that meritorious asylum claims proceed in the application process because only cases that could be viable should continue on in the process.

Finally, the Departments acknowledge that, as with all screening mechanisms, there is some risk under the rule that a meritorious case might not proceed to a credible fear screening or a merits adjudication. The Departments believe that during emergency border circumstances, the rule's provisions strike an appropriate balance, and that the rule's benefits outweigh any potential marginal increase in the likelihood that a meritorious case would be missed or would fail under the rule's procedures, as discussed in more detail in Section III.C.3 of this preamble. The Departments reiterate that nothing in this rule prevents a noncitizen from raising a fear claim. All noncitizens processed for expedited removal who manifest a fear of return, express an intention to apply for asylum or protection, or express a fear of persecution or torture or a fear of return to their country or the country of removal are referred for a credible fear interview. For the reasons discussed in Section III.C.2 of this preamble, DHS believes that the manifestation standard will continue to provide noncitizens with an adequate opportunity to seek relief and protection in the United States. Moreover, under the rule, those referred for a credible fear screening will continue to have an opportunity to have their claims assessed by an AO in a non-adversarial interview and will be able to seek IJ review of the AO's decision. Although many noncitizens may be subject to the limitation on asylum eligibility under this rule, during the credible fear interview and IJ review (if elected), they will still be screened for potential eligibility for statutory withholding of removal and CAT protection. In sum, as explained in the IFR, the Departments expect that these provisions will continue to produce accurate outcomes, although the Departments believe that the rule continues to be necessary and appropriate to address emergency

border circumstances even if this expectation turns out to be misplaced in close cases. 89 FR at 48750 n.250.

Indeed, as discussed in Section II.A.2 of this preamble, the Departments believe that the IFR is working to reduce the gap between high rates of referrals and screen-ins and the historically low percentage of those who are ultimately granted protection or relief, while still providing noncitizens with opportunities to raise and have their claims considered. The Departments believe that the difference between the positive credible fear rate during the pre-pandemic period and the rate under the IFR is attributable to the rule's limitation on asylum eligibility and the higher "reasonable probability" screening standard for statutory withholding of removal and CAT claims, which, as the Departments explained in the IFR, is more appropriate in light of the ultimate burden of proof for statutory withholding of removal and CAT protection, better captures the population of noncitizens with potentially valid claims for such protection, and will assist the Departments in addressing the emergency border circumstances described in the IFR. *See* 89 FR at 48745–46.

Comment: At least one commenter argued that the IFR is arbitrary and capricious because the Departments impermissibly use the availability of pathways not related to asylum or humanitarian relief as justification for reducing asylum access. The commenter stated that the availability of lawful pathways is not a factor that Congress intended the agencies to consider as a basis for limiting asylum.

Response: The Departments disagree with the assertion that the rule impermissibly relies on the availability of lawful, safe, and orderly pathways to reduce access to asylum. As an initial matter, the Departments note that the primary purpose of the rule's temporary limitation on asylum eligibility is to reduce the daily number of entrants by discouraging irregular migration during periods when the border security and immigration systems are over capacity and unable to effectively process noncitizens through expedited removal. *See* 89 FR at 48731–32. Because section 3(b)(v)(D) of the Proclamation contains an exception for arrivals at the SWB under a process approved by the Secretary, and because this rule's limitation on asylum eligibility excepts those who are described in section 3(b) of the Proclamation, the limitation will also not apply to such arrivals. *See id.* at 48754. In this way, the Proclamation

¹¹⁴ *See* EOIR, *Director's Memorandum 23–02, Language Access in Immigration Court 1–2* (June 6, 2023), <https://www.justice.gov/eoir/book/file/1586686/dl>.

and the rule continue to maintain incentives for noncitizens seeking protection to use the safe, lawful, and orderly process that the United States has provided. *See id.* at 48730–31 (stating that “applying the limitation on asylum eligibility will encourage noncitizens to make an appointment to present at the SWB, take advantage of other lawful migration pathways, or not undertake the dangerous journey north to begin with”); *see also id.* at 48754 (explaining that the rule “provides important exceptions that continue to incentivize the use of safe, orderly, and lawful pathways”). Indeed, the use of such pathways and tools to access those pathways, like the CBP One app, is critical for promoting efficient border processing especially during emergency border circumstances. *See id.* at 48737 (“During emergency border circumstances [the] use of the CBP One app is especially critical because it allows DHS to maximize the use of its limited resources.” (citations omitted)); *see also* 88 FR at 31317–18 (explaining the benefits of having noncitizens pre-schedule appointments using the CBP One app). However, contrary to the commenter’s claim, the rule does not impose a limitation on asylum eligibility based solely on the availability of such pathways. Rather, the rule’s limitation applies to noncitizens who enter the United States across the southern border during emergency border circumstances and are not described in section 3(b) of the Proclamation. *See* 8 CFR 208.13(g), 208.35(a), 1208.13(g), 1208.35(a). And even during these situations, the rule provides an exception for noncitizens (including those who do not use the lawful, safe, and orderly pathways) who demonstrate exceptionally compelling circumstances. *See* 8 CFR 208.35(a)(2), 1208.35(a)(2).

In any event, Congress did not preclude the Departments from considering a noncitizen’s use of lawful pathways and processes as a factor when establishing conditions and limitations on asylum. As described in Section III.A.1.a of this preamble, in *Matter of Pula*, the BIA explained that a noncitizen’s “circumvention of orderly refugee procedures,” including their “manner of entry or attempted entry,” is a relevant factor for discretionary asylum determinations, 19 I&N Dec. at 472–73, and this rule merely takes such circumvention into account to determine eligibility. And exactly how much weight to put on that factor and whether to do so in weighing asylum eligibility falls well within the broad discretion conferred by section

208 of the INA, 8 U.S.C. 1158, including section 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C). For the reasons discussed in Section III.A.1 of this preamble and in the IFR, *see* 89 FR at 48733–38, this rule’s limitation on asylum eligibility is consistent with the statute, a proper exercise of the Departments’ authority, and distinguishable from the prior regulations that some courts have found invalid.

Comment: One commenter disagreed with the Departments’ assertion that the IFR will undermine TCOs’ ability to incentivize migrants to utilize irregular migration methods. The commenter argued that the IFR will instead have the opposite effect of forcing many migrants to use irregular routes, thus strengthening the organized smuggling operations and TCOs the agencies seek to combat. The commenter also argued that the IFR makes the “bizarre assertion that new measures punishing vulnerable people are necessary because” smuggling operations have ways to avoid existing asylum restrictions.

Response: The Departments disagree that the IFR will incentivize irregular migration and thereby strengthen organized smuggling operations and TCOs. The IFR has enhanced the disincentives to crossing irregularly, reducing the overall number of encounters between POEs. Through August 31, 2024, average daily total encounters between POEs at the SWB under the Proclamation and the IFR have fallen 59 percent from the level of average daily encounters during the “immediate post-pandemic period,” *i.e.*, the period after the Circumvention of Lawful Pathways rule began to apply on May 12, 2023, and before the IFR entered into effect on June 5, 2024.¹¹⁵ This rule addresses the reality of unprecedented migratory flows, the systemic costs those flows impose, and the ways in which increasingly sophisticated smuggling networks cruelly exploit the system for financial gain. The procedures in place before the publication of the IFR resulted in the release of a high proportion of migrants into the United States to await section 240 removal proceedings, creating a vicious cycle in which exploitative smuggling networks could effectively advertise that border crossers were likely to remain in the United States

upon arrival, encouraging higher encounter numbers, which in turn led to more releases. *See* 89 FR at 48714–15. This created a situation in which large numbers of migrants—regardless of their ultimate likelihood of success on an asylum or protection application—were subject to exploitation and risks to their lives by the networks that drove their movements north. *See id.* In contrast, the Departments believe that the reduction in migration resulting from this rule will, over time, weaken the TCOs that prey on migrants for profit by starving such TCOs of funding.

The IFR does not “punish[] vulnerable people,” as the commenter alleges. The Departments explained that although heightened enforcement efforts by the United States and Mexico helped to mitigate very high levels of irregular migration, “[s]muggling networks are adaptable, responding to changes put in place. Despite their immediate effectiveness, such changes [in enforcement efforts] are not enough—and will almost certainly have diminished effect over time. The reality is that the scale of irregular migration over the past two years has strained the funding, personnel, and infrastructure of both countries’ immigration enforcement systems in ways that have, at times, contributed to high encounters between POEs.” 89 FR at 48726. The Departments further stated that “[w]ithout the Proclamation and this rule, the anticipated increase in migration will, in turn, worsen significant strains on resources already experienced by the Departments and communities across the United States.” *Id.*

The rule is consistent with concern for vulnerable people and the Departments’ operational capacity to administer and enforce the immigration laws. As a means of preventing migrants from falling prey to smuggling and other criminal organizations, the Departments have discouraged attempts to enter the United States without inspection while increasing the availability of lawful pathways. The limitation on asylum eligibility contained in the rule undercuts claims made to migrants by TCOs and smugglers that simply arriving at the border will result in them being released into the United States. Additionally, the Departments believe that increasing the availability of lawful pathways for migration helps discourage attempts to enter the United States without inspection by providing individuals with options that do not involve putting their lives in the hands of smugglers. The Departments believe that this balanced approach—expanded lawful pathways to enter the United

¹¹⁵ OHSS analysis of July 2024 OHSS Persist Dataset and data downloaded from UIP on September 3, 2024. (Summary Statistics tab). There were, on average, 2,077 encounters per day (including all demographic groups) between POEs at the SWB from June 5 through August 31, 2024, compared to 5,119 per day during the immediate post-pandemic period, defined as May 12, 2023, through June 4, 2024. *Id.*

States, coupled with conditions on asylum eligibility for those who fail to exercise those pathways and the swift imposition of immigration consequences when individuals do not establish a legal basis to remain in the United States—will continue to decrease attempts to irregularly enter the United States, and thereby reduce reliance on smugglers and human traffickers.

Comment: A commenter argued that the IFR fails to account for the effect of existing and contemporaneously promulgated policies, such as EOIR's "recent arrivals docket."

Response: The IFR is one of several tools that the Departments employ to encourage the use of safe, orderly, and lawful processes for accessing the border and to maintain a manageable operational capacity to adequately deliver timely decisions and consequences to noncitizens encountered at the southern border who do not establish a legal basis to remain. The Departments are not aware of any evidence that the recent arrivals docket or any other recent procedural changes in case processing could have, on their own, addressed the record high levels of migration that the Departments have contended with in recent years. Such changes offer important efficiency benefits but by themselves do not adequately address problems such as the large number of non-meritorious claims for asylum and related protection.

For example, as the Departments announced on May 16, 2024, the recent arrivals docket applies to certain noncitizen single adults.¹¹⁶ For cases on the recent arrivals docket, IJs will generally aim to render a final decision within 180 days, which is substantially longer than the expedited removal process.¹¹⁷ The recent arrivals docket

provides efficient case processing procedures for removal proceedings, which are, as a general matter, designed to be more comprehensive proceedings for the full adjudication of claims,¹¹⁸ as compared with expedited removal, which is designed to quickly screen out those who cannot demonstrate a sufficient likelihood of ultimate success on the merits. Thus, the recent arrivals docket is not as efficient as either expedited removal proceedings generally or expedited removal proceedings undertaken pursuant to this rule. Accordingly, the recent arrivals docket is best considered as a complementary measure to this rule for those who are not subject to or cannot be processed under expedited removal despite the resource-saving measures laid out in this rule. Similarly, while the Departments are constantly making efforts to maximize the efficiency of their procedures, all such changes are inadequate, on their own, to accommodate the high volumes of encounters that make this rule necessary.

Comment: Citing 89 FR at 48724 nn.99–100 as an example, a commenter objected that the Departments' reliance on an undisclosed data analysis with unknown assumptions as a basis for projecting future trends is arbitrary.

Response: The Departments included in the rulemaking docket extensive data supporting the IFR, including an explanation of assumptions underlying certain projections.¹¹⁹ As DHS explained in the IFR, the complexity of international migration limits DHS's ability to precisely project border encounters under the best of circumstances. See 89 FR at 48727 n.127. The period leading up to the IFR

pandemic period; and 5 days during the IFR period. See OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

¹¹⁸ Parties in section 240 removal proceedings have a wide range of well-established rights, including the following: the rights to representation at no expense to the Government, to a reasonable opportunity to examine and present evidence, and to cross-examine witnesses, INA 240(b)(4)(A)–(B), 8 U.S.C. 1229a(b)(4)(A)–(B); the right to seek various forms of relief, 8 CFR 1240.1(a)(1)(ii)–(iii); the right to file a motion to continue, 8 CFR 1003.29; and the right to appeal specified decisions to the Board of Immigration Appeals ("BIA"), 8 CFR 1003.3(a), 1003.38(a), and to later file a petition for review of certain decisions in the appropriate U.S. Court of Appeals, see generally INA 242, 8 U.S.C. 1252. For these reasons, the completion goals for cases on the recent arrivals docket remain subject to case-specific circumstances and procedural protections, including allowing time for noncitizens to seek representation where needed. See Recent Arrivals Docket Announcement.

¹¹⁹ See OHSS Data Spreadsheet, *Data for Securing the Border IFR* (June 2024), <https://www.regulations.gov/document/USCIS-2024-0006-0003>.

was characterized by greater than usual uncertainty due to ongoing changes in the major migration source countries (*i.e.*, the shift in demographics of those noncitizens encountered by DHS), the growing impact of climate change on migration, political instability in several source countries, the evolving recovery from the COVID–19 pandemic, and uncertainty generated by border-related litigation, among other factors. *Id.* Nonetheless, the Departments included ample basis for their assessment that the IFR was needed and did not rely exclusively on internal projections as a basis for the rule. See, *e.g.*, 89 FR at 48726 (explaining that "between January and April, 2024, [UNCHR] tracked 139,000 irregular entries [through the Darién jungle], up from 128,000 for the same months in 2023 and a seven-fold increase over migration levels during that period in 2022," and that "[p]ast unprecedented migration surges [described in the IFR] bolster . . . the need for this rulemaking"). Further, the Departments note that they are including in the docket extensive data supporting this final rule, including data related to the impact of the IFR, the changes made in this final rule, and the request for comment discussed in Section IV of this preamble, as well as detailed explanations of certain projections.

b. Lack of Resources Does Not Justify the Rule

Comment: Some commenters stated that the Departments' justification of the IFR based on the lack of resources and congressional funding needed to effectively and efficiently meet process demands for migrants and those in the U.S. asylum process is not a valid basis for the Departments' purportedly disregarding their legal obligations to migrants when managing asylum claims and upending the asylum system. A commenter similarly stated that resource constraints should have no relationship to the treatment of newly arriving migrants whose right to remain has not yet been assessed.

Another commenter said that the IFR is arbitrary and capricious because, while the agencies argue that the IFR is required because of a lack of funding, they provided no analysis to justify that conclusion. The commenter stated that the primary reason USCIS lacks enough AOs is that USCIS faces challenges with hiring and retention. The commenter stated that the agency underpays officers, forces them to work 60-hour weeks, and routinely requires them to apply new and illegal requirements in credible fear interviews, all while ignoring their primary duty of

¹¹⁶ Press Release, *DHS, DHS and DOJ Announce "Recent Arrivals" Docket Process for More Efficient Immigration Hearings* (May 16, 2024), <https://www.dhs.gov/news/2024/05/16/dhs-and-doj-announce-recent-arrivals-docket-process-more-efficient-immigration> ("Recent Arrivals Docket Announcement").

¹¹⁷ Credible fear interviews generally take place close in time to when a noncitizen arrives in the United States. See INA 235(b)(1)(B)(i), 8 U.S.C. 1225(b)(1)(B)(i) (providing that AOs "shall conduct interviews" of noncitizens who indicate either an intention to apply for asylum or a fear of persecution "at a port of entry or at such other place designated by the Attorney General"). If the noncitizen is not found to have a credible fear, the noncitizen may request review by an IJ, but such review must take place "in no case later than 7 days after the date" of the AO's determination. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III). DHS data show a median processing time from credible fear referral to result of 8 days in the pre-pandemic period; 17 days during the pandemic period; 12 days during the immediate post-

conducting asylum adjudications. The commenter stated that CBP has the ability under current resources to greatly expand its capacity at POEs, but that CBP and DHS simply refuse to take that step. Another commenter similarly said that the IFR repeatedly invokes resource constraints as the reason to deny access to asylum, yet CBP is the nation's largest Federal law enforcement agency, and it has "seriously understated" its processing capacity in the past. A few commenters said that real solutions to alleviate conditions at the southern border include operational efficiency, better resource allocation, and increasing resources to meet demand and fairly process applications.

One commenter said the rule is motivated by the Departments' concern that too many people are seeking asylum, rather than whether individuals are eligible. Further, this commenter wrote that, without any monitoring of the consequences of removal, it is unclear if the IFR's supposed efficiency is in the best interests of the United States, which include a commitment to upholding human rights and providing humanitarian aid.

Response: With respect to the claim that the rule's reliance on resource and funding constraints and efficiency concerns are impermissible bases to disregard legal obligations to migrants seeking asylum and protection, the Departments first reiterate that the rule does not violate any legal obligations to migrants, as explained in Section III.A.1 of this preamble and in the IFR. *See* 89 FR at 48733–39. This rule is consistent with U.S. domestic law and with the United States's treaty obligations. The United States implements its non-refoulement obligations through statutory withholding of removal and CAT protection. Even when the threshold for emergency border circumstances has been reached, these forms of protection remain available. From June 5, 2024, through August 31, 2024, 27 percent of those encountered between ports of entry at the SWB and placed into expedited removal were referred for a credible fear interview, and over half of individuals referred for credible fear interviews under the IFR have ultimately been screened in.¹²⁰ Those who have not received such determinations have either been determined to have not manifested a fear of removal or have been determined to have not shown a significant possibility that they could ultimately demonstrate by a preponderance of the

evidence eligibility for asylum in light of the rule's limitation on asylum eligibility or a reasonable probability of persecution or torture.

In addition, the Departments disagree with commenters' assertion that it is impermissible to consider resource constraints and lack of funding as supporting the need for the IFR and this rule. Congress provided the Departments with broad discretionary authority under section 208 of the INA, 8 U.S.C. 1158, including expressly conferring discretion to impose limitations on asylum eligibility. INA 208(b)(1)(A), (b)(2)(C), (d)(5)(B), 8 U.S.C. 1158(b)(1)(A), (b)(2)(C), (d)(5)(B). Nothing in the INA explicitly or implicitly forecloses the Departments from considering the impact of resource constraints when exercising their discretionary authorities. For this reason, as explained in Section II.A.1 of this preamble and in the IFR, *see* 89 FR at 48731–49, the rule's changes to certain expedited removal procedures and the credible fear process are a lawful exercise of the Departments' authorities and are consistent with the INA.

Indeed, resources and funding cannot be separated from the safe, effective, and humane enforcement and administration of our immigration laws. The Departments can only function with the resources provided to them by Congress. While the Departments carefully utilize the resources that they are given, they are inadequate in the face of substantial and unprecedented global migration. As explained in the IFR, these constraints prevent the border and immigration systems from properly functioning to provide timely relief for those who warrant it and timely consequences for those without a legal basis to remain when encounters reach the thresholds identified in the rule. *See* 89 FR at 48730 (discussing the impact of resource limitations); *see also id.* at 48752 (explaining that "[g]iven current resources[] . . . there is a limit on how many people can be put through the process—and that limit directly informs the 1,500 threshold").

The rule is carefully tailored to address these challenges and is therefore a reasonable exercise of the Departments' discretionary authorities. By shifting to a manifestation standard for fear claims, and heightening the screening standard for withholding and CAT protection, DHS will be able to devote more of its limited resources to more effectively and quickly processing migrants, and the Departments will be able to focus on those claims that are more likely to have merit. *See id.* at 48744–45. The limitation on asylum

eligibility disincentivizes attempts at entry, thereby easing stress on DHS resources, while also providing an efficient way to address claims of fear raised by individuals who do not fall within the exception to the limitation. *See* 89 FR at 48731–33. At the same time, the rule does not foreclose asylum eligibility for noncitizens who are in circumstances that require immediate action: It includes an exception for exceptionally compelling circumstances, including for noncitizens (or members of their families with whom they are traveling) who experience an acute medical emergency, face an imminent and extreme threat to life or safety, or are a "victim of a severe form of trafficking in persons." *See* 89 FR at 48732–33. And those referred to the credible fear process will continue to be screened for potential eligibility for statutory withholding of removal and protection under the CAT. Thus, the rule allows the Departments to use their limited resources more effectively to administer and enforce the nation's immigration laws, while also reducing incentives for migrants to make the dangerous journey to the southern border in the hope that the overwhelmed and under-resourced immigration system will not be able to expeditiously process them for removal. In sum, the rule is needed to support the effective "operation of the immigration system" during emergency border circumstances. *Judulang v. Holder*, 565 U.S. 42, 55 (2011).

Contrary to commenters' claim, the IFR fully explains the funding shortfall facing the Departments and how it has severely hampered their abilities to effectively and efficiently process noncitizens at the southern border and deliver timely decisions and consequences to those without a legal basis to remain. *See* 89 FR at 48728–30. Under current appropriations, DHS will, at best, be able only to sustain most of its current operations and will not be able to expand capacity along the southern border or increase its ability to deliver consequences through referrals into expedited removal. *See id.* at 48729. Because of the funding shortfall, in the circumstances in which the measures enacted by this rule apply, DHS simply lacks sufficient personnel and facility resources to safely detain a majority of border crossers for the time needed to complete the expedited removal process, which forces DHS to release noncitizens pending prolonged processing pathways outside of expedited removal. *See id.* at 48752. This renders DHS unable to swiftly process migrants and impose

¹²⁰ OHSS analysis of data downloaded from UIP on September 3, 2024 (Summary Statistics tab and IFR ERCF tab).

consequences on those who fail to establish a legal basis to remain in the United States, which in turn leads to higher encounter rates. *See id.*

These resource constraints are not unique to front-line officials. In recent years, EOIR adjudicators have completed a record number of cases.¹²¹ However, the drastic increase in the number of newly initiated cases—composed in large part of cases that could have been processed through expedited removal if DHS resources allowed, *id.* at 48751 (“Due to its resource constraints, the majority of individuals USBP encountered since May 11, 2023, were ultimately placed in section 240 removal proceedings[.]”)—has significantly outpaced even these record numbers of case completions, thus increasing the pending caseload before EOIR.¹²²

Similarly, USCIS has experienced a dramatic increase in credible fear referrals. USCIS received an estimated 137,000 credible fear referrals resulting from SWB encounters in FY 2023, up from an average of about 52,000 from 2010 to 2019 and an average of about 5,700 from 2005 to 2009.¹²³ However, as the Departments explained in the IFR, USCIS does not have enough AOs to keep pace with the number of noncitizens who could be referred for credible fear interviews, much less keep pace with new affirmative asylum receipts or the existing affirmative backlog. 89 FR at 48730. The USCIS affirmative asylum application backlog has reached over 1.25 million cases.¹²⁴ Despite its growing affirmative asylum backlog, USCIS must continue to assign AOs to certain caseloads (some of which are included in the affirmative asylum backlog and some of which are not) that must be staffed to meet processing time frames established by statute, regulation, settlement agreement, court order, or litigation need, including: reasonable fear screenings; Operation Allies Welcome affirmative asylum cases; affirmative asylum cases subject to litigation; and Safe Third Country Agreement screenings. With a focus on

credible fear screenings and while having to address the required caseloads mentioned above, AOs are unavailable to fully support efforts to reduce the affirmative asylum backlog. If there is a surge in credible fear referrals, USCIS would be forced to detail and train additional staff from other parts of the agency, further affecting the overall immigration system.

USCIS has filled 850 out of 1,011 available AO positions as of August 15, 2024. USCIS is working diligently to avoid a gap between the number of AOs on board and the number of available positions, but some gap in these numbers persists, in part due to the time it takes to hire and receive security clearances for individuals to come on board as AOs. As of August 15, 2024, USCIS has a total of approximately 702 permanent AOs fully trained and certified to complete its workloads, including credible fear screening, reasonable fear screening, and affirmative asylum adjudication. Given that the ebb and flow of hiring and the number of credible fear referrals prior to the implementation of the IFR required far more officers to maintain pace, USCIS has trained staff members from across the agency to serve temporarily on detail as AOs and conduct credible fear interviews consistent with the statute. INA 235(b)(1)(E), 8 U.S.C. 1225(b)(1)(E). As of August 15, 2024, USCIS had a total of 807 credible fear trained AOs (702 permanent staff and 105 detailees, who are trained to conduct credible fear screenings only). Given the need to address the Departments’ various required workloads mentioned above, 511 AOs are currently assigned to work exclusively on credible fear cases. With this number of available AOs and accounting for some fluctuation, USCIS can generally complete credible fear determinations for an average of 650 individuals daily Monday through Friday and an average of 200 individuals daily on Saturday and Sunday. Workload priorities related to border enforcement, statutory requirements, and litigation obligations, along with insufficient resourcing allocations from Congress, continue to affect USCIS’s ability to staff at appropriate levels. Accordingly, these funding shortfalls, combined with high encounter levels at the southern border, necessitate this rule’s limitation on asylum eligibility and its changes to the credible fear referral process and screening standard for statutory withholding of removal and CAT protection to ensure the Departments are able to deliver timely decisions and

consequences using the resources provided. *See* 89 FR at 48729–31.

DHS disagrees with the claim that USCIS’s resource challenges are due to hiring and staff retention problems caused by working conditions and underpay, rather than Congress’s failure to provide the agency with sufficient resources. Resource challenges at USCIS are not a novel issue. Nearly 96 percent of USCIS’s funding is from filing fees, not from congressional appropriations. Fees for adjudication and naturalization services are set at a level to “ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants.” INA 286(m), 8 U.S.C. 1356(m). On April 1, 2024, DHS implemented a new fee schedule for USCIS-processed immigration benefits, which will generate approximately an additional \$1 billion annually; the schedule includes a new asylum program surcharge for employment-based petitioners. 89 FR 6194, 6205, 6391 (Jan. 31, 2024). While the new fee rule does provide for increased funding for the Refugee, Asylum, and International Operations Directorate,¹²⁵ keeping pace with USCIS’s protection screening and affirmative asylum workloads requires additional funding, as reflected in the President’s FY 2025 Budget.¹²⁶ As DHS explained in proposing the new fee schedule, the new fee schedule was created based on historical data and the additional funding provided by the new fee schedule may not be sufficient to cover the increased costs of the asylum program, including credible fear processing, if encounters exceed historic rates. 88 FR 402, 432–38 (Jan. 4, 2023). Even with the very limited appropriations provided by Congress to USCIS, the President’s budget requests demonstrate the need to supplement USCIS’s ability to address credible fear screenings. The President’s FY 2024 budget request to Congress sought funds necessary to complete up to 150,000

¹²¹ *See* EOIR, *Adjudication Statistics: New Cases and Total Completions* (Apr. 19, 2024), <https://www.justice.gov/eoir/media/1344796/dl?inline>; *see also* 89 FR at 48751 (noting that due to its resource constraints, “the majority of individuals USBP encountered since May 11, 2023, were ultimately placed in section 240 removal proceedings[.]” (footnote omitted)).

¹²² *Id.*

¹²³ *See* OHSS analysis of Asylum Pre-Screening Officer (“APSO”) Global and OHSS Persist Datasets current as of June 30, 2024 (Historic CFIs tab).

¹²⁴ USCIS, *Asylum Division Monthly Statistics Report. Fiscal Year 2024. June 2024* (July 23, 2024), https://www.uscis.gov/sites/default/files/document/reports/asylumfiscalyear2024todatetats_240630.xlsx.

¹²⁵ DHS, *Immigration Examinations Fee Account: Fee Review Supporting Documentation with Addendum 53* (Nov. 2023), <https://www.regulations.gov/document/USCIS-2021-0010-8176>.

¹²⁶ *See* The White House, *Fact Sheet: The President’s Budget Secures Our Border, Combats Fentanyl Trafficking, and Calls on Congress to Enact Critical Immigration Reform* (Mar. 11, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/11/fact-sheet-the-presidents-budget-secures-our-border-combats-fentanyl-trafficking-and-calls-on-congress-to-enact-critical-immigration-reform/>.

credible fear determinations.¹²⁷ A supplemental request in October 2023 sought congressional funding for 1,600 AOs.¹²⁸ Congress failed to provide resources to address credible fear screenings with respect to these appropriation requests. Raising fees on other applications and petitions to cover the \$755 million that would be required to hire and support the additional 1,600 AOs called for in the President's 2025 FY Budget¹²⁹ would impose a burden on other filers. See 89 FR at 48729. USCIS takes workforce retention seriously, but any concern about pay, hours, or workload does not obviate the systemic obstacles in running an underfunded program with limited resources.

With regard to the specific comments regarding CBP's ability and capacity to process noncitizens at POEs on the SWB, DHS disagrees that it has the resources to meaningfully expand that capacity under current conditions. CBP has finite resources available at POEs, all of which must be distributed both to processing of noncitizens and to implementing CBP's other priority missions, including facilitating lawful trade and travel and protecting national security interests.¹³⁰ That said, CBP has taken steps to increase the number of noncitizens processed at POEs, including through tools such as the CBP One app, which has helped CBP to maximize its limited resources as it permits noncitizens to pre-schedule appointments and mitigates long waiting times at POEs.¹³¹ The

Departments welcome additional resources from Congress, but must respond to emergency border circumstances with the resources currently available.¹³²

Finally, the Departments disagree that this rule is motivated by a concern that too many people are seeking asylum. The rule is intended to address the very high levels of irregular migration that the Departments have recently observed, without discouraging those with valid claims from applying for asylum or other protection. By managing flows more effectively, the rule will help ensure the continued effective, humane, and efficient processing of migrants who arrive at the southern border during emergency border circumstances.

Moreover, the Departments disagree with the suggestion that the rule is not in the best interests of the United States. On June 3, 2024, the President signed a Proclamation under sections 212(f) and 215(a) of the INA, 8 U.S.C. 1182(f) and 1185(a), finding that because the border security and immigration systems of the United States were unduly strained, the entry into the United States of certain categories of noncitizens was detrimental to the interests of the United States, and suspending and limiting the entry of such noncitizens. 89 FR at 48490–91. The Departments determined that the IFR was necessary to respond to the emergency border circumstances discussed in the Proclamation. *Id.* at 48715. Exercising their authorities, including under section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C), the Secretary and the Attorney General determined that during emergency border circumstances, it is in the “best interests of the country . . . to limit asylum eligibility for those who enter in violation of the Proclamation, which, in turn, will allow the Departments to allocate their limited resources to prioritize processing of noncitizens who do not enter in violation of it.” *Id.* at 48737 (alteration, citation, and internal quotation marks omitted). At this time, the Secretary and

the Attorney General continue to believe that this rule's limitation on asylum eligibility is in the best interests of the United States and that it should continue to apply, while encounter levels remain above the thresholds in the rule (*i.e.*, during emergency border circumstances), to noncitizens who enter across the southern border and who are not described in section 3(b) of the Proclamation, unless such noncitizens demonstrate that exceptionally compelling circumstances exist.

The Departments further disagree with the assertion of commenters that, without monitoring the consequences of removal, it is unclear if the IFR's improvement to systemic efficiency is in the best interests of the United States. The Departments believe that the present rulemaking strikes the appropriate balance between facilitating efficiency during times when emergency border circumstances are present and upholding the commitment of the United States to protecting human rights and honoring its non-refoulement obligations. Indeed, the credible fear screening process itself is designed to make a case-by-case determination related to the consequences of removal and whether those potential consequences warrant allowing a noncitizen to remain in the United States to pursue an asylum or related protection claim. While it is not feasible for the United States to monitor the exact consequences of removal in every individual case, AOs and IJs routinely use country conditions information, including Department of State Country Reports on Human Rights Practices, to inform their evaluation of potential consequences of removal as part of the credible fear determination, as part of their statutory obligation to consider “such other facts as are known” to them in the credible fear of persecution determination (INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v)); likewise, they are required by regulation to consider “evidence of gross, flagrant or mass violations of human rights within the country of removal” and “any other relevant information regarding conditions in the country of removal” in any evaluation of protection under the CAT, 8 CFR 208.16(c)(3)(iii)–(iv).¹³³ The

¹²⁷ See DHS, *FY 2024 Budget-in-Brief* 74 (2024), <https://www.dhs.gov/publication/fy-2024-budget-brief> (last visited Sep. 3, 2024).

¹²⁸ See The White House, *Fact Sheet: White House Calls on Congress to Advance Critical National Security Priorities* (Oct. 20, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/20/fact-sheet-white-house-calls-on-congress-to-advance-critical-national-security-priorities/>.

¹²⁹ See The White House, *Fact Sheet: The President's Budget Secures Our Border, Combats Fentanyl Trafficking, and Calls on Congress to Enact Critical Immigration Reform* (Mar. 11, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/11/fact-sheet-the-presidents-budget-secures-our-border-combats-fentanyl-trafficking-and-calls-on-congress-to-enact-critical-immigration-reform/>.

¹³⁰ See, e.g., Memorandum for William A. Ferrara, Exec. Ass't Comm'r, Off. of Field Operations, CBP, from Troy A. Miller, Acting Comm'r, CBP, *Re: Guidance for Management and Processing of Undocumented Noncitizens at Southwest Border Land Ports of Entry* (Nov. 1, 2021), <https://www.cbp.gov/document/guidance/guidance-management-and-processing-undocumented-non-citizens-southwest-border-land>.

¹³¹ *Id.* During the pre-pandemic period, CBP's Office of Field Operations (“OFO”) processed around 330 people per day. From January 2023 (when CBP opened CBP One for direct scheduling) through August 31, 2024, OFO has processed approximately four-and-a-half times that number of

people daily. See OHSS analysis of July 2024 OHSS Persist Dataset and data downloaded from UIP on September 3, 2024 (OFO Encounters tab).

¹³² See Letter for the Hon. Patrick McHenry, Speaker Pro Tempore of the U.S. House of Representatives, from Shalanda D. Young, Dir., Off. of Mgmt. & Budget, *Re: Critical National Security Funding Needs for FY 2024* (Oct. 20, 2023), <https://www.whitehouse.gov/omb/briefing-room/2023/10/20/letter-regarding-critical-national-security-funding-needs-for-fy-2024/> (“This request includes resources for an additional 1,300 border patrol agents to work alongside the 20,200 agents already funded in the FY2024 Budget; 375 immigration judge teams to strengthen the immigration court system—the largest incremental request ever; [and] 1,600 asylum officers to speed up processing of asylum claims[.]”).

¹³³ USCIS RAI0 Directorate, *Officer Training: Credible Fear of Persecution and Torture Determinations* 19–20 (May 9, 2024) (“Additionally, pursuant to the statutory definition of ‘credible fear of persecution,’ the asylum officer must take account of ‘such other facts as are known to the officer.’ Such ‘other facts’ include relevant country conditions information. Similarly, country conditions information should be considered when evaluating a credible fear of torture. The Convention Against Torture and implementing

present rulemaking does not change the types of evidence AOs and IJs rely on, such as human rights monitoring reports relating to the potential consequences of removal to a particular country, in making credible fear determinations at the higher “reasonable probability” of persecution or torture standard.

c. Rule Does Not Acknowledge Factors Contributing to Migration

Comment: Some commenters argued that the Departments failed to analyze to what extent migration patterns are shaped by U.S. immigration enforcement system incentive structures relative to other factors, such as the many reasons people are forced to flee their homes.

These commenters disagreed with what they characterized as the Departments’ decision to impose further consequences on individuals seeking protection. Some commenters argued that many factors contribute to the number of border encounters, including dire conditions in migrants’ countries of origin and their personal circumstances, and that while the IFR acknowledges that various push factors such as violence, persecution, poverty, human rights abuses, climate change, and others contribute to current migratory patterns, it does not fully engage with them and instead “assumes, without foundation, that the perceived incentives, responsive to U.S. enforcement measures, single-handedly shape migration patterns,” despite ample United States Government and academic analyses that demonstrate that U.S. enforcement measures are only one of several factors informing patterns of migration.

Similarly, another commenter stated that, although the IFR asserts that insufficient enforcement leads to high encounter levels, it is more plausible that the world is experiencing high levels of displacement and international migration and that the United States is a desirable destination for migrants. The commenter added that such global pressures would be more productively met with policies that directly address the desire, ability, and opportunities for people to migrate, rather than imposing harsher enforcement.

Response: The Departments agree that many factors that are outside the U.S. Government’s control influence migration patterns, including push factors. The Departments have never

asserted that U.S. enforcement measures singlehandedly shape migration patterns. Economic and political instability around the world is fueling the highest levels of migration since World War II, including in the Western Hemisphere. 88 FR at 11704. However, the effects of these factors and U.S. immigration enforcement are complementary to each other. They can both simultaneously and separately influence migrants’ decisions regarding when, how, and where to migrate. The Departments believe that ensuring the timely enforcement of consequences for noncitizens who enter the United States irregularly without a legal basis to remain in the United States is a powerful tool for addressing the situation at the southern border, particularly when combined with the expanded availability of lawful pathways. This view is supported by the success of the IFR in reducing levels of irregular migration as further discussed in Section II.A.2 of this preamble. Timely enforcement of consequences is but one approach to respond to the specific issue of incentivizing the use of lawful, safe, and orderly pathways and disincentivizing migrants from utilizing dangerous, irregular migration routes along the southern border. This rule was designed to address encounters on our SWB, not to singlehandedly reshape migration patterns throughout the region.

d. Other Comments Related to the Departments’ Justification

Comment: Commenters suggested that high encounter levels are due to the Biden Administration’s border security and immigration regulatory and policy efforts. One commenter disagreed with the Departments’ assigning blame for the border crisis to Congress’s failure to appropriate additional funding to the Departments, instead stating that it is the Administration’s consistent “abdication of border security and immigration enforcement[]” that has resulted in the sustained high rate of encounters since 2021. The commenter said DHS must implement additional deterrence policies to discourage “illegal immigration” across the SWB.

Response: The Departments disagree that the Administration’s regulatory and policy efforts have led to the emergency border circumstances. Rather, the Departments believe that the COVID–19 global pandemic upended travel throughout the world, forcing many noncitizens to delay their journeys to the United States. This was further exacerbated by the implementation of the Title 42 public health Order, which quickly expelled noncitizens who were

crossing the border back into Mexico without applying an immigration consequence. See 88 FR at 31335 (discussing lack of immigration consequences associated with expulsions under the Title 42 public health Order). These factors contributed greatly to the significant surge in migration immediately following the end of the COVID–19 pandemic period. Since 2021, the United States Government has taken a series of significant steps to strengthen consequences for irregular entry at the southern border in response to record levels of encounters there. The Circumvention of Lawful Pathways rule created disincentives for irregular border crossings and is a critical component of the Government’s regional strategy. DHS also put in place complementary measures to streamline expedited removal processing to more quickly apply consequences to those who fail to use lawful, safe, and orderly pathways. These measures include holding noncitizens processed for expedited removal for the pendency of their credible fear interviews in CBP facilities to maximize the use of expedited removal.¹³⁴ In the immediate post-pandemic period, DHS maximized the use of expedited removal given its limited resources, placing an average of 900 individuals encountered between POEs at the SWB into the process each day between May 12, 2023, and June 4, 2024, and conducting an average of 490 credible fear interviews daily, both of which are record highs.¹³⁵ Between May 12, 2023, and June 4, 2024, DHS removed or returned more than 794,000 noncitizens who did not have a legal basis to remain in the United States, the majority of whom crossed the SWB.¹³⁶ Average daily removals and returns during the immediate post-pandemic period exceeded daily rates for every FY since 2010.¹³⁷ The majority of all individuals encountered at the SWB from FY 2021 to FY 2023 were removed, returned, or expelled.¹³⁸

Unfortunately, despite maximizing the usage of resources available to the Departments, these efforts have not been as effective as they could have been had Congress provided the tools and resources needed to address substantial

¹³⁴ See Decl. of Blas Nuñez-Neto ¶ 20, *M.A. v. Mayorkas*, No. 23–cv–1843 (D.D.C. Oct. 27, 2023) (Dkt. 53–1).

¹³⁵ OHSS analysis of June 2024 Enforcement Lifecycle data (Immediate Post-Pandemic ERCF tab); OHSS analysis of APSO Global and OHSS Persist Datasets (Historic CFIs tab).

¹³⁶ *Id.*

¹³⁷ OHSS 2022 Yearbook of Immigration Statistics (OHSS YB Table 39 tab) (listing past repatriations).

¹³⁸ OHSS analysis of June 2024 Enforcement Lifecycle data (Enforcement Lifecycle 6.2024 tab).

regulations require consideration of “[e]vidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and [o]ther relevant information regarding conditions in the country of removal.” (quoting 8 CFR 208.16(c)(3)(iii)–(iv)).

levels of migration impacting the southern border. Encounter levels increased toward the end of 2023,¹³⁹ and December 2023 saw the highest level of encounters between POEs in history,¹⁴⁰ as increasing numbers of people migrated through the Western Hemisphere. 89 FR at 48713. The Departments' inability, given a lack of sufficient resources, to deliver timely decisions and consequences through expedited removal for those without a legal basis to remain creates incentives for further irregular migration and creates further strain on the border security and immigration systems. *See id.* at 48713–14. The IFR was needed to respond to this emergency situation, and it is having its intended effect as discussed in Section II.A.2 of this preamble. However, only Congress can provide the resources and authorities that the Departments need to ensure durable solutions to heightened levels of global migration and the impact it has on the border security and immigration systems.

B. General Feedback on the IFR

1. General Support

Comment: Some commenters approved of the rule's limitation on asylum eligibility, reasoning that the U.S. asylum system is being "abused" and "exploit[ed]." A commenter stated that the Federal Government should stop permitting undocumented immigrants to stay in the country while their asylum claims are processed, as many exploit the system to remain for years, and that daily border crossings pose national security risks. That commenter also stated that the United States has housing and job shortages, so allowing immigrants to take housing and jobs is hurting America. Another commenter thanked the Departments for implementing this rule and asked that all enforcement mechanisms be deployed to uphold it.

Response: The Departments agree that maintaining border security is critical and that the rule will have benefits for the U.S. border security and immigration systems. Specifically, the United States Government has better ensured timely decisions and consequences for irregular entry at the border, while at the same time overseeing the largest expansion of lawful, safe, and orderly pathways and processes for individuals to come to the United States in decades. *See, e.g.,* 89 FR at 48712–13; *id.* at 48721–26

(discussing the increase in migration at the SWB, consistent with global trends and regional United States Government efforts); 88 FR at 11716–18 (discussing United States Government measures to offer alternative pathways to address the root causes of migration, improve the asylum system, and address the pernicious role of smugglers). This approach has allowed DHS to process noncitizens arriving at the southern border for removal in record numbers and with record efficiency. 89 FR at 48713, 48727.

This rule has improved DHS's ability to place into expedited removal the majority of single adults and individuals in family units encountered by USBP at the SWB and to swiftly issue decisions and impose consequences that have proven effective to disincentivize noncitizens who do not have a strong claim for asylum or other protection from entering the United States to pursue such claims. *See* Section II.A.2 of this preamble; *see also* 89 FR at 48746. This rule is also designed to identify more effectively those with a fear of return, and, for noncitizens who have manifested or expressed a fear of return, to screen out and swiftly remove those whose claims have a low likelihood of succeeding on the merits. *See* 89 FR at 48743–46. As a result, the Departments believe that this rule will also improve the overall functioning and efficiency of the immigration system by reducing strains on EOIR and USCIS resources and allowing DHS to remove more noncitizens through expedited removal, rather than adding them to the backlogged immigration courts.

2. General Opposition

a. Negative Impacts on Noncitizens and Others

i. Conflicts with Humanitarian Values

Comment: Several commenters expressed opposition to the IFR based on general humanitarian and moral concerns, with some commenters urging the Departments to reconsider or rescind the rule. Commenters addressed the general right to seek asylum and the United States' obligations to protect those seeking asylum. For example, commenters emphasized that people have the right to migrate and seek asylum, which commenters described as a human right. Commenters stated the Administration should provide rights to those in the U.S. asylum process. Commenters also stated that people have a right to work and live in a safe environment with their families so that they can enjoy a better life. Several commenters stated that the IFR denies

the right to seek asylum or that it harms those with the right to asylum.

Commenters stated that the United States has a responsibility or moral obligation to welcome noncitizens who might make claims of asylum, that the United States should provide protection to those who seek it, and that turning them away is unconscionable. Some commenters suggested that the United States should welcome all people, regardless of their origin or when or how they arrive. Commenters stated that the United States has contributed to the conditions or push factors that promote migration and that it should share the responsibility for the geopolitical and climatic conditions it has created, especially since the response of the United States may shape how other countries react to humanitarian crises.

Response: The Departments agree that the United States has certain legal obligations to protect those present in the United States who fear persecution or torture in their home countries or countries of removal and recognize the importance of offering migrants the opportunity to seek protection from removal. *See* 89 FR at 48759. But as explained more fully in Section III.A.1 of this preamble, this rule does not run afoul of those obligations or otherwise undermine the commitment of the United States to adhering to international law principles concerning non-refoulement. *See also id.* at 48716–17, 48735–36. The Departments have instead exercised their authority to adopt a limitation on asylum eligibility and an exception to that limitation in certain circumstances. *See id.* at 48718. As discussed more fully in Section III.A.1 of this preamble, this framework comports with section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C), which permits limitations and conditions on asylum as long as they are consistent with the INA.

Any noncitizen who is physically present in the United States may apply for asylum, but there is no right for a noncitizen to enter the United States or to be processed in a particular manner. *See United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) ("At the outset we wish to point out that an alien who seeks admission to this country may not do so under any claim of right. Admission of aliens to the United States is a privilege granted by the sovereign United States Government."). No individual present in the United States will be denied the opportunity to seek asylum or protection in the United States under this rule.

In particular, this rule does not preclude noncitizens who cross the

¹³⁹ OHSS analysis of July 2024 OHSS Persist Dataset and data downloaded from UIP August 6, 2024, for July 2024 (Encounters FY 2000–2024 tab).

¹⁴⁰ *Id.*

southern border from seeking asylum. Indeed, all noncitizens processed for expedited removal who manifest a fear of return, express an intention to apply for asylum or protection, or express a fear of persecution or torture or a fear of return to their country or the country of removal are entitled to a credible fear interview, as appropriate. *See* INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii); 8 CFR 235.15(b)(4). Also, noncitizens in section 240 removal proceedings have the opportunity to present information asserting fear of or concern about potential removal. *See* INA 240(c)(4), 8 U.S.C. 1229a(c)(4). Although many individuals may be ineligible for asylum under this rule, they may seek to establish that they are subject to the rule's exception for exceptionally compelling circumstances, and they may also still seek statutory withholding of removal and CAT protection in the United States.

The purpose of this rule is to enhance the Departments' ability to address historic levels of migration and efficiently process migrants arriving at the southern border during emergency border circumstances. 89 FR at 48718. Consistent with that purpose, the rule limits eligibility for asylum during such circumstances and ensures that the process is not overwhelmed by those with nonviable claims in the expedited removal process who will add to an already-large backlog. Those referred to an IJ will become part of the backlog of pending immigration cases before EOIR, which at the end of the third quarter of FY 2024 was over 3.46 million cases.¹⁴¹ Continuing to process non-viable claims will also exacerbate USCIS's asylum backlog, which, based on case filings through August 31, 2024, was over 1.3 million cases.¹⁴²

Comment: Commenters wrote that the IFR contradicts U.S. values and history. Commenters stated that the United States is a nation of immigrants and is built on a history of welcoming migrants. Some commenters described the IFR's limitations on asylum as contrary to U.S. values and democracy and termed it "un-American." Commenters stated that the IFR does not treat noncitizens with dignity and respect. Many commenters emphasized the desire for any process to be "welcoming, transparent, humanitarian,

and fair;" one commenter specifically expressed concern for "the dignity, safety, and human rights of asylum seekers;" and another expressed concern for those people "seeking safety and the American dream." Another commenter emphasized that immigrants "are human beings and deserve to be treated as such." Many commenters generally desired policies that "welcome immigrants." Other commenters provided additional remarks on the contributions of immigrants to the United States, stating that noncitizens provide value to U.S. communities and that immigrants have enriched the United States. Commenters emphasized their own status as descendants of immigrants and expressed a desire for fairness in welcoming noncitizens at all borders. Commenters argued that the IFR undermines the historic commitment of the United States to protecting those who seek refuge. At least one commenter described the IFR as "authoritarian."

Commenters also addressed moral concerns related to the IFR or the immigration system overall. One commenter stated that immigrants are not "a problem;" rather it is "our immigration system that is the problem." Some described the IFR, or denying asylum, as "immoral," "inhumane," "cruel," "unjust" or "unfair," or "xenophobi[c]." Commenters asserted that the United States should have an accessible, diverse, safe, welcoming, dignified, fair, and balanced immigration system. Commenters stated that the United States should not make it harder for those fleeing danger to seek protections. Commenters stated that the United States should treat immigrants and refugees with respect, dignity, and compassion while defending human life. Commenters stated that Mexico and Latin America are neighbors of the United States and should be treated with goodwill. One commenter stated that asylum seekers from Mexico should be given the full rights of citizens. One commenter stated that there is no real border security or immigration crisis, but rather the concept has been created to distract Americans from certain political agendas, and that the "real crisis" is climate change.

Response: The United States is both a nation of immigrants and a nation of laws. The Departments are charged with administering and enforcing those laws and endeavor to do so humanely. The Departments agree that the historical openness of the United States to immigration has enriched our culture, expanded economic opportunities, and

enhanced our influence around the world. However, the Departments reject the contention that the IFR's limitation on asylum eligibility and other provisions are inconsistent with American values, fairness, and showing respect for immigrants.

The United States has a long tradition of accepting and welcoming refugees. For decades, U.S. law has protected vulnerable populations from return to a country where they would be persecuted or tortured. *See, e.g., Stevic*, 467 U.S. at 409 ("For over 30 years the Attorney General has possessed statutory authority to withhold the deportation of an alien upon a finding that the alien would be subject to persecution in the country to which he would be deported."). Under this rule, the United States will continue to offer such protection. The rule is designed to implement the Proclamation's policies and objectives by enhancing the Departments' ability to address historic levels of migration and efficiently process migrants arriving at the southern border during emergency border circumstances. *See* 89 FR at 48718. The rule enhances the Departments' ability to manage high levels of irregular migration to the United States during emergency border circumstances and allows the Departments to quickly deliver decisions and consequences to those who cross the southern border irregularly and are unable to establish a legal basis to remain, while upholding domestic and international protection obligations. *Id.* at 48731.

Without a policy in place to ensure lawful, safe, and orderly processing of migrants entering the United States, the number of migrants would exceed DHS's already limited resources and facilities. Over the past several years, the border security and immigration systems have experienced extreme strain, with a dramatic increase in the number of noncitizens attempting to cross the SWB between POEs. 89 FR at 48722. Despite the meaningful impact of the Circumvention of Lawful Pathways rule and related measures, encounter levels continued to exceed DHS's capacity to, as appropriate, effectively and safely process, detain, and remove noncitizens. *Id.* at 48727. As explained in the IFR, the Departments believed that, without meaningful policy change, encounters between POEs would continue to rise and surpass DHS's capacity and abilities based on available resources. *Id.* at 48726. The Departments disagree with the sentiment that the rule is unnecessary, as it responds to this urgent situation. The Departments reiterate that the goal

¹⁴¹ *See* EOIR, *Adjudication Statistics: Pending Cases, New Cases, and Total Completions* (July 19, 2024), <https://www.justice.gov/eoir/media/1344791/dl?inline>. Initial receipts equals removal, deportation, exclusions, asylum-only, and withholding-only cases.

¹⁴² *See* OHSS analysis of USCIS Global data as of September 10, 2024.

of the rule is not to discourage migrants with valid claims from applying for asylum or other protection, but rather to discourage the unprecedented level of irregular migration while at the same time maintaining access to lawful, safe, and orderly pathways to enter the United States. The Departments have determined that the benefits to the overall functioning and efficiency of the immigration system at our southern border justify the rule; applying the rule is necessary to ensure the Departments' continued ability to safely, humanely, and effectively enforce and administer U.S. immigration laws and to reduce the role of exploitative and dangerous smuggling and human trafficking networks.

The rule does not render noncitizens to whom it applies categorically ineligible for asylum, nor does it alter their ultimate eligibility for withholding or CAT protection. To ensure that particularly vulnerable migrants are not unduly burdened by the rule, the Departments have included an exception to the limitation on asylum eligibility that will allow some migrants to remain eligible for asylum. 8 CFR 208.35(a)(2), 1208.35(a)(2). And even those ineligible for asylum may continue to seek statutory withholding of removal and CAT protection. A noncitizen who seeks to maintain eligibility for asylum can also utilize one of several lawful, safe, and orderly pathways to the United States, including use of the CBP One app, or, for some noncitizens, refugee resettlement, parole processes, family reunification, and labor pathways. Indeed, as noted above, the CBP One app has permitted the United States Government to process nearly five times more individuals at land border POEs each day than it did on an average day in the six years preceding the pandemic—providing an important avenue for individuals who may wish to access protection in the United States to so in a safe and orderly manner.¹⁴³ The Safe Mobility Initiative, which includes Safe Mobility Offices in several countries in the Western Hemisphere, processes and educates migrants about the aforementioned pathways.¹⁴⁴ By reducing migration flows to a reasonable rate, the rule will reduce strains on limited Federal Government immigration processing and enforcement resources; preserve the

Departments' continued ability to safely, humanely, and effectively enforce and administer the immigration laws; and reduce the role of exploitative TCOs and smugglers. 89 FR at 48767. Finally, as explained in Section III.A.1 of this preamble, the rule is fully consistent with the Departments' authority and obligations under section 208 of the INA, 8 U.S.C. 1158.

ii. Procedural and Due Process Concerns

(1) General Concerns

Comment: A commenter stated that the IFR does not violate noncitizens' due process rights because asylum is a discretionary benefit to which noncitizens have no inherent due process interest; instead, they have only the procedural rights guaranteed by statute. Because the IFR preserves all procedural statutory protections, the commenter stated, the IFR complies with due process. The commenter further stated that regulatory bars to asylum do not alter the basic procedural protections, such as the opportunity to be heard, for noncitizens who make credible fear claims.

Other commenters urged the Departments to rescind the IFR entirely. Some commenters expressed general concern that the IFR would violate or undermine due process protections. One commenter said that U.S. immigration law is already confusing, citing research that it said showed that 55.9 percent of noncitizen respondents did not understand the requirements and processes for accessing United States territory. The commenter further stated that noncitizens arriving at the southern border will not be able to understand the procedures for seeking asylum or protection given the IFR's complexity.

Commenters discussed the importance of due process in the asylum system, as required by international human rights law, and said that the United States has a duty to ensure that noncitizens receive a fair trial and fully understand their rights. Similarly, one commenter stated that noncitizens who express the desire to seek asylum have a due process right to information about their rights and obligations, including deadlines and appeals, the interview process, and their right to legal representation. Such safeguards, the commenter wrote, would ensure that noncitizens receive the necessary guidance for pursuing their asylum claims.

Commenters wrote that fair and efficient asylum procedures are even more important for noncitizens with particular vulnerabilities, such as UCs. Commenters stated that the IFR would

hamper consistent application of the law and result in arbitrary application of the law, thus severely restricting access to asylum and humanitarian protections.

Response: The Departments disagree that the rule violates the Due Process Clause of the Fifth Amendment or impermissibly restricts access to asylum. Noncitizens who are encountered in close vicinity to and immediately after crossing the border and are placed in expedited removal proceedings, including those in the credible fear screening process, have “only those rights regarding admission that Congress has provided by statute.”¹⁴⁵ *Thuraissigiam*, 591 U.S. at 140; see also *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (concluding that “an arriving immigrant caught at the border . . . ‘has no constitutional rights regarding his application’ for asylum” (quoting *Thuraissigiam*, 591 U.S. at 139)). As discussed above in Section III.A 1 of this preamble, the changes in this rule are consistent with the INA. They thus comply with the Due Process Clause with respect to noncitizens in expedited removal proceedings.¹⁴⁶

Contrary to commenters' assertions, the rule ensures that noncitizens receive

¹⁴⁵ Courts also have held that noncitizens do not have an underlying property or liberty interest in a grant of asylum to which the protections of the Due Process Clause attach. See, e.g., *Jin v. Mukasey*, 538 F.3d 143, 157 (2d Cir. 2008) (holding that “an alien who has already filed one asylum application, been adjudicated removable and ordered deported, and who has nevertheless remained in the country illegally for several years, does not have a liberty or property interest in a discretionary grant of asylum”); *Ticoalu v. Gonzales*, 472 F.3d 8, 11 (1st Cir. 2006) (“Due process rights do not accrue to discretionary forms of relief, and asylum is a discretionary form of relief.” (citation and internal quotation omitted)); *Mudric v. Att’y Gen.*, 469 F.3d 94, 99 (3d Cir. 2006) (holding that an 8-year delay in processing the petitioner’s asylum application was not a constitutional violation because the petitioner “had no due process entitlement to the wholly discretionary benefits of which he and his mother were allegedly deprived”); cf. *Munoz v. Ashcroft*, 339 F.3d 950, 954 (9th Cir. 2003) (“Since discretionary relief is a privilege created by Congress, denial of such relief cannot violate a substantive interest protected by the Due Process clause.”). Notably, UCs are excepted from expedited removal and have other rights under the nation’s immigration laws. See generally 8 U.S.C. 1232. Procedural concerns related to UCs are addressed later in this section.

¹⁴⁶ Although this rule’s limitation on asylum eligibility also applies in section 240 removal proceedings, even if noncitizens in those proceedings had an interest protected by the Due Process Clause, the application of the limitation would not violate the Due Process Clause because, as noted below, noncitizens in such proceedings are entitled to all the procedural protections such proceedings normally entail. See *Pouhova v. Holder*, 726 F.3d 1007, 1011 (7th Cir. 2013) (citing section 240(b)(4) of the INA, 8 U.S.C. 1229a(b)(4), and explaining that “[a]ny proceeding that meets the requirements of the statute also satisfies constitutional due process”).

¹⁴³ OHSS analysis of July 2024 OHSS Persist Dataset (OFO Encounters tab).

¹⁴⁴ See U.S. Dep’t of State, *Safe Mobility Initiative: Helping Those in Need and Reducing Irregular Migration in the Americas*, <https://www.state.gov/safe-mobility-initiative/> (last visited Sept. 24, 2024).

a fair process. Indeed, although the rule changes some procedures, as discussed throughout this preamble, it leaves much of the process unaltered. Specific comments concerning the rule's manifestation of fear standard and related changes to the process for determining whether a noncitizen should be referred to an AO for a credible fear interview are addressed in Section III.C.2 of this preamble. The Departments address commenters' concerns about the rule's consistency with international obligations in Section III.A.1 of this preamble.

First, with respect to one commenter's claim that noncitizens do not understand the requirements for accessing United States territory because U.S. immigration law is confusing, the Departments are aware of no statutory requirement that notice regarding any of the INA's provisions be provided to individuals outside the United States, including those who may be subject to expedited removal provisions or this rule's limitation on asylum eligibility upon arrival. In addition, to the extent the commenter's objection is to the complexity of the INA, that concern is a matter for Congress to address.

Second, under the rule, DHS is continuing to provide noncitizens who are subject to expedited removal with notice of their ability to raise a claim of fear of persecution or torture. DHS is using signs and videos that are reasonably designed to ensure that noncitizens in its custody are aware of their right to request asylum or protection. As discussed further in Section III.C.2 of this preamble, these signs and videos are provided in languages that are common to the large majority of noncitizens encountered by CBP at the southern border. ICE likewise provides information in a number of languages to detainees being processed under the rule.¹⁴⁷ And the signs provide a simple instruction to noncitizens that, if they fear persecution or torture if they are removed from the United States, they should tell an immigration officer and an AO will conduct an interview and ask the noncitizens questions about

any fear they may have. Individuals who do not speak one of the languages are provided with language access services consistent with CBP's existing language assistance policies. These procedures are consistent with DHS's obligations under section 235(b)(1)(B)(iv) of the INA, 8 U.S.C. 1225(b)(1)(B)(iv).

Moreover, to the extent that commenters have expressed due process concerns about the manifestation standard, the Departments reiterate that the expedited removal statute does not require immigration officers to affirmatively ask every noncitizen subject to expedited removal if the noncitizen has a fear of persecution or torture. *See* 89 FR at 48740. Instead, the statute provides that only those noncitizens who "indicate[] either an intention to apply for asylum . . . or a fear of persecution," INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i), must be referred to an AO for a credible fear interview, INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii). As discussed in detail in Section III.C.2 of this preamble, the statute does not place any affirmative obligation on the Government to question noncitizens about intent to seek relief or fear in their home countries, nor does it define what circumstances constitute the requisite indication of intent or fear; to the contrary, the onus under the statute is on the noncitizen to "indicate[]" either of the circumstances warranting referral. Because the Departments' procedures comply with the statute, they comport with due process. *See Thuraissigiam*, 591 U.S. at 139–40.

Third, noncitizens who manifest or express a fear and who are referred for a credible fear interview will receive additional information about the credible fear process that has the same types of procedural and substantive information as that provided in the Form M–444, which is used for those not subject to the rule's expedited removal procedures and during times when this rule's provisions do not apply. 89 FR at 48739–40. The new "Information About Credible Fear Interview Sheet" informs the noncitizen that the noncitizen may consult with another person, including a legal service provider, and is provided to the noncitizen along with an EOIR-maintained list of pro bono legal service providers. It gives the noncitizen information about the credible fear interview itself, including that an interpreter will be provided, if needed or requested. It explains that the noncitizen may request a male or female interpreter or AO and may speak to the AO separately from the noncitizen's

family. It highlights the importance of telling the AO about the noncitizen's fear of harm and that this may be the only opportunity to do so. The information sheet notifies the noncitizen of the right to have an IJ review a negative fear determination and gives details about the steps following a positive determination.

Individuals in the credible fear process maintain the right to consult with an attorney or other person or persons of their choosing before their interview, and such persons may be present for the interview itself. 8 CFR 235.15(b)(4)(i)(B). Asylum seekers also may present evidence relevant to their claim during their interviews. 89 FR at 48746 & n.239. Additionally, USCIS provides interpreter services at the agency's expense to noncitizens who cannot proceed effectively in English. 8 CFR 208.30(d)(5). And noncitizens may request review of a negative fear determination before an IJ. *Compare* 8 CFR 208.30(g)(1) (providing the standard process for requesting IJ review in credible fear proceedings), *with* 8 CFR 208.35(b)(2)(iii)–(v) (explaining the process for requesting IJ review for those subject to the rule and unable to show that the exception to the limitation on asylum eligibility applies). The rule requires noncitizens to respond affirmatively when asked whether the noncitizen would like to request such review, rather than providing review if the noncitizen does not respond, but IJ review remains available in all cases with a negative credible fear determination. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III); 8 CFR 208.35(b)(2), 1208.35(b)(1). The rule is thus fully consistent with the Departments' legal authority and obligations.

In addition, the rule provides several procedural protections to ensure that asylum applicants receive a full and fair hearing before an IJ and that the limitation on asylum eligibility applies only to noncitizens properly within the scope of 8 CFR 208.35(a) and 1208.35(a). During the credible fear review, an IJ will evaluate *de novo* whether there is a significant possibility that the noncitizen would ultimately be able to demonstrate by a preponderance of the evidence that the limitation on asylum eligibility does not apply or that the noncitizen meets the exception. 8 CFR 208.35(b)(2)(v), 1208.35(b). Even where an IJ determines that the noncitizen has not met that burden, if the noncitizen demonstrates a reasonable probability of persecution or torture in the country or countries of removal, the noncitizen will have an opportunity to apply for statutory withholding of removal,

¹⁴⁷ *See* Memorandum for Daniel A. Bible, Exec. Assoc. Dir., Enforcement and Removal Operations, ICE, from Patrick J. Lechleitner, Deputy Dir. and Senior Off. Performing the Duties of the Dir., ICE, *Re: Implementation Guidance for Noncitizens Described in Presidential Proclamation of June 3, 2024, Securing the Border, and Interim Final Rule, Securing the Border 5* (June 4, 2024) ("These signs must be posted in English and Spanish. [Enforcement and Removal Operations ('ERO')] will have additional translations available in facility law libraries in the following languages"); ICE, *National Detainee Handbook* 7, 15, 25 (2024), <https://www.ice.gov/doclib/detention/ndHandbook/ndhEnglish.pdf>.

protection under the CAT regulations, or any other form of relief or protection for which the noncitizen is eligible in section 240 removal proceedings, including asylum. 8 CFR 1208.33(b)(2)(ii), 1208.35(b)(2)(iii). These standards help to ensure the outcome of the process delineated in the rule is not predetermined and that noncitizens potentially subject to the limitation on asylum eligibility receive sufficient opportunity for consideration and review of threshold eligibility determinations to satisfy any putative due process rights they may have. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” (internal quotation marks omitted)).

Nor does the rule violate any procedural due process rights noncitizens may have in section 240 removal proceedings. For those placed in section 240 removal proceedings, the rule’s limitation on asylum eligibility will be litigated in those proceedings before an IJ with all the procedural rights that apply in such proceedings. *See Pouhova*, 726 F.3d at 1011; *see also Rehman v. Gonzales*, 441 F.3d 506, 508 (7th Cir. 2006) (“Any proceeding that meets [the requirements of section 240 of the INA, 8 U.S.C. 1229a, and the INA’s implementing regulations,] satisfies the Constitution as well.”).

Additionally, the Departments disagree with comments characterizing the IFR as resulting in unfair procedures that are especially harmful to those with particular vulnerabilities, such as UCs, individuals with mental health issues or intellectual capacity challenges, and victims of violence, torture, or other traumatic experiences. Nothing in the IFR changes the longstanding framework establishing that UCs are not subject to expedited removal. *See* 8 U.S.C. 1232(a)(5)(D). UCs are also specifically excepted from the Proclamation’s suspension and limitation on entry under section 3(b) of the Proclamation and, accordingly, the IFR’s limitation on asylum eligibility. 89 FR at 48487; 8 CFR 208.35(a)(1), 1208.35(a)(1). Moreover, the process outlined in the IFR does not prohibit USCIS from exercising its discretion to issue notices to appear (“NTAs”) and place noncitizens, including those who are unable to testify or who speak a rare language, in section 240 removal proceedings, where they can request asylum. *See* 8 CFR 208.30(b); *see also Matter of E–R–M– & L–R–M–*, 25 I&N Dec. 520, 523 (BIA 2011) (finding that the INA provides DHS with “discretion to put aliens in section 240 removal

proceedings even though they may also be subject to expedited removal”). Additionally, EOIR has established a specialized juvenile docket at each immigration court with an established caseload of children’s cases; has issued guidance to its adjudicators regarding special considerations and procedures for cases involving children, including UCs; and has provided training to IJs on cases involving children, including UCs.¹⁴⁸

Noncitizens in section 240 removal proceedings have a wide range of well-established statutory and regulatory rights, including the following: the right to representation at no expense to the Government, INA 240(b)(4)(A), 8 U.S.C. 1229a(b)(4)(A); a reasonable opportunity to examine evidence, present evidence, and cross-examine witnesses, INA 240(b)(4)(B), 8 U.S.C. 1229a(b)(4)(B); the right to seek various forms of relief, 8 CFR 1240.1(a)(1)(ii)–(iii); the right to file a motion to continue, 8 CFR 1003.29; and the right to appeal specified decisions to the BIA, 8 CFR 1003.3(a), 1003.38(a), and to later file a petition for review of a final removal order in the appropriate U.S. Court of Appeals, INA 242, 8 U.S.C. 1252. Additionally, EOIR provides interpreters for noncitizens in section 240 removal proceedings.¹⁴⁹ And safeguards are provided to those who are not competent to participate in their proceedings, *see Matter of Matter of M–A–M–*, 25 I&N Dec. 474, 481–82 (BIA 2011), which may include termination of the proceedings where “[f]undamentally fair proceedings are not possible because the noncitizen is mentally incompetent and adequate safeguards are unavailable,” 8 CFR 1003.1(m)(1)(i)(B), 1003.18(d)(1)(i)(B).

The Departments also disagree with commenters’ assertion that the IFR would lead to disparate or arbitrary application of the law. USCIS AOs and supervisory AOs have received the same training and materials related to applying the IFR across offices and jurisdictions. Asylum staff nationwide use Global, a cloud-based case management system,¹⁵⁰ which includes interview guides, forms, and instructions—including specific interview guides, forms, and instructions to implement the IFR—to

ensure consistency in procedures and substantive guidelines. Moreover, the IFR does not change the fact that all credible fear determinations issued by USCIS are reviewed by a supervisory AO prior to being served on a noncitizen, 8 CFR 208.30(e)(8), another important safeguard to ensure quality and consistency within and between offices.

Additionally, IJs are career employees who are selected through a competitive process.¹⁵¹ The Director of EOIR has authority to order “comprehensive, continuing training and support” directed at “promot[ing] the quality and consistency of adjudications.” 8 CFR 1003.0(b)(1)(vii). And the Chief IJ has the authority to “[p]rovide for appropriate training of the immigration judges and other [Office of the Chief Immigration Judge] staff on the conduct of their powers and duties.” 8 CFR 1003.9(b)(2). Regulations also require IJs to “resolve the questions before them in a timely and impartial manner consistent with the [INA] and regulations.” 8 CFR 1003.10(b). To that end, all IJs receive ongoing training to facilitate the implementation of new policies and procedures, such as the IFR.¹⁵² EOIR’s Legal Education and Research Services Division also offers nationwide legal training for IJs and “regularly distributes new information within EOIR that includes relevant legal developments and policy changes from U.S. government entities and international organizations.”¹⁵³

(2) Access to Counsel, Unrepresented Applicants, and the Ability or Time To Prepare

Comment: Commenters stated that access to counsel is a due process right. Commenters also discussed statutory and regulatory requirements that provide noncitizens eligible for a credible fear interview the right to consult with legal counsel and said that the recent change to a minimum 4-hour consultation period prior to a credible fear interview—which DHS made via guidance—would effectively deny noncitizens that right.

One commenter additionally stated that less than 3 percent of migrants in

¹⁴⁸ *See* EOIR, *Director’s Memorandum 24–01, Children’s Cases in Immigration Court* (Dec. 21, 2023), https://www.justice.gov/d9/2023-12/dm-24-01_1.pdf.

¹⁴⁹ *See* EOIR, *Director’s Memorandum 23–02, Language Access in Immigration Court 1–2* (June 6, 2023), <https://www.justice.gov/eoir/book/file/1586686/dl>.

¹⁵⁰ USCIS, *Privacy Impact Assessment Update for the USCIS Asylum Division*, at 4 (2018), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-asylum-september2018.pdf>.

¹⁵¹ EOIR, *Make a Difference—Apply for an Immigration Judge Position* (last updated Sept. 17, 2024), <https://www.justice.gov/eoir/Adjudicators> (describing application process and core position requirements for IJ position).

¹⁵² *See, e.g.,* EOIR, *Fact Sheet: Executive Office for Immigration Review Immigration Judge Training 2* (June 2022), <https://www.justice.gov/eoir/page/file/1513996/dl?inline>.

¹⁵³ EOIR, *Legal Education and Research Services Division* (last updated Jan. 3, 2020), <https://www.justice.gov/eoir/legal-education-and-research-services-division>.

expedited removal were able to obtain legal representation. Other commenters said that less than 1 percent were able to find representation in the credible fear process. A commenter stated that in 2023, 35 percent of represented individuals had their negative fear determinations vacated, compared to just 15 percent of unrepresented noncitizens. Commenters emphasized that any immigration solution should include procedures for asylum seekers to access legal representation.

Another commenter said that a 2010 study found that 54 percent of noncitizens with representation were granted asylum, compared to 11 percent of noncitizens without representation. Another commenter said that noncitizens with representation were twice as likely to receive a grant of asylum as their unrepresented counterparts. The commenter said that such data indicate that, as a result of the IFR and reduced access to counsel, applicants with meritorious claims who would have otherwise been referred to full hearings will be denied.

Commenters stated that many noncitizens do not understand the function and purpose of a credible fear interview without speaking with an attorney, particularly those who speak languages not included on orienting signs. Commenters explained that a majority of noncitizens do not have legal representation and thus may struggle to effectively present their cases, particularly if they do not speak English. Commenters also stated that, without legal counsel, many noncitizens will not understand the process nor the legal grounds for their asylum claims. Commenters stated that access to counsel significantly affects asylum outcomes and that less access to counsel is particularly troubling considering that noncitizens must now meet a new, higher standard for protection screenings. One commenter stated that the rule will worsen the issues that already exist in expedited removal proceedings, adding that children and adults are routinely denied access to legal advice if they get referred for fear screenings. Commenters who provide legal services also claimed that they have been excluded from credible fear interviews and subsequent credible fear review hearings before IJs.

Another commenter stated that the availability of legal information and representation at the outset of the asylum process increases efficiency, discourages frivolous claims, reduces the number of appeals and repeat claims, and shortens the time required to determine a claim.

Several commenters stated that noncitizens face significant barriers to obtaining legal representation during the credible fear process. A commenter stated that noncitizens in custody already face insurmountable hurdles to access legal counsel, such as knowing how to contact a lawyer, knowing where they are being detained, having access to a phone, and being given enough information to understand the credible fear process. Another commenter stated that having only 4 hours would make it impossible for providers to meet with clients before credible fear interviews, stating that legal representatives often face barriers to accessing clients within 48 hours, much less 4. The commenter discussed such barriers, stating that legal representatives frequently wait 24 to 48 hours for their interviews with their clients to be scheduled and may be barred from including translators or interpreters in those interviews. Some commenters stated that immigration advocates and attorneys face numerous issues in trying to provide legal consultations, such as being unable to physically access detention facilities or obtain the requisite signatures from their clients. Another commenter added that advocates lack access to private meeting rooms and experience long waits to meet with clients, malfunctioning technology, and unsafe or uncomfortable environments.

Several commenters stated that the rule would effectively eliminate access to legal representation because noncitizens would have only 4 hours to find and consult with a lawyer before an initial hearing. Commenters emphasized that they viewed a 4-hour window as troubling in light of the newly increased standards noncitizens must meet. Commenters stated that it takes more than 4 hours to adequately prepare a noncitizen for the credible fear process. Commenters stated that noncitizens will not have the time or resources to contest arguments and present evidence before the credible fear screenings. Commenters believed that the 4-hour window will lead to greater rates of refoulement. Commenters stated that the 4-hour window may fall on a weekend or after business hours, when legal service providers and aid organizations are closed. Commenters asserted that noncitizens will lose access to legal counsel because the United States does not provide free counsel for noncitizens, and 4 hours is not enough time for individuals to retain counsel. Commenters stated that the rule's restrictions are arbitrary and impermissible, not supported by evidence, and will lead to the denial of

otherwise meritorious asylum claims. Commenters stated that counsel would not be able to access their clients physically or telephonically in a 4-hour window.

Commenters stated that, by reducing noncitizens' ability to secure counsel and connect with communities, the IFR will prevent individuals from becoming aware of other protections from which they could potentially benefit.

Response: The rule does not deprive noncitizens of access to counsel in violation of the Fifth Amendment's Due Process Clause. The Supreme Court has held that the rights of individuals seeking asylum at the border are limited to "only those rights regarding admission that Congress has provided by statute." *Thuraissigiam*, 591 U.S. at 140. The INA provides that a noncitizen "may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General," provided that "[s]uch consultation shall be at no expense to the Government and shall not unreasonably delay the process." INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv). This statutory right to consult does not attach until a noncitizen becomes eligible for a credible fear interview, and it does not guarantee an absolute right to retain counsel. *See* INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv). The regulations implementing expedited removal elaborate that "[s]uch consultation shall be made available in accordance with the policies and procedures of the detention facility where the alien is detained." 8 CFR 235.3(b)(4)(ii).

Moreover, because this rule does not alter procedures governing consultation or representation, commenters' concerns regarding those issues—including that the minimum 4-hour consultation period violates section 235(b)(1)(B)(iv) of the INA, 8 U.S.C. 1225(b)(1)(B)(iv), or is unreasonable—are outside the scope of this rulemaking. Procedures regarding consultation and representation are governed by other DHS regulations, guidance, and policies.

Nevertheless, insofar as commenters' concerns relate to the Departments' decision to adopt the changes made by the IFR and this rule, DHS's changes to the consultation period do not undermine the Departments' decision to promulgate this rule. Those changes aim to address the same emergency border circumstances as this rule—specifically, DHS determined that shortening the minimum consultation period would reduce the risk that DHS's processing capacity would become overwhelmed by increasing DHS's ability to impose

consequences swiftly, which in turn lowers incentives for additional irregular migration. DHS's 4-hour minimum consultation period, moreover, continues to allow sufficient time for individuals to make multiple phone calls and have in-depth conversations. DHS is not aware of any data supporting the assertion that this approach has decreased the effective availability of consultation. Finally, even if this approach had some adverse effect on noncitizens' ability to consult, the Departments would still find it necessary and appropriate to adopt this rule's changes, including the two changes to the portions of the removal process that follow consultation—the asylum limitation and the reasonable probability standard.

The Departments start by explaining how the consultation process works. Once a noncitizen is referred to USCIS for a credible fear interview pursuant to 8 CFR 235.15(b)(4), the rule ensures that the noncitizen receives information about that interview and the right to consult with a person or persons of the noncitizen's choosing. Specifically, all those referred for a credible fear interview receive a written "Information About Credible Fear Interview Sheet" describing the purpose of the referral and the credible fear interview process; the right to consult with other persons prior to the interview and any review thereof at no expense to the United States Government; the right to request a review by an IJ of any negative fear determination an AO enters; and the consequences of a failure to establish a credible fear of persecution or torture. 8 CFR 235.15(b)(4)(i)(B). This written disclosure is available in English, Spanish, Haitian Creole, and Portuguese, and the noncitizen is also provided with a list of pro bono legal service providers. If the noncitizen does not speak one of these languages, then language access services are provided to orally communicate the written material in a language understood by the noncitizen.¹⁵⁴ As stated in the "Information About Credible Fear

Interview Sheet," the minimum 4-hour consultation period begins at the time a noncitizen who has been referred to USCIS for a credible fear interview has access to a phone or another opportunity to consult with an individual of the noncitizen's choosing, and the minimum 4-hour period runs only between the hours of 7 a.m. and 7 p.m. This period is calculated in local time. Procedurally, a noncitizen is scheduled for a credible fear interview only after the minimum consultation period has elapsed, regardless of whether the noncitizen used the phone or consulted with anyone during that period.

The "Information About Credible Fear Interview Sheet" further explains that the noncitizen may have a consultant of the noncitizen's choice participate in the interview with USCIS by telephone, and an EOIR-maintained list of pro bono legal service providers who may be able to speak with the noncitizen is also provided. The information sheet instructs noncitizens to ask a DHS officer for assistance if they want to call someone. Individuals who manifest fear in CBP custody and go through the credible fear process in CBP custody are provided access to a phone in order to telephonically consult with any individual of their choosing, including legal counsel, and do not need to ask CBP employees to do so. After manifesting a fear, when a phone becomes available, such noncitizens are brought to the phone and given at least 4 hours in which to use it. If a noncitizen requests use of a phone after the end of the noncitizen's consultation period, but before the noncitizen's interview occurs, the noncitizen is afforded the opportunity to access a phone unless it is not operationally feasible to provide such access (such as because of a lack of available personnel to escort the noncitizen to the consultation area). The phone booths in which such consultations occur are private, closed, confidential booths and include an EOIR-maintained list of pro bono legal service providers.¹⁵⁵

Those detained noncitizens who go through the credible fear process in ICE custody generally have direct access to phones (without having to interact with facility staff to request access, for instance) and have access to a free call platform that includes telephone numbers of legal service providers who are listed on the EOIR-maintained list of pro bono legal service providers, in accordance with ICE detention

standards.¹⁵⁶ Beyond telephone access, visits between a legal representative and a detained noncitizen are confidential and not subject to auditory supervision.¹⁵⁷ Private consultation rooms may be available for these meetings.¹⁵⁸ To facilitate improved access to legal resources and representation, ICE has also expanded its Virtual Attorney Visitation program, which facilitates confidential attorney-client conversations through virtual technology.¹⁵⁹

Commenters' arguments concerning the minimum 4-hour consultation period, first, miss that Congress did not provide an unqualified right to consultation or representation during the credible fear process. Rather, noncitizens may consult "according to regulations prescribed by" the Secretary, and "[s]uch consultation . . . shall not unreasonably delay the process." See INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv). And those regulations specify that "consultation shall be made available in accordance with the policies and procedures of the detention facility where the alien is detained." 8 CFR 235.3(b)(4)(ii). "Read together, the text of these provisions provides noncitizens with a right to consultation while they are detained pending expedited removal, but also plainly establish that the consultation right is subordinate to the expedition that this removal process is designed to facilitate, and that the scope of the right to consult is determined by the facility in which these noncitizens are detained." *Las Americas Immigr. Advoc. Ctr. v. Wolf*, 507 F. Supp. 3d 1, 25 (D.D.C. 2020); cf. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III) (providing that IJ review of an AO's negative credible fear determination "shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination").

DHS, moreover, moved to the 4-hour minimum consultation period for credible fear referrals for noncitizens

¹⁵⁴ See, e.g., ICE, 2019 *National Detention Standards for Non-Dedicated Facilities*, Foreword (2019), <https://www.ice.gov/detain/detention-management/2019> ("Generally, all written materials provided to detainees must be translated into Spanish and other frequently encountered languages. Oral interpretation or other language assistance must be provided to any detainee who speaks a language in which written material has not been translated or who is illiterate."); ICE, 2011 *Operations Manual ICE Performance-Based National Detention Standards*, Standard 2.13 (2011), <https://www.ice.gov/detain/detention-management/2011> ("Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.").

¹⁵⁵ See USBP, 6.4.24 *USBP Field Guidance*, at 4.

¹⁵⁶ ICE, *Attorney Information and Resources: Communicating with Your Client or Prospective Client* (last updated Aug. 9, 2024), <https://www.ice.gov/detain/attorney-information-resources>. Telephone access and use may be limited in the event of emergencies (for instance, escapes, escape attempts, disturbances, fires, power outages) or other events that disrupt orderly facility operations. If such disturbances occur, officers are responsible for ensuring that the minimum 4-hour consultation period is afforded.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ ICE, *Virtual Attorney Visitation Program* (last updated Aug. 16, 2024), <https://www.ice.gov/detain/detention-facilities/vav>.

covered by the IFR to address the emergency border circumstances described in the President's June 3 Proclamation based on a determination that operational imperatives necessitated this change in order to avoid unreasonable delays to the process in the context of these emergency border circumstances—exactly the type of determination that Congress authorized DHS to make. Under DHS's guidance that applies outside of the context of emergency border circumstances, noncitizens are not interviewed until at least 24 hours after the noncitizen's acknowledgement of receipt of the Form M-444,¹⁶⁰ unless the noncitizen, at the noncitizen's request, voluntarily waives the consultation period. Even if a noncitizen consults at the start of that 24-hour period, the noncitizen's credible fear interview is not conducted until after that period ends.

The 4-hour approach allows a swifter cadence of scheduling noncitizens for credible fear interviews. This minimum 4-hour consultation period thus enables credible fear screenings to take place in a more efficient manner and reduces the time noncitizens remain in custody; in turn, those improvements mitigate overcapacity issues in DHS facilities, free up detention space to allow for greater expedited-removal processing capacity over time, and help to avoid situations in which DHS must issue NTAs to individuals otherwise eligible for expedited removal and release them pending section 240 removal proceedings—in turn delaying the imposition of consequences for those without a legal basis to remain in the United States and creating incentives for additional arrivals at the border. Conversely, a longer minimum consultation period would delay credible fear screenings, increase the amount of time noncitizens remain in immigration detention, and contribute to a situation where DHS's capacity could quickly become overwhelmed, including potentially requiring the release of individuals into section 240 removal proceedings instead of processing such individuals under expedited removal due to resource constraints—thus delaying the imposition of consequences for those without a legal basis to remain and creating incentives for more irregular migration.

The Departments disagree with the conclusion drawn by certain

commenters that a shortened minimum consultation period effectively eliminates access to counsel or that the hours during which the consultation period runs make it practically impossible for noncitizens to reach attorneys or consultants. To the contrary, the minimum 4-hour period that DHS has adopted allows sufficient time for individuals to make multiple phone calls and have in-depth conversations prior to the credible fear interview. *Cf. Las Americas Immigr. Advoc. Ctr.*, 507 F. Supp. 3d at 12–14, 30.

The difference between DHS's 24-hour approach and its approach during these emergency border circumstances is also less significant in practice than certain commenters suggested. For example, the consultation period during emergency border circumstances begins to run only when the individual is provided access to a phone and confers access during at least that 4-hour period; the 24-hour period, by contrast, begins when a noncitizen acknowledges receipt of the Form M-444, and the noncitizen does not necessarily have access to a phone immediately at that point. For those who express a fear in CBP custody, under either approach, CBP generally takes a noncitizen to a phone booth once during the noncitizen's time in custody for consultation, and CBP generally will accommodate requests for additional phone access when operationally feasible. In addition, a significant share of the 24-hour period occurs overnight, when fewer people are likely to be available to take calls. Under the 4-hour approach, by contrast, the clock runs only during daytime hours.

The 4-hour period is also a minimum, and noncitizens may receive greater time. For example, for noncitizens in CBP custody, if a noncitizen requests access to a phone booth after the consultation, but the interview has not yet occurred, the agent or officer would in the normal course facilitate another call, to the extent operationally feasible. For noncitizens in ICE custody, noncitizens are generally housed in areas with phones that they may use at any time. Hence, noncitizens have phone access even during times when the 4-hour consultation period is tolled, as well as in circumstances in which the noncitizen's credible-fear interview is delayed for a longer time than the 4-hour minimum. The result is that noncitizens in ICE custody will often have more than 4 hours of phone access. Requests to reschedule the credible fear interview may be accommodated for reasons that constitute extraordinary circumstances, such as serious illness of the noncitizen's consultant or serious

facility issues that prevented the noncitizen from contacting a consultant.

The Departments acknowledge that the period includes Saturdays, Sundays, holidays, and periods outside of traditional business hours (7 a.m. to 9 a.m. and 5 p.m. to 7 p.m.). And while the Departments recognize that it may be more difficult for detained noncitizens to connect with the person or persons with whom they wish to consult during these times, this concern again does not undermine the Departments' decision to adopt the changes in the IFR and this rule. DHS's 24-hour approach also includes Saturdays, Sundays, and holidays.¹⁶¹ Although DHS's 4-hour approach uses a shorter window during those periods than its 24-hour approach, the Departments have already explained why that change makes less of a practical difference than some commenters suggest. Moreover, although DHS's approach during emergency border circumstances may sometimes result in some or all of the 4-hour period falling outside of traditional business hours, noncitizens may reach out to individuals in different time zones during these periods. For those who manifest fear in CBP custody, CBP provides noncitizens with a list of legal service providers operating in multiple time zones.¹⁶² For those who manifest fear in ICE custody, ICE provides noncitizens with a list of legal service providers who service the area in which the noncitizen is detained and ICE will, upon request, provide the noncitizen a list of providers in additional States identified by the noncitizen. In addition, DHS's 24-hour approach also does not guarantee that noncitizens would have access to phones during traditional business hours (for example, when the period falls over a weekend or holiday).¹⁶³ Excluding weekends, holidays, and periods outside of traditional business hours would thus mark a significant

¹⁶¹ See DHS, *M-444 Information About Credible Fear Interview* (May 10, 2023) (noting that the interview will occur no earlier than 24 hours after receipt of the form without mention of any tolling or stoppage).

¹⁶² See, e.g., EOIR, *List of Pro Bono Legal Service Providers (Noncitizens in U.S. Customs and Border Protection Custody)* (July 2024), <https://www.justice.gov/eoir/page/file/1582586/dl>.

¹⁶³ The consultation period also was not tolled for weekends, holidays, or periods outside of normal business hours under the 48-hour approach that predated the 24-hour approach. See Memorandum for Andrew Davidson, Acting Deputy Dir., USCIS, from John L. Lafferty, Chief, Asylum Div., USCIS, *Re: Scheduling of Credible Fear Interviews* (May 10, 2023) (“Under the current policy, credible fear interviews have generally taken place at least 48 hours after the time of the noncitizen's arrival at the detention facility, unless the noncitizen specifically requests to be interviewed more quickly.”).

¹⁶⁰ See Memorandum for Andrew Davidson, Acting Deputy Dir., USCIS, from John L. Lafferty, Chief, Asylum Div., USCIS, *Re: Scheduling of Credible Fear Interviews* (May 10, 2023).

change in DHS's practice that could lead to unreasonable delays. And because CBP continues to encounter individuals and to take them into custody 24 hours a day and 7 days a week, that change would be inconsistent with the imperative to facilitate the prompt operation of the expedited removal process, especially during the emergency border circumstances when this rule applies.

In addition, when a noncitizen receives a negative credible fear determination, the noncitizen also has an additional opportunity to consult before review of that determination by an IJ (if requested). INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv). Noncitizens can obtain counsel or consult with other individuals of their choosing and seek to introduce new evidence before IJs, allowing for additional consultation beyond the initial 4 hours. INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv); 8 CFR 1003.42(c). That additional consultation opportunity further reinforces the Departments' view that the minimum 4-hour consultation period prior to the credible fear interview does not undermine their decision to adopt the changes made by the IFR and this rule.

In response to comments alleging that legal representatives have been excluded from credible fear interviews, the Departments again note that neither this rule nor the consultation period policy changes the procedures and regulations governing attorney participation during credible fear interviews. Under existing regulations, all noncitizens are afforded the opportunity to have a person or persons of their choosing present, including by phone, during their credible fear interview. 8 CFR 208.30(d)(4). In any case where USCIS has received a properly executed G–28, Notice of Entry of Appearance as Attorney or Accredited Representative, prior to the credible fear interview, asylum office staff notify the attorney or accredited representative of the scheduled interview date and time, and the AO must call the attorney or representative before beginning the interview so the attorney or representative may be present. If the AO is unable to reach the attorney or accredited representative, the AO documents this in the interview notes and asks the noncitizen if the noncitizen would like to proceed without the attorney or accredited representative present. Guidance instructs that, where a properly executed Form G–28 is on file, asylum office staff will attempt to ensure that the attorney or accredited representative is present at the interview if the

noncitizen desires such a person's presence. Further, as long as it does not unreasonably delay the process, the asylum office has discretion to reschedule interviews on a case-by-case basis to ensure that an attorney or accredited representative may attend. At the beginning of the credible fear interview, if it has not already been established through a Form G–28, the AO asks the noncitizen if the noncitizen has an attorney or consultant and verifies whether the noncitizen received a list of free or low-cost legal service providers. If the noncitizen does not have an attorney or consultant present, the AO reminds the noncitizen that the noncitizen may have an attorney or consultant present during the interview and asks the noncitizen if the noncitizen wants to continue with the interview without an attorney or consultant present. In addition, as noted above, if a noncitizen requests to reschedule the interview for reasons that constitute extraordinary circumstances, such as illness of the noncitizen's consultant or technical issues that prevented the noncitizen from contacting a consultant, such requests may be accommodated. If there are individual instances where commenters believe legal representatives have been excluded from a credible fear interview contrary to the wishes of a noncitizen, commenters should lodge those complaints through the proper channels,¹⁶⁴ but the Departments emphasize that the present rule does not change the regulatory provisions that govern who may be present during the credible fear interview or impact how asylum office staff ensure those provisions are enforced.

As for the credible fear interview itself, as discussed more fully below in Section III.C.3 of this preamble, even with the heightened screening standard for those found not to have a significant possibility of demonstrating eligibility for asylum under this rule's limitation on asylum eligibility, the type of information sought to be elicited during a credible fear interview is well within a noncitizen's knowledge, such that having an attorney is not necessary to secure a positive outcome. 89 FR at 48747–48. Indeed, even after implementation of the IFR, the experience of DHS has been that noncitizens who do not have an attorney or consultant present during

the credible fear interview are often able to successfully satisfy the “reasonable probability” screening standard.¹⁶⁵ Additionally, under the IFR and this rule, a noncitizen may request IJ review of an AO's negative credible fear determination, which provides an additional layer of protection, including for those noncitizens who are unable to consult with an attorney.

With respect to commenters' reliance on data that purport to show that few noncitizens are able to secure the assistance of counsel during the credible fear process and that those who do receive better outcomes, the Departments note that such data fail to take into account any screening that may occur by legal service providers to determine the perceived validity of the claim before agreeing to provide representation to a noncitizen. Even assuming some instances of improved results for those with counsel, due process “does not mandate that all governmental decisionmaking comply with standards that assure perfect, error-free determinations.” *Mackey v. Montrym*, 443 U.S. 1, 13 (1979). Moreover, as discussed in Section II.A.2 of this preamble, 51 percent of SWB encounters between POEs referred to the credible fear process under the rule—including many who did not have an attorney or consultant present during the credible fear interview—have received a positive result.¹⁶⁶

With regard to commenter concerns about lack of privacy during credible fear interviews, DHS notes that these interviews are conducted “separate and apart from the general public.” 8 CFR 208.30(d). The Departments are mindful of their duties under 8 CFR 208.6 and 1208.6 to prevent unauthorized disclosure of records pertaining to any credible fear determination, and AOs are required to explain these confidentiality requirements to noncitizens prior to credible fear interviews.¹⁶⁷ For those going through the consultation and credible fear process in CBP custody, noncitizens consulting with an attorney or other individual before a credible fear interview do so in a private phone booth. USCIS contract interpreters

¹⁶⁵ See OHSS analysis of data pulled from CBP UIP on September 3, 2024, and data pulled from Global on September 11, 2024 (Fear by Atty or Cons Present tab).

¹⁶⁶ See OHSS analysis of data pulled from CBP UIP on September 3, 2024, and data pulled from Global on September 11, 2024 (Fear by Atty or Cons Present tab).

¹⁶⁷ See USCIS, *RAIO Directorate—Officer Training: Interviewing—Introduction to the Non-Adversarial Interview* 19–20 (Apr. 24, 2024); USCIS, *RAIO Directorate—Officer Training: Interviewing—Working With An Interpreter* 14, 30 (Apr. 24, 2024).

¹⁶⁴ See USCIS, *Report USCIS Employee Misconduct* (last reviewed/updated Mar. 15, 2024), <https://www.uscis.gov/scams-fraud-and-misconduct/report-uscis-employee-misconduct>; see also DHS, *Make a Civil Rights Complaint* (last updated Aug. 20, 2024), <https://www.dhs.gov/file-civil-rights-complaint>.

conducting telephonic interpretation are bound by the confidentiality requirements protecting all credible fear determinations pursuant to 8 CFR 208.6¹⁶⁸ and must pass all required DHS background checks applicable to contractors.¹⁶⁹ All AOs receive training on working with interpreters, which includes explaining confidentiality, assessing competency, and recognizing other factors that may affect the accuracy of interpretation.¹⁷⁰ AOs are trained to elicit all relevant testimony during credible fear interviews¹⁷¹ and will not preemptively issue negative credible fear determinations due to phone connectivity issues. And all AOs receive training on interviewing survivors of torture and other severe trauma.¹⁷²

The Departments therefore decline to amend in this rule existing practices with respect to credible fear proceedings based on commenters' concerns about noncitizens' ability to obtain and consult with counsel. Nothing in the rule alters noncitizens' existing ability to consult with persons of their choosing prior to the credible fear interview, *see* INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv), or prior to IJ review of a negative credible fear determination, *see* 8 CFR 1003.42(c). The Departments believe that any minimal adverse impact on the ability to retain counsel resulting from the rule and changes in DHS's practices are outweighed by the significant benefits to efficiency that the rule and DHS's changed practices promote. In addition, the Departments do not believe that the limitation on asylum eligibility or the heightened "reasonable probability" standard applied to those who do not establish a credible fear of persecution for asylum purposes due to the

limitation require significant development prior to the credible fear interview. At the screening stage, the information pertinent to the limitation—including the existence of exceptionally compelling circumstances—and the reasons for the noncitizen's fear of persecution or torture are reasonably expected to be within the noncitizen's personal knowledge at the time of the credible fear interview. *See* 89 FR at 48747–48. And as explained in the IFR, AOs and IJs are trained on and have extensive experience eliciting such information from noncitizens. *Id.* at 48747–48 & nn.241–44. The Departments do not seek to diminish the importance of being able to consult with a person or persons of the noncitizen's choosing during the screening process as provided by statute, *see* INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv), but the Departments also do not believe that the information required for the screening process under the IFR and this rule is such that the screening interviews must be significantly delayed to allow for greater consultation time. Doing so in the context of emergency border circumstances would "unreasonably delay the process." INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv).

As to commenters' arguments that ensuring legal representation increases efficiency, discourages frivolous claims, shortens the time required to determine a claim, and reduces the number of appeals and repeat claims, the Departments note that even assuming those claims are true, ensuring legal representation for all noncitizens would impose extraordinary burdens on DHS and would undermine the speed that Congress sought to achieve in the expedited removal system. Moreover, because Congress refrained from creating an unqualified right to legal representation, the approach adopted in this rule accords with the statute and is a reasonable exercise of the Departments' discretion. *See* INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv) (providing the noncitizen only an opportunity to "consult" with a person prior to a credible fear interview).

(3) Noncitizens' Ability To Have Their Claims Heard

Comment: Commenters stated that a quota system would deny vulnerable individuals and families the opportunity to have their claims fairly considered, in contravention of U.S. and international law. Similarly, a commenter stated that, by imposing a cap on daily asylum claims and automatically denying asylum to those

who exceed the limit, the IFR "nullifies fundamental rights that the United States is obligated to uphold." The commenter wrote that this "blanket denial" would deviate from due process principles under U.S. and international law that mandate non-refoulement and the individualized assessment of asylum claims. Commenters also stated that the IFR strips away the humane aspects of the asylum system.

Response: The Departments do not believe that the rule affords noncitizens an insufficient opportunity to have their asylum or protection claims heard, and the rule's limitation on eligibility includes no automatic "blanket denials" based on quotas or caps. Instead, during the emergency border circumstances described in the Proclamation, in the IFR, and in this rule—which relate to encounter levels as described in Section III.D.1 of this preamble—the rule's provisions (which are consistent with U.S. domestic and international law, as discussed in Section III.A.1 of this preamble) impose a limitation on asylum eligibility (with an appropriate exception) and changes to the expedited removal and credible fear process aimed at providing the Departments a greater ability to deliver timely decisions and consequences to noncitizens encountered along the southern border. The rule does so while ensuring that those in expedited removal proceedings who fear removal continue to have their fear claims heard.

First, all noncitizens processed for expedited removal who manifest a fear of return, express an intention to apply for asylum or protection, or express a fear of persecution or torture or a fear of return to their country or the country of removal are referred for a credible fear interview, as appropriate. *See* INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii); 8 CFR 235.15(b)(4). Such referrals occur irrespective of how many noncitizens have presented at the border or sought protection on a given day.

Second, this rule does not change the longstanding procedural protections that are provided to noncitizens during these credible fear interviews. Credible fear interviews are conducted in a non-adversarial manner,¹⁷³ and all AOs are

¹⁶⁸ *See* USCIS, RAO Directorate—Officer Training: Interviewing—Working With An Interpreter 14, 30 (Apr. 24, 2024); *see also* USCIS, Credible Fear Procedures Manual sec. III.E.3.d (May 10, 2023), <https://www.uscis.gov/sites/default/files/document/guides/CredibleFearProceduresManual.pdf>.

¹⁶⁹ *See* DHS, Fact Sheet: Contractor Fitness at DHS, https://www.dhs.gov/sites/default/files/publications/personnel_security_contractor_fitness_fact_sheet_new.pdf (last visited Sept. 20, 2024).

¹⁷⁰ USCIS, RAO Directorate—Officer Training: Interviewing—Working with an Interpreter 14, 17–22, 24, 30, 43–44 (Apr. 24, 2024).

¹⁷¹ USCIS, RAO Directorate—Officer Training: Interviewing—Eliciting Testimony 11 (Apr. 24, 2024) ("In cases requiring an interview, although the burden is on the applicant to establish eligibility, equally important is your obligation to elicit all pertinent information."); *id.* at 12 ("It is your duty to fully and fairly develop the record by eliciting information from the interviewee, probing for additional information, and following up on the interviewee's statements.")

¹⁷² USCIS, RAO Directorate—Officer Training: Interviewing Survivors of Torture and Other Severe Trauma (Apr. 24, 2024).

¹⁷³ USCIS, RAO Directorate—Officer Training: Interviewing—Introduction to the Non-Adversarial Interview 13–15 (Apr. 24, 2024). As described in a previous rule, AOs have experience in "country conditions and legal issues, as well as nonadversarial interviewing techniques," and they have "ready access to country conditions experts." Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 86 FR 46906, 46918 (Aug. 20, 2021).

trained in non-adversarial interview techniques to facilitate their duty to elicit relevant and useful information—in effect, to help the noncitizen meet their burden through testimony alone.¹⁷⁴ 8 CFR 208.1(b). AOs are also trained to consult country conditions information, which often provides context to a noncitizen's claim. *Id.* In evaluating whether a noncitizen has shown a credible fear, AOs are instructed by statute to take into account the credibility of the statements made by the noncitizen and such other facts as are known to the AO. INA 235(b)(1)(B)(ii)–(iii), 8 U.S.C. 1158(b)(1)(B)(ii)–(iii). Just as a noncitizen's testimony alone without corroboration may be sufficient to establish the noncitizen meets the definition of a refugee where it is credible, persuasive, and refers to specific facts, INA 208(b)(1)(B)(ii), 8 U.S.C. 1158(b)(1)(B)(ii), a noncitizen's testimony alone, in the credible fear context, may meet the burden to demonstrate a credible fear of persecution or torture.¹⁷⁵ Accordingly, insofar as it is part of a credible fear determination, credible testimony and evidence available to the AO alone may be sufficient to demonstrate a significant possibility that the noncitizen could show that the noncitizen is eligible for the “exceptionally compelling circumstances” exception to this rule's limitation on asylum eligibility. The procedures outlined above do not depend on how many noncitizens have presented at the border or have sought protection on a given day.

Third, all negative credible fear determinations are reviewed by a supervisory AO prior to becoming final, *see* 8 CFR 208.30(e)(8), and, consistent with the sole statutorily provided mechanism for review of negative credible fear determinations, *see* INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III), noncitizens may request review of a negative credible fear determination before an IJ, *see* 8 CFR 208.35(b)(2)(iii)–(v) (explaining the process for requesting IJ review for those described in the Proclamation and unable to show that the rule's exception to the limitation on asylum eligibility applies).

Unlike the process that applies to negative credible fear determinations under 8 CFR 208.30(g)(1)(i), during which a noncitizen's refusal or failure to request or decline IJ review is treated as a request for IJ review, noncitizens under the present rule must indicate whether they desire IJ review when asked, *see* 8 CFR 208.35(b)(2)(iv). When serving the negative credible fear determination, USCIS staff read the contents of the Form I–869SBIFR, Record of Negative Credible Fear and Reasonable Probability Finding and Request for Review by Immigration Judge for Noncitizens Subject to the Limitation on Asylum Eligibility Pursuant to 8 CFR 208.35(a), to the noncitizen in a language the noncitizen understands, using an interpreter if needed.¹⁷⁶ The Form I–869SBIFR includes a statement that the noncitizen may request that an IJ review the negative determination and that, if the noncitizen does not request IJ review, the noncitizen will not receive review by an IJ and may be removed from the United States immediately. The noncitizen then must check one of two boxes on the I–869SBIFR indicating either that the noncitizen requests IJ review or does not request IJ review. The noncitizen will be referred to an IJ for review of a negative determination only where the noncitizen requests such review. 8 CFR 208.35(b)(2)(iv)–(v). Under the IFR and this rule, IJ review remains available in all cases with a negative credible fear determination, and such review includes an opportunity for the noncitizen to be heard and questioned by the IJ. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III); 8 CFR 208.35(b)(2), 1208.35(b)(1) and (2). Additionally, while it is not equivalent to another level of review, USCIS retains the sole discretion to reconsider its own negative credible fear determination following IJ concurrence. 8 CFR 208.35(b)(2)(v)(B). Thus, the rule maintains review of any negative credible fear determination by a supervisory AO prior to service and, following service of a negative credible fear determination, the opportunity to have an IJ review the finding *de novo*. *See* 8 CFR 1208.35(b)(1).

As discussed above in this section of the preamble, the Departments believe these processes are adequate in light of the high levels of training received by adjudicators and the high volume of cases before the Departments.

(4) Issues With Asylum Officers, Detention Conditions, and Quality of Credible Fear Determinations

Comment: Several commenters expressed concern with the conduct of AOs during credible fear interviews and suggested that AOs are ill-equipped to conduct the analysis the rule requires, including applying the “exceptionally compelling circumstances” exception to the limitation and screening fear claims at a higher evidentiary standard. Some commenters stated that they are aware of instances where AOs have failed to comply with established guidelines during credible fear interviews and that translation issues, such as Indigenous language speakers being interviewed in Spanish, exist in some cases. One commenter recounted examples of noncitizens who, the commenter believes, were wrongly issued negative credible fear determinations; the commenter said that noncitizens' statements were incorrectly translated by interpreters and that noncitizens were not adequately asked about their experiences or were interrupted by AOs during screenings. Other commenters discussed alleged violations of the credible fear interview procedures experienced by noncitizens, such as alleged failures to address language barriers, that prevent noncitizens from adequately telling their stories, resulting in refolement.

An organizational commenter discussed its experience with clients who it contends were wrongfully deported and returned to violence, stating that the rule will only increase the frequency with which USCIS errs in conducting credible fear screenings and IJs err in reviewing credible fear determinations. Commenters emphasized that hearings take place shortly after noncitizens have endured lengthy and traumatic journeys to reach the United States and asserted that they take place while noncitizens are in detention facilities with deplorable conditions. Commenters stated that the harm caused by the IFR will be exacerbated by expedited removal policies such as conducting credible fear interviews while noncitizens are in CBP custody. A commenter stated that courts have questioned the reliability of credible fear interviews because of the expedited and stressful nature of the process.

Response: The Departments take any allegations of misconduct by AOs or other government officials seriously, and there are existing channels available to report any such alleged

¹⁷⁴ *See, e.g.,* USCIS, *RAIO Directorate—Officer Training: Interviewing—Eliciting Testimony* 11–12 (Apr. 24, 2024).

¹⁷⁵ *See* USCIS, *RAIO Directorate—Officer Training: Credible Fear of Persecution and Torture Determinations* 19 (May 9, 2024); *see also* *Kiakombua v. Wolf*, 498 F. Supp. 3d 1, 46–47 (D.D.C. 2020) (asylum officer (“AO”) cannot require an applicant to provide corroborating evidence at the credible fear stage where the applicant's testimony is otherwise found credible).

¹⁷⁶ Following issuance of this rule, the form will be designated I–869SB instead of I–869SBIFR.

misconduct.¹⁷⁷ To the extent that commenters suggested that examples where they believe AOs failed to follow existing guidance related to credible fear screenings or failed to conduct a fair credible fear interview are representative of AOs generally and are grounds for reasoning that AOs are ill-equipped to perform credible fear screenings under the current rule, the Departments disagree with these assertions and find them unpersuasive. Instances where commenters believe AOs failed to conduct credible fear interviews fairly should be reported through the proper channels and will be addressed on a case-by-case basis, but these anecdotal complaints do not dissuade the Departments from concluding that AOs are capable of performing their duties under this rule. These complaints about AO conduct in specific credible fear interviews do not undermine the statutorily prescribed role of AOs to conduct credible fear interviews and make credible fear determinations, and the Departments are confident, for the reasons explained above, that AOs have the necessary training and expertise to fulfill that role.

As discussed in Section III.A.1.c of this preamble, the rule operates within the expedited removal and credible fear screening process established by section 235 of the INA, 8 U.S.C. 1225, and comports with all statutory requirements. Under the credible fear statutory framework, AOs conduct credible fear screening interviews. INA 235(b)(1)(B)(i), 8 U.S.C. 1225(b)(1)(B)(i). By definition, AOs are individuals who have had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of asylum applications under section 208 of the INA, 8 U.S.C. 1158. INA 235(b)(1)(E), 8 U.S.C. 1225(b)(1)(E). They are supervised by officers who meet the same training requirements and have had substantial experience adjudicating asylum applications. INA 235(b)(1)(E), 8 U.S.C. 1225(b)(1)(E). AOs conducting credible fear interviews do so in a non-adversarial manner, beginning with ensuring the noncitizen understands the purpose of the interview, that the noncitizen has a right to have a legal representative or other person of the noncitizen's choosing present during the interview, and that the noncitizen understands the

interpreter, where applicable. 8 CFR 208.30(d). USCIS has language access policies in place to ensure that noncitizens have an interpreter for a language they understand during credible fear interviews and procedures in place that all AOs must follow to address instances where rare language interpreters may not be available, including issuing a discretionary NTA in certain circumstances. After the noncitizen has received an NTA, the noncitizen's language barrier can be addressed in proceedings before an IJ. At the beginning of a credible fear interview, AOs explain to noncitizens the confidentiality provisions governing credible fear interviews pursuant to 8 CFR 208.6, including that the AO and interpreter will keep the noncitizen's information and testimony confidential. The AO verifies that the noncitizen is comfortable proceeding with the interpreter and the AO of the given gender. AOs also ask noncitizens if there are any issues that could affect their ability to testify, such as a language barrier or health issue, and deal with any such issue according to established procedures. All credible fear determinations, including those in which the IFR limitation on asylum eligibility applies, are reviewed by supervisory AOs before becoming final and being served on the noncitizen, and this will remain true under the final rule. 8 CFR 208.30(e)(8). Supervisory review includes ensuring that AOs follow all applicable procedures and guidelines related to language access and other issues that could impede the noncitizen's ability to effectively communicate during a credible fear interview.

As already explained, AOs are specifically trained on eliciting testimony, working with interpreters, engaging in cross-cultural communication, detecting possible victims of trafficking, and interviewing vulnerable populations, including survivors of torture and other severe trauma. In addition to receiving specialized training on interviewing and eliciting testimony, AOs are trained on and well-versed in applying substantive asylum law in both full asylum adjudications and in screening determinations. As explained in the IFR, AOs and supervisory AOs have the training and experience necessary to identify in a screening whether the information the noncitizen has provided is sufficiently specific to lead them to believe that the noncitizen may be able to establish eligibility at the merits stage. 89 FR at 48748. AOs frequently assess physical and psychological harm

when adjudicating asylum applications and are trained to do so in a sensitive manner.¹⁷⁸ AOs may also evaluate harm resulting from the unavailability of necessary medical care or specific medications when assessing "other serious harm" under 8 CFR 208.13(b)(1)(iii)(B) in full asylum adjudications.¹⁷⁹ When conducting a credible fear interview where the IFR's limitation on asylum eligibility applies, AOs' questioning will necessarily include information related to whether there is a significant possibility that the noncitizen would ultimately be able to demonstrate by a preponderance of the evidence that the limitation on asylum eligibility does not apply or that the noncitizen satisfies the rule's exception, regardless of whether the noncitizen affirmatively raises the issue. Since May 11, 2023, when the Circumvention of Lawful Pathways rule went into effect, AOs and supervisory AOs have evaluated the exceptionally compelling circumstances grounds for rebutting the presumption of asylum ineligibility under that rule, including the enumerated examples of an acute medical emergency, imminent and extreme threat to life or safety, and satisfying the definition of a victim of a severe form of trafficking in persons. 8 CFR 208.33(a)(3). The enumerated examples mirror the enumerated examples of exceptionally compelling circumstances that except noncitizens from the limitation on asylum eligibility under the IFR and this rule, *see* 8 CFR 208.35(a)(2), so not only have AOs and supervisory AOs been implementing this approach since the IFR was implemented, but they also already had considerable experience in eliciting testimony related to the "exceptionally compelling circumstances" exception and determining whether that exception applied in the context of the Circumvention of Lawful Pathways rule. Likewise, IJs have extensive experience and training in applying such concepts to individual cases under the Circumvention of Lawful Pathways rule and the IFR.¹⁸⁰ Accordingly, the

¹⁷⁸ For example, AOs adjudicate cases involving forms of persecution like female genital mutilation, forced abortion, and forced sterilization. *See Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996); INA 101(a)(42)(B), 8 U.S.C. 1101(a)(42)(B); *see also* USCIS, *RAIO Directorate—Officer Training: Gender-Related Claims* 23–27 (Apr. 24, 2024).

¹⁷⁹ *See* USCIS, *RAIO Directorate—Officer Training: Definition of Persecution and Eligibility Based on Past Persecution* 56–57 (Apr. 24, 2024).

¹⁸⁰ *See* 8 CFR 1003.0(b)(1)(vii) (EOIR Director's authority to "[p]rovide for comprehensive, continuing training and support" for IJs); 8 CFR 1003.9(b)(1)–(2) (Chief IJ's authority to issue "procedural instructions regarding the implementation of new statutory or regulatory

¹⁷⁷ *See* USCIS, *Report USCIS Employee Misconduct* (last reviewed/updated Mar. 15, 2024), <https://www.uscis.gov/scams-fraud-and-misconduct/report-uscis-employee-misconduct>; *see also* DHS, *Make a Civil Rights Complaint* (last updated Aug. 20, 2024), <https://www.dhs.gov/file-civil-rights-complaint>.

Departments believe that IJs and AOs will continue to fairly and competently examine the facts and circumstances of each individual's case to determine whether the individual has established a significant possibility that the individual would ultimately be able to demonstrate by a preponderance of the evidence that the limitation on asylum eligibility does not apply or that the individual satisfies the rule's exception.

The Departments consider the commenters' concerns about the quality of determinations unfounded. USCIS AOs and supervisory AOs have received the same thorough training and materials related to applying the IFR across offices and jurisdictions. Asylum staff nationwide use the Global case management system,¹⁸¹ which includes updated interview guides, forms, and instructions for processing cases under the IFR to ensure consistency in procedures and substantive guidelines. All credible fear determinations, as noted above, are subject to review by a supervisory AO, 8 CFR 208.30(e)(8), and IJ (if requested), INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III), and determinations made in section 240 removal proceedings are subject to administrative appeal and judicial review.

Regarding concerns about noncitizens going through the credible fear process while in CBP custody, the Departments disagree with the contention that such a process causes or exacerbates harm. Noncitizens who are going through the credible fear process in CBP custody are given at least 4 hours between 7 a.m. and 7 p.m. to telephonically consult with an individual of their choosing, including legal counsel, before their credible fear interview. Additionally, the noncitizens are afforded privacy for these consultations, which occur in a private phone booth. These phones and phone booths are also used to conduct the credible fear interview.

authorities" and "[p]rovide for appropriate training of the [IJs] . . . on the conduct of their powers and duties"); EOIR, *Legal Education and Research Services Division* (last updated Jan. 3, 2020), <https://www.justice.gov/eoir/legal-education-and-research-services-division> ("The Legal Education and Research Services Division (LERS) develops and coordinates headquarters and nationwide substantive legal training and professional development for new and experienced judges, attorneys, and others within EOIR who are directly involved in EOIR's adjudicative functions. LERS regularly distributes new information within EOIR that includes relevant legal developments and policy changes from U.S. government entities and international organizations.").

¹⁸¹ USCIS, *Privacy Impact Assessment Update for the USCIS Asylum Division*, at 4 (2018), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-asylum-september2018.pdf>.

Additionally, to the extent that commenters have generalized concerns about conditions in CBP custody, such comments are outside the scope of this rule. DHS notes, however, that it is committed to providing safe, sanitary, and humane conditions to all individuals in custody, and that it is committed to transferring individuals out of CBP custody in an expeditious manner. The Departments further note that one anticipated effect of this rule is to reduce the risk of overcrowding in DHS detention facilities. *See* 89 FR at 48742 (noting that "[h]igh [encounter] numbers, such as those giving rise to the Proclamation and this rule, increase the likelihood that USBP facilities will become quickly overcrowded . . . [which] creates health and safety concerns for noncitizens and Government personnel").

(5) Fairness or Risks Associated With Process

Comment: Commenters stated that the rule would undermine the commitment of the United States to providing refuge for those fleeing persecution and violence and exacerbate the humanitarian crisis at the southern border. Other commenters stated that the rule would increase refoulement and that the Departments did not adequately consider this consequence. Commenters asserted that the rule could cause arbitrary denials of asylum, thus placing noncitizens back into harm's way and resulting in life-threatening outcomes. A commenter asserted that the IFR ignores the realities of initial fear screenings (including that individuals have often experienced a long and difficult journey, undergo screenings within days of arrival, and may face barriers to accessing counsel and language services) and establishes an even higher screening standard that may prevent noncitizens from factually presenting claims before an AO. A commenter stated that a decline in positive credible fear determinations under the Circumvention of Lawful Pathways rule is a result of an orchestrated effort to reduce the screen-in rate by erecting barriers to eligibility and attorney consultation and eroding due process protections, not the result of the appropriate screening out of claims that would in fact be non-meritorious, as suggested by the Departments in the IFR.

Some commenters discussed the existing difficulties that noncitizens in CBP custody have in obtaining what they need, such as a pen and paper to write down essential information, access to counsel, and access to private phone services. Some commenters

stated that they have witnessed failures by USCIS and EOIR to notify attorneys of their clients' interviews and immigration court reviews.

Response: The present rule complies with all statutory and regulatory requirements related to access to counsel, including the right of a noncitizen to access counsel at no cost to the Government, the right to consult with a person of the noncitizen's choosing prior to the credible fear interview, and the right to have a person of the noncitizen's choosing (including a legal representative) present during the interview, provided it will not cause unreasonable delay. INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv); 8 CFR 208.30(d)(4). Moreover, in addition to protecting the procedural safeguards guaranteed by statute, the rule also ensures the United States honors its non-refoulement obligations under international law by screening for statutory withholding and protection under regulations implementing the CAT, even where a noncitizen is subject to the rule's limitation on asylum eligibility and cannot establish that the rule's exception applies under the significant possibility standard. 8 CFR 208.35(b)(2). Contrary to commenters' assertions that noncitizens may be prevented from presenting factual claims to an AO where they are subject to the IFR's limitation on asylum eligibility, AOs elicit testimony, and noncitizens have the opportunity to present testimony and other evidence relevant to a potential persecution or torture claim, even where the limitation applies and no exception is established during the credible fear interview; this allows the AO to effectively screen the noncitizen for a reasonable probability of persecution or torture. 8 CFR 208.35(b)(2)(i). Indeed, the experience of USCIS with the IFR shows its implementation illustrates that noncitizens are still able to meet the higher reasonable probability standard in approximately 48 percent of cases where the IFR's limitation on asylum eligibility applies and no exception is established during the credible fear interview.¹⁸²

Further, while a commenter suggested that the drop in the overall screen-in rate under the Circumvention of Lawful Pathways rule resulted from barriers to eligibility or to counsel and the erosion of due process rights, as opposed to screening out more potentially non-meritorious cases under the higher "reasonable possibility" standard in the

¹⁸² OHSS analysis of data pulled from CBP UIP on September 3, 2024 (Fear Screening—STB tab).

IFR, *see* 89 FR at 48746, a more granular examination of the various screen-in rates undermines the commenter's assertion. In fact, SWB encounter credible fear screen-in rates for screenings conducted by USCIS under the significant possibility standard remain consistent or increase when comparing (1) interviews that took place in the pre-pandemic period (76 percent positive); (2) interviews that took place under the Circumvention of Lawful Pathways rule where the presumption of asylum ineligibility applied but an exception was established (79 percent positive) or the presumption was rebutted (86 percent positive); and (3) interviews that took place under the IFR where the IFR's limitation on asylum eligibility applied but the IFR's exception was applicable (81 percent positive).¹⁸³ If anything, then, the screen-in rate at the significant possibility standard is higher under the Circumvention of Lawful Pathways rule and under the IFR, notwithstanding commenters' claims that factors such as difficulty in accessing counsel necessarily reduce screen-in rates. Rather, USCIS screen-in rates for USBP encounters effectively drop only when AOs apply the higher substantive standards, dropping (1) to approximately 51 percent for cases screened at the reasonable possibility standard where the Circumvention of Lawful Pathways presumption of asylum eligibility applies and no exception or rebuttal is established; and (2) to approximately 48 percent for cases screened at the reasonable probability standard where the IFR's limitation on asylum eligibility applies and no exception is established.¹⁸⁴

Accordingly, the analysis provided by the Departments in the IFR concluding that the drop in screen-in rates under the higher "reasonable possibility" standard relates to the merits of the potential claim, *see* 89 FR at 48746, remains supported and is only further bolstered by the experience of the Departments in implementing the IFR.

The IFR acknowledges that the rule's manifestation of fear and reasonable probability standards may increase the risk that some noncitizens with meritorious claims may not be referred for credible fear interviews or may not receive a positive credible fear

determination. 89 FR at 48767. It also explains that there may be costs to noncitizens that result from their removal—indeed, such costs are likely. *Id.* Thus, the Departments did consider these risks, and they have continued to consider these risks in finalizing this rule.

The Departments weighed the fact that, despite the protections preserved by the rule, the available exception, and the training and expertise of DHS personnel, the changes to the credible fear process adopted may result in the denial of asylum when such an asylum claim otherwise may have been granted. *Id.* at 48750 n.250. As with all screening mechanisms, there is some risk that a case that might otherwise lead to a grant of asylum might not proceed to a merits adjudication, *id.*, but as discussed in Sections III.C.2.c and III.B.2.a.ii of this preamble, DHS personnel have significant experience and training in recognizing and interviewing noncitizens with protection claims, which the Departments believe will minimize the frequency of such cases. Regardless, in light of the emergency border circumstances facing the Departments and addressed in the Proclamation and this rule, the Departments believe these measures are appropriate, necessary, and legally permissible. *Id.* And given the emergency border circumstances facing the Departments and the gap between high rates of referrals and screen-ins during the immediate post-pandemic period and historic ultimate grant rates, as described in Section II.A.2 of this preamble, the Departments believe the rule's provisions are appropriate and justified even if certain close cases result in imperfect outcomes. *Id.* As with other conditions and limitations imposed under section 208(b)(2) of the INA, 8 U.S.C. 1158(b)(2), this rule is grounded in important policy objectives, including providing those with valid asylum claims an opportunity to have their claims heard in a timely fashion, preventing an increased flow of migrants arriving at the southern border that would overwhelm DHS's ability to provide safe and orderly processing, and reducing the role of exploitative TCOs and smugglers. The Departments have determined that these important policies outweigh whatever marginal impact on meritorious claims the rule might have.

DHS serves noncitizens with all the necessary documents related to their credible fear determination, 8 CFR 208.30(f)–(g), which for noncitizens in detention may be served through a telephone call by USCIS, during which

information on the noncitizen's determination is relayed in a language that the noncitizen understands, while CBP or ICE personnel physically provide the documents to a noncitizen. While any person may consult with a noncitizen in the credible fear process, DHS provides copies of documents only to legal representatives who have completed a fully executed Form G–28.¹⁸⁵ Although commenters expressed concern about the burden of obtaining consent and a signature from a detained noncitizen, the Departments must balance the sensitive nature of credible fear interviews and the importance of confidentiality pursuant to the nondisclosure provisions in 8 CFR 208.6.

With regard to the comment about noncitizens in CBP custody having difficulties obtaining items such as pen and paper, or having access to counsel or to private phone booths, the Departments disagree with the commenters' characterizations. Noncitizens who are going through the credible fear process in CBP custody are provided with pen and paper, and they are afforded a period of time to consult with an individual of their choosing, which occurs in a private phone booth, as discussed in this section.¹⁸⁶ These phones and phone booths are also used to conduct the credible fear interview.

iii. Impacts on Specific Vulnerable Populations, Discrimination Concerns

Comment: Many commenters expressed concern that the rule would disproportionately harm vulnerable groups, including Black individuals, Indigenous individuals, and People of Color ("BIPOC"), those who are HIV positive, and people with disabilities. For example, a commenter remarked that the Departments did not analyze the effect the rule has on particularly vulnerable populations such as Black migrants. A commenter voiced concern about the impact the rule could have on predominantly BIPOC communities, remarking that the rule perpetuates harmful political rhetoric about these communities and the border that can lead to long-term detrimental effects and violence. While sharing specific examples of the way the IFR has impacted members of BIPOC communities, another commenter raised

¹⁸³ OHSS analysis of June 2024 Enforcement Lifecycle data, July 2024 Persist Dataset, and data downloaded from UIP on September 3, 2024 (Summary Statistics tab; Fear Screening—CLP tab; Fear Screening—STB tab).

¹⁸⁴ OHSS analysis of June 2024 Enforcement Lifecycle data, July 2024 Persist Dataset, and data downloaded from UIP on September 3, 2024 (Fear Screening—CLP tab and Fear Screening—STB tab).

¹⁸⁵ DHS, *Instructions for Notice of Entry of Appearance as Attorney or Accredited Representative* 1, 4 (Sep. 17, 2018), <https://www.uscis.gov/sites/default/files/document/forms/g-28instr.pdf>.

¹⁸⁶ To the extent that commenters have concerns regarding compliance with this policy, DHS notes that such complaints about noncompliance can be addressed under the process described in Section III.C.2.c of this preamble.

concern for the discrimination these populations may face under the rule while seeking asylum and waiting for an appointment. A commenter stated that the rule would prevent fair and equal access to lifesaving protections and lead to the unnecessary deaths of individuals who are denied entry and returned to dangerous and unsafe countries. Therefore, the commenter urged, the rule should be rescinded in its entirety.

Response: The Departments are committed to the equal treatment of all persons, and this rule does not distinguish between individuals based on race, nationality, ethnicity, or any other protected characteristic. The Departments also acknowledge that certain populations, including members of BIPOC communities, may have unique vulnerabilities or face unique issues in their country of origin or countries of transit, and agree that the United States has certain legal obligations to protect noncitizens present in the United States who fear harm in their home countries. But as explained more fully in Section III.A.1 of this preamble, the rule ensures that noncitizens may continue to seek asylum or other protection in the United States. The Departments note that the rule and its exception apply equally to noncitizens who enter during the times when emergency border circumstances are present, regardless of nationality, race, ethnicity, or other demographics of concern identified by the commenters. Further, as explained in this section, adjudicators receive training to help them identify members of vulnerable communities and account for the harms such individuals may face. And, to the extent that members of certain communities may face greater risks because of their membership in those communities, the Departments believe that the “exceptionally compelling circumstances” exception will afford a means to seek asylum or protection when those risks manifest as specific threats to the individuals in question.

Comment: Several commenters expressed concern regarding the separation of families and the treatment of trafficking victims. A commenter generally supported allowing united families to escape persecution and cross the border together. Other commenters raised concern that the IFR and associated policy changes routinely separate families and often complicate or prevent family reunification. Another commenter wrote that the rule is likely to impose negative impacts on family wellbeing and result in family separations, as the commenter reasoned the changes in policy would incentivize an increase in the arrival of UCs because

families are unable to seek or receive protection by crossing the border together. One commenter also expressed concern that the rule puts children at risk to migrate alone. Another commenter elaborated that family unity and reunification is fundamental to our Nation’s immigration policies and the foundational principles of a Catholic social teaching. The commenter voiced concern that the effects of this rule would be similar to the effects of the Migrant Protection Protocols (“MPP”) and the Title 42 public health Order, which, the commenter stated, “led families to ‘self-separate’ at the border” because either the adults decided the conditions in Mexico were too dangerous for the children to continue to wait with them or the adults were injured or had disappeared. The commenter urged the Departments to rescind the rule entirely, arguing that the policy changes undermine families’ ability to seek humanitarian protection.

Additionally, a commenter stated that the rule’s exemption for survivors of trafficking is inadequate. The commenter wrote that survivors could be returned to trafficking situations when the new heightened credible fear standard fails to trigger safeguards codified in the TVPA.

Response: The Departments have designed the rule with a goal of keeping families together. As described in Section III.C.1.e of this preamble, the Departments have adopted family unity provisions that apply during both AMIs and section 240 removal proceedings. See 8 CFR 208.35(c), 1208.35(c). Additionally, if one member of a family unit traveling together is excepted from the limitation on asylum eligibility based on exceptionally compelling circumstances, then the entire family unit is excepted. See 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i).

Accordingly, commenters are incorrect that the rule disallows families from obtaining relief or protection together.

Additionally, the Departments believe that the safeguards in place for victims of human trafficking are sufficient. A noncitizen who is a victim of a severe form of trafficking in persons as defined in 8 CFR 214.201 is excepted from the suspension and limitation on entry under section 3(b) of the Proclamation and is also separately excepted from the provisions of this rule. See 8 CFR 208.35(a)(1), 1208.35(a)(1) (excepting from the limitation on asylum eligibility noncitizens described in section 3(b) of the Proclamation); 8 CFR 235.15(a) (excepting from the manifestation provision noncitizens described in section 3(b) of the Proclamation). Noncitizens who meet that definition

are also excepted from the limitation on asylum eligibility as having established exceptionally compelling circumstances. See 8 CFR 208.35(a)(2)(i)(C), 1208.35(a)(2)(i)(C). In practice, these two provisions provide two significant safeguards and work alongside section 3(b) of the Proclamation and 8 CFR 235.15(a) to ensure that noncitizens are not subject to the suspension and limitation on entry or any of the rule’s provisions if they meet the definition of a victim of a severe form of trafficking.

Comment: A commenter raised concern for non-Mexicans under the rule being removed and left stranded in Mexico without migration documents or resources. The commenter explained that undocumented individuals removed to Mexico are vulnerable to arrest, detention, and potential deportation by Mexican immigration authorities. The commenter stated that this process has been a dangerous and unsafe practice that results in human rights violations and that government officials in Mexico have confirmed this practice will continue and potentially expand under the rule.

Response: This rule does not change the statutory and regulatory process for designating the country to which a noncitizen may be removed. To the extent that a greater number of noncitizens may be removed through the operation of this rule—some of whom may be removed to Mexico rather than their home countries, consistent with country of removal designation authorities—the Departments note that noncitizens may assert claims of fear of harm in Mexico and that the rule explicitly provides that noncitizens are screened for fear of harm in their “designated country or countries of removal.” 8 CFR 208.35(b)(2)(ii); see also 8 CFR 208.35(b)(2)(iii).

The Departments acknowledge that noncitizens other than Mexicans who are removed to Mexico may be subject to Mexican immigration law. However, the Departments disagree that being returned to Mexico is necessarily unsafe, whether because of actions by the Government of Mexico or otherwise. Over the last several years, the Government of Mexico has made exceptional strides to improve conditions for asylum seekers, migrants, and refugees within its borders. For instance, Mexico’s Federal Public Defender’s office provides legal counseling and support to asylum seekers and migrants who file claims with Mexico’s Commission for Refugee Assistance, and the office has expanded its specialized staff and increased its visits to migration stations. 88 FR at

31411. Further, not only is Mexico a party to the 1951 Convention¹⁸⁷ relating to the Status of Refugees and its 1967 Refugee Protocol,¹⁸⁸ but also Mexico's Constitution includes a right to seek and receive asylum from political persecution. *See* Mex. Const. art. 11. In fact, the available grounds to qualify for asylum are broader in Mexico than in the United States. *See* 88 FR at 31411 (explaining that Mexico has joined the Cartagena Declaration on Refugees, which expands the definition of "refugee," "thus providing some who may apply for protection, such as asylum, with more grounds on which to make their claim than they would have in the United States"). And applicants who do not qualify for asylum in Mexico are automatically considered for complementary protection if they possess a fear of harm in their country of origin, or if there is reason to believe that they will be subjected to torture or to cruel, inhuman, or degrading treatment, but do not meet the "refugee" definition; those granted complimentary protection are able to regularize their status.¹⁸⁹

Comment: Multiple commenters expressed concerns for the health and safety of women and noncitizens from Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, and Intersex ("LGBTQI+") communities. For example, one commenter voiced concern for the asserted lack of equal opportunity and the Departments' asserted lack of analysis of the effect of the rule on particularly vulnerable populations, such as LGBTQI+ migrants. Another commenter wrote that the rule erroneously separates the imminent threat the noncitizen suffer at the border from their future threat of persecution upon return, especially for those noncitizens fleeing from Mexico who identify as LGBTQI+. The commenter wrote that violence towards members of the LGBTQI+ community can happen randomly and unexpectedly, and hence that noncitizens would be unable to predict or articulate the violent risks

they may face when seeking refuge in the United States. In addition, the commenter voiced concern for the disproportionate impacts of the rule on LGBTQI+ community members from Mexico and the "Northern Triangle" countries of Guatemala, Honduras, and El Salvador because, the commenter asserted, these countries have long and documented histories of severe violence against the LGBTQI+ population. Citing research, the commenter wrote that 4,385 claims of fear were related to LGBTQI+ status and 98.4 percent of the interviews resulted in positive determinations for fear of persecution. In conclusion, the commenter urged that it is imperative for the United States to remain a haven for all people fleeing danger and violence, especially LGBTQI+ migrants and therefore requested that the IFR be immediately rescinded. This commenter further expressed concern that the IFR was contrary to President Biden's February 2021 memorandum on advancing the human rights of LGBTQI+ persons around the world, which included an explicit instruction to the Departments of State and Homeland Security to "enhance their ongoing efforts to ensure that LGBTQI+ refugees and asylum seekers have equal access to protection and assistance, particularly in countries of first asylum."

Citing experts on gender-based violence in Mexico, a commenter stated that violence against asylum seekers who are women or members of LGBTQI+ communities is endemic in many parts of the country. While sharing specific examples involving both LGBTQI+ community members and women, a commenter raised concern about the violence these populations may face under the rule while seeking asylum. For example, the commenter shared that migrant girls, adolescents, and women have either witnessed or been victims of exploitation, sexual violence, kidnapping, and human trafficking both in transit and while waiting in Mexico. The commenter also remarked that the rule adds new barriers that further endanger LGBTQI+ individuals, such as lack of access to safe housing, employment, and medical care.

Another commenter asserted that the rule arbitrarily and unlawfully prevents women, children, families, and LGBTQI+ community members from seeking safety in the form of asylum based on border encounter numbers that are unrelated to the individuals' need for protection. The commenter wrote that the result would be to severely harm the health and safety of those who would otherwise merit protection.

Response: The Departments agree that the United States has certain legal obligations to protect those who fear harm in their home countries and recognize the importance of offering noncitizens the opportunity to seek protection from removal from the United States based on a likelihood of future persecution or torture. 89 FR at 48759. But as explained more fully in Section III.A.1 of this preamble and in the IFR, this rule complies with all such obligations and does not deny anyone the ability to apply for asylum or other protection in the United States. *See id.* at 48716–17, 48735–36.

The rule does not prevent noncitizens with valid claims from seeking asylum or other protection. To the extent that, as commenters asserted, women and members of the LGBTQI+ community do in fact face a greater risk of violence, those individuals would necessarily have a greater ability to establish that exceptionally compelling circumstances exist that would except them from the rule's limitation on asylum eligibility. To be clear, generalized risks of violence would not be sufficient to establish such circumstances, but insofar as such generalized risks manifest as specific threats to women and members of the LGBTQI+ community, the rule affords an avenue for those individuals to remain eligible for asylum. 8 CFR 208.35(a)(2), 1208.35(a)(2). And the rule does not change the ultimate eligibility requirements for statutory withholding of removal or CAT protection. A noncitizen who seeks to apply for asylum can also schedule arrival at a POE under a process approved by the Secretary, including by using the CBP One app, and avoid application of the rule. 8 CFR 208.35(a)(1), 1208.35(a)(1); Proclamation sec. 3(b)(v); 89 FR at 48737.

This rule does not preclude noncitizens who cross the southern border from seeking asylum or protection. Indeed, all noncitizens processed for expedited removal who manifest a fear of return, express an intention to apply for asylum or protection, or express a fear of persecution or torture or a fear of return to their country or the country of removal are referred for a credible fear interview, as appropriate. *See* INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii); 8 CFR 235.15(b)(4). AOs receive mandatory, specific training on screening and adjudicating gender-related claims.¹⁹⁰ This training includes information about violence against women (including domestic

¹⁸⁷ *See* United Nations Treaty Collection, *Chapter V: Refugees and Stateless Persons: Convention Relating to the Status of Refugees*, <https://treaties.un.org/doc/Publication/MTDGS/Volume%20I/Chapter%20V/V-2.en.pdf> (last visited Sept. 24, 2024).

¹⁸⁸ *See* United Nations Treaty Collection, *Chapter V: Refugees and Stateless Persons: Protocol Relating to the Status of Refugees*, <https://treaties.un.org/doc/Publication/MTDGS/Volume%20I/Chapter%20V/V-5.en.pdf> (last visited Sept. 24, 2024).

¹⁸⁹ 88 FR at 11721 & n.144 (citing Government of Mexico, *Ley sobre Refugiados, Protección Complementaria y Asilo Político* (Jan. 27, 2011), https://www.gob.mx/cms/uploads/attachment/file/211049/08_Ley_sobre_Refugiados_Proteccion_Complementaria_y_Asilo_Politico.pdf).

¹⁹⁰ USCIS, *RAIO Directorate—Officer Training: Gender-Related Claims* (Apr. 24, 2024).

violence), and guidance on interview considerations specific to gender-based claims.¹⁹¹ AOs also receive training on screening and adjudicating claims relating to LGBTQI+ noncitizens.¹⁹² This training includes information about types of harm that may be directed at LGBTQI+ individuals, as well as guidance on interview considerations specific to LGBTQI+ claims.¹⁹³ AOs are trained to recognize the sensitive nature of these claims and to pursue appropriate lines of inquiry.¹⁹⁴ AOs also receive training on country of origin information specific to LGBTQI+ issues, while recognizing that LGBTQI+ country-of-origin information may sometimes be difficult to find.¹⁹⁵

Additionally, the Departments recognize the sensitive nature of credible fear interviews, especially for vulnerable populations, including LGBTQI+ noncitizens. For example, for those going through the credible fear process in CBP custody, CBP has taken steps to protect the privacy of noncitizens during their interviews. These interviews occur in confidential and private phone booths intended for use both for consultation and for the credible fear interview. Additionally, ICE provides similar reasonable access to legal counsel for those who are detained in ICE custody during the credible fear process.¹⁹⁶

Comment: Commenters stated that many immigrants today are Punjabi-speaking Sikhs seeking protection due to the worsening human rights conditions under India's current administration. The commenters stated that these immigrants may face hardships such as language barriers and difficulty accessing employment opportunities and resources upon arrival. Commenters stated that the rule would exacerbate language-barrier issues. Specifically, a commenter stated that the requirement to express a fear of persecution explicitly and proactively in order to be referred for a credible fear screening, and the limited time to seek legal advice from a language-accessible attorney, would prevent many Sikh noncitizens from understanding their legal rights or the need to express their credible fear. The commenters wrote

that it is critical for the Sikh community and many other populations fleeing persecution to have the opportunity to seek asylum and requested clarification on how the Government intends to address the concerns of religious minorities who would be impacted by the rule.

Response: The Departments disagree that the rule will exacerbate language-barrier issues. For those who are going through the credible fear process in CBP custody, CBP provides language assistance services for those who do not speak English, consistent with CBP's Language Access Plan.¹⁹⁷ CBP immigration officers have extensive experience and training in identifying whether an individual requires a translator or interpreter or is unable to understand a particular language. *See* 89 FR at 48741. In addition, CBP facilities have "I Speak" signs, which are signs that assist literate individuals to identify a preferred language from one of over 60 possible languages, including Punjabi.¹⁹⁸ With respect to the signs and videos in CBP facilities that provide general information about the ability to express a fear, individuals who are unable to read those signs or communicate effectively in one of the languages in which the sign and video are presented are read the contents of the sign and video in a language they understand. *See* 89 FR at 48741.

The Departments agree that the United States has certain legal obligations to protect those who fear harm in their home countries, including those who are fleeing for religious reasons, and recognize the importance of offering noncitizens the opportunity to seek protection from removal. But as explained more fully in Section III.A.1 of the preamble, this rule does not deny anyone the ability to seek asylum or other protection in the United States and meets all such legal obligations. *See also id.* at 48716–17, 48735–36. Further, although commenters asserted generally

that religious minorities would be harmed by the IFR and DHS's policy changes, the commenters provided no specific reason to believe that the IFR and policy changes would disproportionately impact any particular religious groups other than the Punjabi-speaking Sikhs discussed above.

Comment: Commenters discussed the rule's impact on noncitizens with fewer financial resources and means. For example, a commenter wrote that the rule would further disadvantage those noncitizens with fewer financial resources because these noncitizens are less likely to pursue alternative routes to safety. A few commenters expressed concern for noncitizens with physical and mental health disabilities. And a commenter remarked that individuals with cognitive issues, disabilities, and language barriers are less likely to effectively articulate fears to border officials.

Response: The Departments agree that the United States has certain legal obligations to protect from removal those who fear specific types of harm upon removal and recognize the importance of offering noncitizens the opportunity to seek protection from removal, including noncitizens with fewer financial resources, noncitizens with physical and mental health disabilities, and noncitizens with cognitive issues, disabilities, and language barriers. But as explained more fully in Section III.A.1 of this preamble, this rule does not deny anyone the ability to seek asylum or other protection in the United States. *See also id.* at 48716–17, 48735–36. Further, there is no fee to download or use the CBP One app to schedule an appointment and thereby avoid the IFR's limitation on asylum eligibility,¹⁹⁹ and DHS has designed the CBP One app to be accessible to people with disabilities. Additionally, the Departments note that, depending on individual circumstances, AOs and IJs may find that certain especially vulnerable individuals meet the "exceptionally compelling circumstances" standard, or, as discussed previously, AOs may exercise their discretion to issue an NTA to place such noncitizens into section 240 removal proceedings as appropriate, where additional procedural safeguards are available to noncitizens. For

¹⁹⁷ *See* CBP, *Language Access Plan* (Nov. 18, 2016), <https://www.dhs.gov/sites/default/files/publications/final-cbp-language-access-plan.pdf>; CBP, *Supplementary Language Access Plan* (Feb. 7, 2020), <https://www.dhs.gov/sites/default/files/publications/cbp-updated-language-access-plan-2020.pdf>.

¹⁹⁸ *See* CBP, *Language Access Plan* 7 (Nov. 18, 2016), <https://www.dhs.gov/sites/default/files/publications/final-cbp-language-access-plan.pdf>; DHS, *I Speak . . . Language Identification Guide*, <https://www.dhs.gov/sites/default/files/publications/crcl-i-speak-poster-2021.pdf> (last visited Sept. 24, 2024); DHS, *I Speak . . . Indigenous Language Identification Poster*, https://www.dhs.gov/sites/default/files/publications/Habla%20Poster_12-9-16.pdf (last visited Sept. 24, 2024); *see also* DHS, *DHS Language Access Resources* (last updated July 17, 2023), <https://www.dhs.gov/publication/dhs-language-access-materials>.

¹⁹⁹ *See* CBP, *CBP One™ Mobile Application* (last modified Sept. 23, 2024), <https://www.cbp.gov/about/mobile-apps-directory/cbpone> (explaining in response to frequently asked questions that "the CBP One™ mobile application is FREE and available to everyone who has access to a mobile device").

¹⁹¹ *E.g.*, *id.* at 15–20, 42.

¹⁹² USCIS, *RAIO Directorate—Officer Training: Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims* (Apr. 24, 2024).

¹⁹³ *E.g.*, *id.* at 18–19, 27–34.

¹⁹⁴ *Id.* at 28–30, 37–38, 49.

¹⁹⁵ *Id.* at 43–44, 50.

¹⁹⁶ ICE, *Access to Due Process: Fiscal Year 2023 Report to Congress 2–3* (Feb. 20, 2024), https://www.dhs.gov/sites/default/files/2024-04/2024_0220_ice_access_to_due_process.pdf.

example, during section 240 removal proceedings, IJs may more fully consider whether a noncitizen demonstrates indicia of mental incompetency and, if so, what procedural safeguards are appropriate. *See Matter of M–A–M–*, 25 I&N Dec. at 481–83. Additionally, CBP officers may determine that such noncitizens are excepted from the suspension and limitation on entry (and thus that the provisions of this rule do not apply) under Section 3(b)(vi) or (vii) of the Proclamation.

iv. Impacts on Criminal Enforcement

Comment: Commenters stated that they are concerned that noncitizens would face criminal charges if they attempted to return to the United States following removal under the rule. One commenter stated that an increased number of expedited removal orders would inevitably lead more noncitizens to attempt to reenter the United States after their removal, potentially subjecting them to felony charges and two years of imprisonment, and that noncitizens should not be deemed criminals and incarcerated for seeking asylum in the United States. Another commenter stated that charging noncitizens criminally would decrease their access to humanitarian relief and increase the risk that criminal organizations would target those noncitizens.

Response: The Departments are committed to the fair, evenhanded enforcement of the law as Congress has enacted it. The Departments agree that, in appropriate cases, noncitizens who have been removed pursuant to an expedited removal order may be subject to criminal charges if they attempt to unlawfully reenter the United States. *See* INA 276(a), 8 U.S.C. 1326(a). Because the rule will allow the Departments to predictably and swiftly impose consequences on noncitizens who enter the United States without a legal basis to remain, the Departments believe noncitizens will be disincentivized from attempting to enter without a legal basis to remain or to reenter after being removed. Nevertheless, for the relatively few who choose nevertheless to reenter unlawfully, congressionally enacted criminal penalties remain an important tool to enforce the law.²⁰⁰

v. Negative Impacts on Other Affected Entities

Comment: Commenters stated that the rule would impose more burdens on nonprofit organizations, legal-service providers, and communities near the border. One commenter believed that the increase in negative fear determinations would cause legal-service providers to dedicate significant resources to preparing clients for and representing them in hearings before IJs and potential requests for reconsideration to USCIS. The commenter also alleged that the Departments have failed to consider reliance interests such as those of legal-service providers that prepare informational material, employ internal protocols, and deliver client services predicated on access to asylum and on access to clients in custody; the commenter stated that their organization would need to understand the changes effected by the rule, train staff and pro bono volunteers on those changes, and rewrite published legal information in multiple languages. Another commenter stated that its presentations would become longer and more complex to explain the effect of the rule's limitation on asylum eligibility, the exceptionally compelling circumstances needed to overcome it, and the new, heightened "reasonable probability" standard in credible fear interviews. The commenter asserted that the rule would also affect its staff's ability to provide services to callers of its hotline and its clients' ability to understand the legal issues involved.

Response: The Departments decline to modify the rule in response to the commenters' concerns. The concerns raised are not unique to immigration. Any change to any law or policy regulating the public requires providers who practice in the relevant area to adapt—they must learn the new law and advise clients accordingly. To facilitate the transition to the new provisions, since the Proclamation and IFR came into force, DHS personnel have regularly made themselves available to answer questions about these policies and the Departments' implementation activities, made information about these policies public on the Departments' websites,²⁰¹ and proactively engaged a

as in the instant case, a conviction is not for an aggravated felony for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years, we examine the nature of the conviction, the type of sentence imposed, and the circumstances and underlying facts of the conviction.").

²⁰¹ *See, e.g.,* CBP, *CBP One™ Mobile Application* (last modified Sept. 23, 2024), <https://www.cbp.gov/about/mobile-apps-directory/cbpone>.

variety of stakeholder groups to promote understanding of the rule. The Departments believe that any purported costs that nonprofit organizations and legal-service providers assert they will bear in adapting to the changes effected by the rule are outweighed by the interest in reducing the current levels of encounters and allowing the Departments to invest more of their limited resources into predictably and swiftly delivering consequences to noncitizens who cross the border without a lawful basis to remain in the United States. *See* 89 FR at 48714. Although returning to the status quo before the IFR may eliminate some of the asserted burdens to which the commenters object, that status quo would perpetuate the vicious cycle in which the border security and immigration systems cannot deliver timely decisions and consequences to those encountered at the southern border who lack a lawful basis to remain in the United States, ultimately incentivizing more noncitizens to attempt to cross the border. *See id.* Conversely, a decrease in encounters at the southern border could be expected to allow organizations like the commenters to allocate more resources to each of their individual clients, allowing them to serve their clients more effectively.

The Departments also disagree that the rule will burden communities near the border. To the contrary, the rule will free resources to allow DHS to more effectively patrol the border and interdict smugglers and TCOs.²⁰² Moreover, the rule enables the delivery of predictable, swift consequences to noncitizens who cross the border without a legal basis to remain in the United States. That will disincentivize such noncitizens from attempting to cross the border, depriving smugglers and TCOs of opportunities to perpetuate their illegal operations. *See* 89 FR at 48730. In these ways, this rule is expected to reduce smuggler and TCO activity in border communities, ultimately reducing the harms that those activities bring to those communities. Additionally, the same incentives are expected to ultimately lower the number of noncitizens present in border communities, further reducing the burdens on those communities.

²⁰⁰ Even so, although convictions for certain "particularly serious crimes" may render noncitizens ineligible for asylum or withholding of removal, unlawful reentry alone is not necessarily a particularly serious crime. *See* INA 208(b)(2)(A)(ii), 8 U.S.C. 1158(b)(2)(A)(ii); INA 241(b)(3)(B)(ii), 8 U.S.C. 1231(b)(3)(B)(ii); *Matter of N–A–M–*, 24 I&N Dec. 336, 342 (BIA 2007) ("Where,

²⁰² *See* 89 FR at 48729–30.

b. Negative or Minimal Impacts on Immigration System and Government Operations

i. Undermines the Administration's Promises and Goals

Comment: Some commenters urged the Administration to keep its promises, stating that “[w]e are all immigrant[s].” Specifically, one commenter stated that the Administration “has not upheld its promise to safeguard the legal right to asylum and protect individuals from persecution, violations of due process, and family separation.” Other commenters asserted that the Administration issued the Proclamation for political reasons, including using it as a political tool and for reelection purposes, while another commenter stated that the rule will not be effective in achieving the Administration’s perceived political messaging or in “sway[ing]” right-wing individuals. And a third commenter argued that the Democratic Party supported discriminatory ideas like those found in the rule despite claiming to disagree with such policies.

Along the same lines, commenters stated that the rule is inconsistent with the Administration’s goal of creating a just immigration system and goes against the Administration’s promise to not deny asylum for noncitizens fleeing persecution and violence. One commenter claimed that the Administration had “previously pledged to restore the United States’ ‘moral standing in the world and our historic role as a haven for refugees and asylum seekers, and those fleeing violence and persecution,’ ” but that the rule “is misaligned with the values promised by this administration, including promises to end Trump-era restrictions on asylum seekers.” Other commenters asserted that the Departments sought to curtail the rights of noncitizens arriving at the border by shutting them out of the asylum process based “solely” on how they arrived in the United States, even though the Administration had previously called on agencies to review expedited removal procedures to make them fairer. Another commenter expressed concern regarding what they alleged was a shift in the Administration’s “rhetoric” and support for “fear-based restrictions” on asylum, instead of proposing measures to overhaul and ameliorate the asylum process, which they said was “sadly a very different stance” from the Administration’s position a few years ago. A few commenters urged the Administration to expand the asylum system and to not close the southern border.

Response: The Departments agree that the United States has a long tradition of accepting and welcoming refugees and note that in the past few years, the United States Government has taken steps to significantly expand refugee admissions worldwide,²⁰³ including for refugees from Latin America and the Caribbean. See 89 FR at 48712; 88 FR at 31333, 31341. However, without a policy in place to ensure lawful, safe, and orderly processing of noncitizens entering the United States during emergency border circumstances, the number of noncitizens in such circumstances would exceed DHS’s already limited resources and facilities. See 89 FR at 48711–15. As explained in the IFR and under this rule, noncitizens seeking protection in the United States will still be able to do so, either before USCIS or in removal proceedings before EOIR, subject to the rule’s provisions.

The Departments have determined that the changes effected by the IFR and the rule during emergency border circumstances will allow for better management of the limited resources Congress has provided to the Departments. Specifically, noncitizens intending to seek asylum are encouraged to do so using lawful pathways and processes, which facilitate the orderly processing of claims. In addition, the changes in the IFR and this rule permit the Departments to swiftly screen noncitizens not likely to establish eligibility for relief or protection, as well as to efficiently identify and process valid claims. The combined effect of the changes has reduced the percentage of noncitizens placed in section 240 removal proceedings,²⁰⁴ where cases may take years to resolve.²⁰⁵ In addition to reducing the impact on EOIR operations, reducing the number of noncitizens in removal proceedings reduces ancillary benefit requests to USCIS, see 8 CFR 208.7 (employment authorization for pending asylum applicants), and alleviates the burden on ICE of removing non-detained noncitizens who receive final orders of removal at the conclusion of section 240 removal proceedings but who do not comply with their orders, see, e.g., 8 CFR 241.4(f)(7) (in considering whether to recommend further detention or

release of a noncitizen, an adjudicator must consider “[t]he likelihood that the alien is a significant flight risk or may abscond to avoid removal”).

The Departments reiterate that a noncitizen may avoid application of the limitation on asylum eligibility if the noncitizen establishes by a preponderance of the evidence that exceptionally compelling circumstances exist. See 8 CFR 208.35(a)(2), 1208.35(a)(2). The Departments recognize that some noncitizens who would otherwise be granted asylum may not be eligible due to this rule. However, because such noncitizens remain able to seek statutory withholding of removal and CAT protection, the Departments believe that this rule strikes the appropriate balance between the need to protect those who wish to seek protection in the United States and the need to use resources effectively during emergency border circumstances.

Moreover, the Departments have determined that responding to emergency border circumstances is necessary to ensure the Departments’ continued ability to safely, humanely, and effectively enforce and administer U.S. immigration laws, as well as to reduce the role of exploitative and dangerous smuggling and human trafficking networks. See 89 FR at 48714, 48723, 48726, 48767. One cause of recent surges in irregular migration is smugglers’ and noncitizens’ growing understanding that DHS’s capacity to impose consequences at the border is limited by the lack of resources and tools that Congress has made available. Indeed, this rule follows congressional inaction limiting DHS’s capacity to impose such consequences despite the Departments’ repeated attempts to obtain the legislative framework and resources required to address unprecedented levels of irregular migration. In early February 2024, a bipartisan group of Senators proposed reforms of the country’s asylum laws that would have provided new authorities to significantly streamline and speed up immigration enforcement proceedings and immigration adjudications for individuals encountered at the border, including those who are seeking protection, while preserving principles of fairness and humane treatment.²⁰⁶ 89 FR at 48729.

²⁰³ U.S. Dep’t of State, *Report to Congress on Proposed Refugee Admissions for Fiscal Year 2024*, at 6 (2023), https://www.state.gov/wp-content/uploads/2023/11/FY-2024-USRAP-Report-to-Congress_FINAL-Accessible-11.02.2023.pdf.

²⁰⁴ OHSS analysis of June 2024 Enforcement Lifecycle data and data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

²⁰⁵ See OHSS analysis of EOIR data as of July 2024 (Mean EOIR Filed Dates tab).

²⁰⁶ The White House, *Fact Sheet: Biden-Harris Administration Calls on Congress to Immediately Pass the Bipartisan National Security Agreement* (Feb. 4, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/02/04/fact-sheet-biden-harris-administration-calls-on-congress-to-immediately-pass-the-bipartisan-national-security-agreement/>.

Critically, the proposal included more than \$20 billion in additional resources for DHS, DOJ, and other departments to implement those new authorities.²⁰⁷ *Id.* However, Congress failed to move forward with this bipartisan legislative proposal.²⁰⁸ *Id.* It also failed to pass the emergency supplemental funding requests that the Administration submitted. *Id.* Although Congress did ultimately enact an FY 2024 appropriations bill for DHS, the funding falls significantly short of what DHS requires to deliver timely consequences and avoid large-scale releases pending section 240 removal proceedings. *Id.*

In light of congressional inaction, this rule is designed to address historic levels of migration and efficiently process migrants arriving at the southern border during emergency border circumstances with the resources and tools Congress did make available. As discussed in Section II.A.2 of this preamble, the Departments assess that this rule significantly increases their ability to deliver timely decisions and consequences. Accordingly, the Departments reject commenters' claim that the Departments' basis for promulgating the rule is political. Rather, the Departments believe that the rule will continue to reduce irregular migration by allowing the Departments to better manage their limited resources while delivering consequences more swiftly through expedited removal for those without a legal basis to remain in the United States.

ii. Similarity to Actions of Past Administration

Comment: Some commenters stated that the rule was akin to the asylum-related rulemaking and policies of the prior Administration, which, the commenters said, denied noncitizens their "legal right to request asylum in the United States" and were "struck down" by Federal courts. Specifically, one commenter stated that the prior Administration "provided [a] similar rationale" for its policies: "to alleviate the mass illegal immigration crises along the Southern border by discouraging the submission of fraudulent or otherwise meritless asylum claims." And another commenter asserted that the rule was

similar to the prior Administration's interim final rule entitled Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims, 83 FR 55934 (Nov. 9, 2018) ("Proclamation Bar IFR"), in that it is "again barring people crossing between ports from accessing asylum protections for no legitimate reason beyond false optics of border 'control' that unlawfully penalize and seek to deter those who need access to protection." A number of commenters criticized the rule as an insufficient break from prior immigration policies that the commenters described as "inhumane," "cruel[]," and "punishing." Some commenters claimed that the Administration was "walking back promises to protect fair asylum processes" since revoking Title 42. And another commenter stated that the Administration's echoing of "reactionary measures" of the prior Administration "during a looming election season" was a "cynical approach" that would foster "division and xenophobia," fail to address the root causes of immigration issues, and "alienat[e] an electorate that values fairness and justice for immigrants."

Response: The Departments disagree that the rule is indistinguishable from or too similar to the asylum-related rulemakings and policies commenters cited. The Proclamation Bar IFR, for instance, imposed a categorical eligibility bar for noncitizens crossing the southern border outside a POE. *See* 83 FR at 55935; *cf. East Bay III*, 993 F.3d at 669–70. By contrast, this rule does not operate as a categorical bar on asylum eligibility based on manner of entry. Instead, the rule provides a limitation on asylum eligibility for certain noncitizens who (1) enter the United States across the southern border during emergency border circumstances; (2) are not described in section 3(b) of the Proclamation; and (3) do not establish exceptionally compelling circumstances. *See* 8 CFR 208.13(g), 208.35(a), 1208.13(g), 1208.35(a). Importantly, then, noncitizens may avoid application of the limitation on asylum eligibility if they establish by a preponderance of the evidence that exceptionally compelling circumstances exist. *See* 8 CFR 208.35(a)(2), 1208.35(a)(2). Such circumstances necessarily exist where the noncitizen demonstrates that, at the time of entry, the noncitizen or a member of the noncitizen's family as described in 8 CFR 208.30(c) with whom the noncitizen was traveling faced an acute medical emergency; faced an imminent and extreme threat to their life or safety;

or was a "victim of a severe form of trafficking in persons" as defined in 8 CFR 214.201. 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i). Noncitizens may also be excepted from the limitation if, during section 240 removal proceedings or the asylum merits process, they meet the family unity exception. *See* 8 CFR 208.35(c), 1208.35(c). As discussed in further detail in Section III.C.1.e of this preamble, under the family unity provision, the following noncitizens may be treated as having established exceptionally compelling circumstances sufficient to avoid application of the limitation on asylum eligibility: those who (1) are found eligible for statutory withholding of removal or CAT withholding; (2) would be eligible for asylum but for the limitation on asylum eligibility set forth in the rule, the condition set forth in the Circumvention of Lawful Pathways rule, or both; and (3) have a qualifying spouse or child. *See id.* The Departments believe that the distinctions between this rule and the Proclamation Bar IFR are of legal significance, and those distinctions are discussed at length in the IFR. *See* 89 FR at 48735–36.

In addition, the rule is designed to implement policies distinct from those motivating the Proclamation Bar IFR. This rule seeks to enhance the Departments' ability to address historic levels of migration and efficiently process migrants arriving at the southern border during emergency border circumstances. 89 FR at 48718, 48726–31. The rule is intended to better manage already strained resources, thereby protecting against overcrowding in border facilities and helping to ensure that the processing of migrants seeking protection in the United States is done in an effective, humane, and efficient manner. *See* 89 FR at 48767. In that vein, the Proclamation Bar IFR differed in important respects from this rule. *See* 89 FR at 48734–36, 48738 (explaining that this rule does not treat the manner of entry as dispositive in determining asylum eligibility, contains an exception that accounts for varied circumstances, and is narrowly tailored to address the emergency border circumstances described in the Proclamation and this rule and thus does not allow for implementation of future proclamations or orders).

Moreover, this rule is a response to emergency border circumstances that did not exist when the Proclamation Bar IFR was promulgated. 89 FR at 48726–28. Current trends and historical data indicate that migration and displacement in the Western Hemisphere will continue to increase as a result of violence, persecution,

²⁰⁷ Deirdre Walsh & Claudia Grisales, *Negotiators Release \$118 Billion Border Bill as GOP Leaders Call It Dead in the House*, NPR (Feb. 4, 2024), <https://www.npr.org/2024/02/04/1226427234/senate-border-deal-reached>.

²⁰⁸ Stephen Groves, Rebecca Santana & Mary Clane Jalonick, *Border Bill Fails Senate Test Vote as Democrats Seek to Underscore Republican Resistance*, AP News (May 23, 2024), <https://apnews.com/article/border-immigration-senate-vote-924f48912eef1dc544dc648d757c3fe>.

poverty, human rights abuses, the impacts of climate change, and other factors. *Id.* at 48726. The United States Government is working to address these root causes of migration and to abate adverse effects from unprecedented levels of irregular migration,²⁰⁹ including by working closely with partner countries across the Western Hemisphere.²¹⁰ *Id.* at 48727. But these efforts will take time to have significant impacts and will not alleviate the stress that the border security and immigration systems are currently experiencing, as described in the Proclamation, the IFR, and this rule. *Id.*

iii. Would Be Ineffective or Not Achieve Its Intended Outcomes

Comment: Commenters expressed opposition to the rule, claiming that the rule would decrease, not increase, the efficiency of USCIS management of asylum cases and could lead to further backlogs and inefficiencies for AOs and immigration courts, complicating the asylum process. One commenter believed that the rule would “exacerbate efficiency issues by requiring operational changes to compensate for elimination of the preliminary screening to notify noncitizens of the expedited removal process and the need to affirmatively express their fear of persecution or torture.” Some commenters asserted that the Departments have created an “unworkable, convoluted, and unfair” system at the border, which CBP officers and AOs will not be prepared to adapt to. Commenters claimed that the rule would create additional administrative burdens by requiring officers, applicants, stakeholders, and judges to apply multiple tests in one proceeding. Further, commenters stated that having to track, identify, and apply different standards would be more complex for all those involved.

Other commenters stated that the rule would exacerbate conditions at the southern border and would increase the number of migrants who enter between POEs, further straining resources and escalating the current humanitarian

crisis. A commenter stated that the rule may cause migrants to be turned away if they walked up to a POE, and thus, it would “inadvertently encourage desperate individuals to resort to dangerous methods to reach safety.” One commenter voiced concern that the rule would have an adverse effect on the asylum process because the rule would cause a foundational shift in the U.S. asylum system, causing access to asylum to be the exception rather than the norm. Another commenter claimed that decades of deterrence policies have “proven that punitive policies do not reduce irregular migration—they only increase chaos, confusion, and human suffering.” (Emphasis omitted.)

Other commenters claimed that the rule would be ineffective at achieving its intended goals for managing the border. One commenter stated that people were coming to the United States because they had no choice, so securing the border would not solve the problem. Similarly, a commenter stated that the rule would be like playing “whack-a-mole, except with real live people, most of whom would not undertake such a dangerous, difficult journey to the border if they felt they could stay where they were.” Furthermore, a commenter stated that, without additional resources, the Government will have no way of fully implementing its own policy. Commenters cited an article stating that “it is hard to say with confidence whether this regulation will work as the administration intends.”²¹¹ One commenter stated that the Proclamation did not address the actual needs of asylum seekers, nor did it address the problem that has led the U.S. immigration system to be “broken.” This commenter described a “broken legal system that takes years to process cases, leading individuals to live in limbo and without important legal rights.” Along the same lines, another commenter stated that turning away noncitizens is evidence of a faulty immigration system and, thus, there are better solutions than turning away those asking for help.

Other commenters asserted that the rule had not substantiated its aim of incentivizing a sustained drop in the number of encounters at the southern border. While citing a study, one commenter stated that any change in border policy triggers a short-term drop in encounters, regardless of the intent of the policy change. The commenter also

stated that the rule has not provided an adequate explanation for the assumption that it would achieve its objective of reducing the number of encounters at the border. And while referencing another study, another commenter elaborated that policies that limit access to POEs increase irregular crossings by noncitizens who cannot wait in Mexico, which they stated was also confirmed by DHS’s Office of Inspector General. Conversely, another commenter remarked that, while there has been a temporary drop in encounters immediately after the issuance of the IFR, the IFR would be ineffective in deterring migrants in the long term because of the rule’s exceptions and loopholes. Lastly, another commenter expressed concern that “[a]s written, the [IFR] simply continues the status quo by encouraging mass illegal immigration and abuse of our asylum system.”

Response: The Departments disagree that the rule decreases the efficiency of management of asylum claims. The Departments recognize that the rule may require additional time for AOs and IJs during credible fear screenings and reviews, respectively, to inquire into the applicability of the rule and noncitizens’ fear claims. Similarly, where its provisions apply to a given case, applying the rule will require additional time during asylum adjudications before USCIS and before IJs during section 240 removal proceedings. On the other hand, in the absence of this rule’s provisions, AOs and IJs would have to make other inquiries into potential fear claims under steady-state regulations and into asylum eligibility under the Circumvention of Lawful Pathways rule. In addition, as discussed throughout this preamble, the IFR has resulted in significantly reduced irregular migration and has allowed the Departments to filter out a greater portion of cases that are unlikely to ultimately be successful on the merits. *See* Section II.A.2 of this preamble. Accordingly, the Departments expect the additional time spent by AOs and IJs on implementation of the rule to be accompanied by a comparatively smaller number of credible fear cases and full adjudications on the merits than AOs and IJs would otherwise have been required to handle in the absence of the rule. And as discussed in Section III.C.3 of this preamble, AOs and IJs are specifically trained to apply multiple tests in the same proceedings; any claim that these trained and skilled professionals would be burdened by multiple tests is unfounded. Moreover, any burdens imposed by the rule on

²⁰⁹ *See, e.g.,* The White House, *Mexico and United States Strengthen Joint Humanitarian Plan on Migration* (May 2, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration/> (describing the commitment of the United States and Mexico to addressing root causes of migration).

²¹⁰ *See* The White House, *Fact Sheet: Third Ministerial Meeting on the Los Angeles Declaration on Migration and Protection in Guatemala* (May 7, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/05/07/fact-sheet-third-ministerial-meeting-on-the-los-angeles-declaration-on-migration-and-protection-in-guatemala/>.

²¹¹ Am. Immigr. Council, *Analysis of the President’s 212(f) Proclamation & Interim Final Rule Restricting Asylum 2* (2024), <https://www.americanimmigrationcouncil.org/research/american-immigration-council-analysis-presidents-212f-proclamation-and-interim-final-rule/>.

CBP officers and agents have been accompanied by a substantial reduction in other resource burdens due to a substantial reduction in encounters at the southern border caused by this rule.

The Departments agree with commenters that the immigration system is badly in need of additional resources and efficiencies. This rule is not a substitute for congressional action, which remains the only long-term solution to the challenges the Departments have confronted on the border for more than a decade. However, the Departments disagree that these fundamental challenges mean this rule will be ineffective in achieving its aims. Given the absence of reforms by Congress, the Departments are working within the legal framework and with the resources provided by Congress to ensure the functioning of the border security and immigration systems during emergency border circumstances. After the implementation of the Proclamation and IFR, the Departments saw a significant decrease in encounters along the southern border, which has allowed the Departments to more efficiently process noncitizens through expedited removal, delivering timely decisions and consequences and discouraging irregular migration. In other words, commenters are incorrect that the rule would lead to an increase in encounters between POEs and decreased efficiencies in the process.

Notably, in addition to the decrease in encounters, operations at POEs have remained largely steady over this time. For example, vehicle wait times at POEs on the SWB have not shown changes from typical monthly fluctuations. The numbers of vehicle occupants and pedestrians entering the United States with lawful status have remained aligned with normal entry data. In particular, between August 2023 and May 2024—the last month before implementation of the IFR—the average wait time across all SWB POEs (passenger vehicle, pedestrian, and truck cargo) was 32 minutes for vehicles, 15 minutes for cargo trucks, and 9 minutes for pedestrians. From June 2024 through July 2024, the average wait times were 34 minutes for vehicle traffic, 9 minutes for truck cargo, and 7 minutes for pedestrians.

With respect to the suggestion that the rule would inadvertently encourage desperate individuals to resort to dangerous methods to reach safety (such as crossing between POEs), the Departments note that the rule creates no such incentive; experience shows that the IFR has improved DHS's capacity to swiftly deliver consequences to those who cross between POEs and

do not have a lawful basis to remain, including through the use of expedited removal. See Section II.A.2 of this preamble. Notably, the comparatively abbreviated timeline of the expedited removal process serves as a powerful disincentive against irregular migration of noncitizens who cross between POEs without viable claims for asylum. In addition, the rule, by adopting the exceptions contained in section 3(b) of the Proclamation, complements and incentivizes the use of lawful, safe, and orderly pathways and processes for individuals to come to the United States.

With respect to the claim that this rule will yield at most a short-term reduction in encounters as noncitizens decide that they cannot wait in Mexico, the Departments note that thus far, encounters have not increased to the levels that were seen in the years leading up to the IFR. See Section II.A.2 of this preamble. Moreover, in the Departments' experience, migrants are sensitive to the incentives created by national policy,²¹² and the Departments see an imperative to act in the face of the challenging problem of very high levels of irregular migration. Even if the rule's effects did not last indefinitely, moreover, that would not be a reason to depart from the rule's approach now—when its approach is having its intended effect.

The Departments do assess that ensuring that the reduction in border encounters is sustained will require not just the rule itself but work on the confluence of factors that also contribute to high levels of irregular migration. And in parallel with this rule, the Administration is working to address those factors.²¹³ For instance, the United States Government is working to address the root causes of migration and to abate adverse effects from unprecedented levels of irregular migration,²¹⁴ including through working

closely with partner countries across the Western Hemisphere.²¹⁵ 89 FR at 48727; see Section II.A.2 of this preamble.

Additionally, increased access to lawful, safe, and orderly pathways will continue to complement one of the rule's goals of discouraging irregular migration where appropriate.²¹⁶ While these and other parallel measures are necessary complements to the rule, they cannot substitute for the rule: These efforts will take time to have significant impacts and will not alleviate the stress that the border security and immigration systems are currently experiencing, as described in the Proclamation, the IFR, and this rule. 89 FR at 48727.

c. Negative Impacts on the U.S. Economy, Workforce, Citizenry, Public Health, and Safety

Comment: Commenters expressed general concern that the IFR would negatively impact the U.S. workforce and economy, stating that the United States needs immigrants to bolster the workforce and address labor shortages, that the United States was built on the labor of immigrants, and that reliance on immigrant labor continues today. They argued that restricting immigration into the United States exacerbates population shortages, and that closing borders to immigrants negatively impacts the food supply chain because a significant portion of agricultural workers and food processing employees are immigrants. One commenter specified that migrants are currently needed because “the reproductive birthrate here has declined” and “replacement” of economic contributors is “essential to avoid complete replacement by ‘artificial intelligence.’”

Response: The Departments do not dispute the importance and contributions of immigrants to the economy. As noted in Section V.B. of this preamble (in which the Departments describe the estimated

²¹² See, e.g., Miriam Jordan, One Big Reason Migrants Are Coming in Droves: They Believe They Can Stay, N.Y. Times (Jan. 31, 2024), <https://www.nytimes.com/2024/01/31/us/us-immigration-asylum-border.html>.

²¹³ See DHS, Fact Sheet: DHS Continues to Strengthen Border Security, Reduce Irregular Migration, and Mobilize International Partnerships (June 4, 2024), <https://www.dhs.gov/news/2024/06/04/fact-sheet-dhs-continues-strengthen-border-security-reduce-irregular-migration-and>; U.S. Agency for Int'l Dev., U.S. Strategy to Address the Root Causes of Migration in Central America—FY 2022 USAID Results, <https://www.usaid.gov/central-america-and-mexico-regional-program/fy-2022-root-causes-strategy-results> (last visited Sept. 15, 2024).

²¹⁴ See, e.g., The White House, Mexico and United States Strengthen Joint Humanitarian Plan on Migration (May 2, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration/>

(describing the commitment of the United States and Mexico to addressing root causes of migration).

²¹⁵ See The White House, Fact Sheet: Third Ministerial Meeting on the Los Angeles Declaration on Migration and Protection in Guatemala (May 7, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/05/07/fact-sheet-third-ministerial-meeting-on-the-los-angeles-declaration-on-migration-and-protection-in-guatemala>.

²¹⁶ See, e.g., Ezra Klein, The Real ‘Border Czar’ Defends the Biden-Harris Record, N.Y. Times (Sept. 13, 2024), <https://www.nytimes.com/2024/09/13/opinion/ezra-klein-podcast-alejandromayorkas.html> (interview response of Secretary of Homeland Security Alejandro Mayorkas explaining that one “leg[] of the stool” for decreasing encounters is presenting migrants with “alternative means of accessing humanitarian relief in the United States,” including “the lawful pathways that we have built”).

effects of the rule pursuant to Executive Order 12866), the expected effect of this rule is primarily to reduce incentives for irregular migration and illegal smuggling activity. This rule does not inhibit or prevent regular migration into the United States. In particular, the Departments have been clear that the IFR does not apply to any noncitizen who has a valid visa or other lawful permission to seek entry or admission into the United States or presents at a POE pursuant to a pre-scheduled time and place. 89 FR at 48715; *see also* 8 CFR 208.35(a), 1208.35(a) (excepting from the limitation on asylum eligibility noncitizens who are excepted from the Proclamation's suspension and limitation on entry under section 3(b) of the Proclamation). Additionally, this rule does not change or place any restrictions on those who may be eligible for employment authorization within the United States. The Departments recognize that there may be an impact on some people who attempt to enter the United States irregularly and who are removed after their entry, but the Departments find that the limitation on asylum eligibility is, on balance, an appropriate response to surges in irregular migration during emergency border circumstances. For those whom this rule renders ineligible for asylum but who ultimately receive statutory withholding of removal or CAT protection, another effect would be the increased frequency with which those subject to this rule who are present in the United States are required to renew their employment authorization and a reduced ability for their family to immigrate to the United States.

Additionally, as noted in the IFR, 89 FR at 48712 & nn.10–13, over the past several years the United States Government has implemented a historic expansion of lawful pathways and processes to come to the United States, including:

- The CHNV parole processes, which allow individuals with U.S.-based supporters to seek parole on a case-by-case basis for urgent humanitarian reasons or significant public benefit;
- The Safe Mobility Offices in Colombia, Costa Rica, Ecuador, and Guatemala, which provide, among other things, information and referrals to humanitarian or family reunification parole processes, labor pathways, and expedited refugee processing for eligible individuals;²¹⁷

²¹⁷ U.S. Dep't of State, *Safe Mobility Initiative: Helping Those in Need and Reducing Irregular Migration in the Americas*, <https://www.state.gov/safe-mobility-initiative/> (last visited Sep. 20, 2024);

- The expansion of country-specific family reunification parole processes for individuals in the region who have U.S. citizen relatives in the United States;

- Increasing proposed refugee admissions from the Western Hemisphere from 5,000 in FY 2021 to up to 50,000 in FY 2024; and
- Expanding access to labor pathways.

More specifically, recognizing the significant contributions noncitizens make to the U.S. economy, the United States Government significantly expanded access to labor pathways to maintain strong economic growth and meet labor demand in the United States. Our efforts to expand access to labor pathways have yielded results. In FY 2023, the United States issued 442,000 H-2A and H-2B nonimmigrant worker visas globally.²¹⁸ Similarly, in FY 2023, the United States issued 265,777 H-1B specialty occupation visas,²¹⁹ the highest number of visas issued or otherwise utilized in decades.²²⁰ Furthermore, the United States also issued more than 192,000 employment-based immigrant visas in 2023—far above the pre-pandemic number—and ensured that no employment-based visas went unused for the second year running.²²¹

The Departments believe that these new or expanded lawful pathways, and particularly employment-based pathways, are effective ways to address labor shortages and encourage lawful migration. The Departments also believe that, by reducing migrants' incentives to use human smugglers and traffickers to enter the United States, this rule will reduce the likelihood that newly arrived migrants will be subjected to labor

The White House, *Fact Sheet: Biden-Harris Administration on World Refugee Day Celebrates a Rebuilt U.S. Refugee Admissions Program* (June 20, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/20/fact-sheet-biden-harris-administration-on-world-refugee-day-celebrates-a-rebuilt-u-s-refugee-admissions-program/>.

²¹⁸ U.S. Dep't of State, *Worldwide Visa Operations: Update*, <https://travel.state.gov/content/travel/en/News/visas-news/worldwide-visa-operations-update.html> (last updated Jan. 2, 2024).

²¹⁹ U.S. Dep't of State, *Nonimmigrant Visa Statistics*, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html> (last visited Aug. 27, 2024) (see the "FY2019–2023 Detail Table (PDF)" under "Nonimmigrant Visas by Individual Class of Admission (e.g. A1, A2, etc.)").

²²⁰ *Id.* (see the "FY1997–2023 NIV Detail Table (Excel spreadsheet)" under "Nonimmigrant Visa Issuances by Visa Class and by Nationality" showing issuance totals of H-1B specialty occupation visas).

²²¹ USCIS, *Completing an Unprecedented 10 Million Immigration Cases in Fiscal Year 2023, USCIS Reduced Its Backlog for the First Time in Over a Decade* (Feb. 9, 2024), <https://www.uscis.gov/EOY2023>.

trafficking. The Departments further reiterate that noncitizens who avail themselves of any of the lawful, safe, and orderly pathways recognized in this rule will not be subject to the limitation on asylum eligibility or the other provisions of the rule.

Comment: Other commenters provided additional remarks on the contributions of immigrants to the United States, stating that noncitizens provide value to U.S. communities and that immigrants have enriched the United States. While citing a 2024 article, a commenter stated that the IFR would subject noncitizens who cross the border irregularly to expedited removal and further criminalization through criminal prosecution, costing taxpayers over \$7 billion to incarcerate migrants charged or convicted with unauthorized entry or reentry crimes.

Response: The Departments emphasize that neither the IFR nor this rule requires DHS to refer noncitizens it encounters at the border for prosecution for unauthorized entry or other immigration-related offenses. It is incorrect to cite expedited removal as the vehicle leading to mass incarceration and criminal prosecution of migrants. To the contrary, expedited removal is a process that allows DHS officials to quickly remove certain noncitizens encountered at the border. While it is true that noncitizens will spend some time in custody pending completion of the expedited removal process (and for a credible fear determination where referred), such custody is not for purposes of criminal prosecution. Although the Departments recognize commenters' concerns regarding the amount of taxpayer funds used to incarcerate migrants who are charged and convicted with unauthorized entry or reentry crimes, that is not at issue here. And in any event, as discussed in Section V.B of this preamble, the Departments expect that the rule will result in significantly reduced irregular migration. Accordingly, the Departments expect AOs and IJs to conduct a smaller number of credible fear cases than AOs and IJs would otherwise be required to handle in the absence of this rule, with the possibility of attendant savings of Government resources.

d. Other General Opposition

Comment: Several comments urged the Departments not to close the SWB.

Response: The rule does not close the SWB. It adds a limitation on asylum eligibility and alters the process for those individuals described in section 3(a) of the Proclamation who are not described in section 3(b) of the

Proclamation, but it does not “close” the border.

Additionally, the rule does not impose any changes to asylum eligibility or processing of noncitizens who use lawful, safe, and orderly pathways to seek entry to the United States. Noncitizens who use the CBP One app to pre-schedule an appointment at a SWB POE to present themselves at the border in a safe, orderly, and lawful manner are excepted from the suspension and limitation on entry under section 3(b) of the Proclamation and so are excepted from the limitation on asylum eligibility and changes to expedited removal processing. This exception is significant. From June 5, 2024, through August 31, 2024, 123,600 noncitizens with CBP One appointments presented at POEs and were accordingly processed outside of the IFR’s provisions and will be excepted from the limitation on asylum eligibility if they choose to apply for asylum.²²² See 8 CFR 208.35(a)(1), 1208.35(a)(1); June 3 Proclamation sec. 3(b)(v)(D). During the pre-pandemic period, approximately 330 encounters were processed at SWB POEs per day.²²³ Since January 2023 through August 2024, approximately 1,500 encounters have been processed at SWB POEs per day.²²⁴ And since the start of FY 2024 through August 2024, that average has increased to approximately 1,700 per day.²²⁵

C. Provisions of the Rule

1. Limitation on Asylum Eligibility

a. Proclamation Exceptions—Section 3(b) of Proclamation

Comment: Commenters raised a number of concerns regarding the exceptions to the Proclamation’s suspension and limitation on entry, including the exceptions for UCs; those permitted to enter based on the totality of the circumstances; and those permitted to enter based on operational considerations.

As an initial matter, a majority of commenters supported the Proclamation’s exclusion of UCs from the suspension and limitation on entry or from provisions of the rule. However, some commenters stated that excepting UCs from the Proclamation’s suspension and limitation on entry, without also providing an exception for family units,

would lead families traveling together to choose to “self-separate” at the border and send the children across unaccompanied because conditions in Mexico are too dangerous for children to wait with their parents until the family can cross together. Similarly, commenters stated that excepting UCs from the Proclamation’s suspension and limitation on entry would encourage the trafficking and exploitation of children. Commenters stated that the rule, without an additional family-unit exception, would therefore result in the separation of families.

Another commenter opposed the Proclamation’s exception for UCs. This commenter stated that noncitizens, including those who pose security risks, would attempt to pose as UCs to evade the Proclamation’s suspension and limitation on entry.

Additionally, some commenters opposed the exceptions in sections 3(b)(vi) and 3(b)(vii) of the June 3 Proclamation, which provide that the suspension and limitation on entry will not apply to a noncitizen if a CBP immigration officer determines that the noncitizen is permitted to enter either based on the totality of the circumstances or based on operational considerations. Commenters expressed concern that these exceptions are vague and subjective and should not be left to the discretion of CBP immigration officers.

Specifically, commenters asserted that the Proclamation does not provide any standards or make clear how CBP officers will determine when someone is excepted based on the totality of the circumstances or operational considerations. Commenters also stated that CBP immigration officers may not be properly equipped to apply the Proclamation’s exceptions, which would result in arbitrary decision-making and removals in violation of non-refoulement principles.

Other commenters stated that the Proclamation’s exceptions were overly broad and would authorize CBP immigration officers to use them as a “loophole” to permit large populations of noncitizens to enter the country based on the “totality of the circumstances” or due to “operational considerations.” These commenters stated that, as a result, overbroad use of these exceptions will result in fewer noncitizens being removed and will not change the status quo of large numbers of noncitizens crossing the border.

Lastly, commenters expressed concern that noncitizens excepted under section 3(b)(vi) or 3(b)(vii) of the June 3 Proclamation based on the totality of the circumstances or for

operational considerations and who are subsequently placed into immigration court proceedings will be unable to demonstrate that they are not subject to the rule’s provisions in immigration court.

Response: Any comments opposing provisions of the Proclamation, as opposed to the parallel provisions of the rule, are outside of the scope of this rule. President Biden issued the Proclamation by the authority vested in the President by the INA. See INA 212(f), 8 U.S.C. 1182(f); INA 215(a), 8 U.S.C. 1185(a); 89 FR 48487. Under section 3(d) of the Proclamation, the President directed the Secretary and Attorney General to promptly consider issuing any instructions, orders, or regulations as may be necessary to address the circumstances at the southern border, including any additional limitations and conditions on asylum eligibility that they determine are warranted, subject to any exceptions to such asylum eligibility limitations and conditions that they determine are warranted. The Departments lack authority to amend the exceptions to the Proclamation’s suspension and limitation on entry, as set forth in section 3(b) of the Proclamation, and any proposal to do so would be outside the scope of this rule. At the same time, the Departments may depart from the Proclamation’s section 3(b) exceptions in determining which exceptions to this rule’s limitation on asylum eligibility are warranted to the extent they are adopted in this rule, and the Departments have responded to comments suggesting such exceptions below.

To the extent that commenters suggest excepting family units from the rule’s limitation on asylum eligibility, the Departments reiterate that excepting all family units could incentivize families to bring their children on the often-perilous journey to the United States. See 89 FR at 48757. Such a broad exception would also be at odds with the Proclamation and rule’s goals in addressing emergency border circumstances. See *id.* at 48726–31 (“Need for These Measures”).

Further, the Departments do not believe that the rule will meaningfully incentivize the “self-separation” of families. Because UCs are already excluded from expedited removal by statute, see 8 U.S.C. 1232(a)(5)(D), the Departments do not expect based on their experience implementing border enforcement and asylum that excepting UCs, but not family units, from the limitation on asylum eligibility would lead to increased incentives to “self-separate.” Rather, in the time since the

²²² OHSS analysis data downloaded from UIP on September 3, 2024 (IFR Details tab).

²²³ OHSS analysis of July 2024 Persist Dataset (OFO Encounters tab).

²²⁴ OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (OFO Encounters tab).

²²⁵ *Id.*

IFR took effect, average daily encounters of UCs at the SWB have actually decreased by 37 percent.²²⁶

Moreover, on balance, the Departments believe that the important interests of protecting the statutorily recognized vulnerabilities of UCs, while maintaining the fundamental goals of the rule in addressing emergency border circumstances, outweigh any consequences of claimed incentives for noncitizens to “self-separate” at the border. Notably, the Departments emphasized the importance of maintaining family unity in the IFR and crafted a number of exceptions to the limitation to preserve family unity and avoid family self-separations. *See* 8 CFR 208.35(a)(2), 208.35(c), 1208.35(a)(2), 1208.35(c); *see also* 89 FR at 48733 (explaining that the rule contains exceptions that “avoid[] the separation of families”). For instance, if any member of a noncitizen’s family—as described in 8 CFR 208.30(c)—with whom the noncitizen is traveling demonstrates exceptionally compelling circumstances for entering the United States during emergency border circumstances, then all of the members of that family unit traveling together will be excepted from the rule’s limitation on asylum eligibility. 8 CFR 208.35(a)(2), 1208.35(a)(2); *see also* 89 FR at 48754. The rule also contains an explicit family unity provision in the AMI process before USCIS and in removal proceedings before EOIR; this provision allows a principal asylum applicant to be excepted from the rule’s limitation on asylum eligibility if the applicant can establish that the applicant meets the statutory requirements for statutory withholding of removal or CAT protection, among other requirements. *See* 8 CFR 208.35(c), 1208.35(c); *see also* 89 FR at 48733 (explaining family unity provision requirements).

The Departments recognize commenters’ concerns about the vulnerability of UCs. The Departments encourage all those who seek to travel to the United States, including UCs, to take advantage of available lawful, safe, and orderly pathways and processes

rather than rely on smugglers or criminal organizations to facilitate a potentially dangerous journey. 89 FR at 48723; 88 FR at 31346. However, the Departments note that UCs are particularly vulnerable and entitled to special protections under the law. *See* 88 FR at 31346 (citing INA 208(a)(2), 8 U.S.C. 1158(a)(2) (providing that safe-third-country bar does not apply to UCs); INA 208(b)(3)(C), 8 U.S.C. 1158(b)(3)(C) (stating that an AO has initial jurisdiction over the asylum claims of UCs)); *see generally* 8 U.S.C. 1232. Given that UCs have long had special rules and protections applicable to them in immigration proceedings, the Departments disagree with commenters that this rule’s adoption of the exception for UCs at section 3(b)(iii) of the Proclamation would create any meaningful new incentive for noncitizens who may be a security risk to attempt to pose as UCs in order to circumvent the rule’s provisions. Further, immigration officers have training, knowledge, skills, and experience in identifying fraudulent behavior. *See* 89 FR at 48744 (explaining that CBP immigration officials “have skills and expertise in interacting with individuals and observing human behavior and in determining appropriate follow up steps with regards to any behaviors or indicators of concern”).

Furthermore, with respect to commenters’ concerns regarding the discretionary nature of the exceptions at sections 3(b)(vi) and 3(b)(vii) of the Proclamation based on the totality of the circumstances and operational considerations, the Departments reiterate that comments on the Proclamation itself are outside the scope of this rulemaking. And insofar as these comments relate to this rule, the Departments disagree that these exceptions will essentially swallow the rule, as commenters suggest, or that CBP immigration officers will be unable to apply these exceptions fairly or consistently. Section 3(b)(vi) of the Proclamation permits entry based on the totality of the circumstances, and then delineates examples such as “consideration of significant law enforcement, officer and public safety, urgent humanitarian, and public health interests at the time of the entry or encounter that warranted permitting the noncitizen to enter.” Thus, this “totality of the circumstances” exception provides numerous examples that would allow the CBP immigration officer to determine whether such circumstances were present such that a noncitizen would not be subject to the

Proclamation’s suspension and limitation on entry. The discretionary nature of the “operational considerations” exception provides flexibility for CBP immigration officers to better manage migratory flows during emergency border circumstances, which is a driving purpose of this rule. 89 FR at 48723, 48726–31 (explaining, in detail, the need for the rule). Moreover, CBP officers have experience considering various factors and factual scenarios when exercising their discretion as immigration officers, including determining appropriate processing pathways, and such experience is also relied upon in making these decisions.

Finally, as to commenters’ concerns about whether noncitizens who were excepted from the Proclamation’s suspension and limitation on entry under subsections 3(b)(vi) and (vii) of the Proclamation will nonetheless be subject to the rule’s limitation on asylum eligibility in immigration court, those concerns are misplaced. By their terms, subsections 3(b)(vi) and (vii) apply to “any noncitizen who is permitted to enter by the Secretary of Homeland Security, acting through a CBP immigration officer,” based on certain considerations. Whether a noncitizen was excepted from the Proclamation and permitted to enter the United States is a question of historical fact, documented by CBP in the appropriate electronic processing system(s).²²⁷ and does not require a separate assessment by an AO or IJ. *See* 89 FR at 48732 n.169. Thus, any noncitizen who is described in subsections 3(b)(vi) and (vii) of the Proclamation will not be subject to the limitation on asylum eligibility contained in the rule. *Id.*

i. Legal Concerns Related to CBP One and the Lack of Exceptions

Comment: Commenters raised a number of concerns regarding the rule’s exception to the limitation on asylum eligibility for noncitizens who use the CBP One app to present at a POE pursuant to a pre-scheduled time and place. *See* 8 CFR 208.35(a)(1), 1208.35(a)(1); June 3 Proclamation sec. 3(b)(v)(D).

Commenters expressed concern that use of CBP One is unlawful. Some commenters voiced concern that “barring” those who enter the United States along the SWB without a pre-

²²⁶ *See* OHSS analysis of July 2024 OHSS Persist Dataset and data downloaded from UIP on September 3, 2024 (Summary Statistics tab). Consistent with the discussion in Section II.C.1 of this preamble, encounters of individuals in family units and single adults have fallen more sharply than encounters of UCs, which has caused UCs’ share of total encounters to increase, notwithstanding the overall drop in UC encounters in absolute numbers. The relative stability of UC flows compared to family unit flows is consistent with the fact that most policy changes in recent years (including the current rule) have not had a direct impact on UCs.

²²⁷ Memorandum for Exec. Dirs., Headquarters & Dirs., Field Operations, OFO, from Ray Provencio, Acting Exec. Dir., Admissibility and Passenger Programs, OFO, *Re: Implementation of Presidential Proclamation and Interim Final Rule, Securing the Border* attach. 5 (June 4, 2024) (Muster).

scheduled CBP One appointment would violate U.S. and international law and “effectively eliminate[] asylum” for every noncitizen who crosses into the United States at the southern border without an appointment. Commenters further stated that, while the Departments seek to distinguish the IFR from the vacated Proclamation Bar IFR by explaining that it is being implemented during an emergency and some lawful pathways remain available to migrants, most who cannot wait for a CBP One app appointment would be barred from asylum under the IFR. Similarly, commenters stated that the INA requires DHS to provide every noncitizen who arrives in the United States with the opportunity to establish a credible fear of persecution—not just those with the resources to own a smartphone and the ability to schedule an appointment. Other commenters stated that the CBP One app codifies a form of electronic metering and essentially replaces a program that relied on metering to limit the number of noncitizens who could approach POEs, a practice that, the commenters argued, was held unlawful by the Federal courts.

One commenter expressed concern with the use of the CBP One app, stating that the app has been used to release record numbers of undocumented noncitizens into the United States. The commenter warned that the Biden Administration could continue to utilize and expand upon the CBP One app without any limits under the IFR. The commenter also raised concerns that the number of appointments available through the CBP One app can be expanded without limit, such that a large population of noncitizens could be excepted from the Proclamation’s suspension and limitation on entry.

Several commenters expressed concern that the IFR, unlike the Circumvention of Lawful Pathways rule, does not provide an exception for those who are unable to access or use the CBP One application. Other commenters asserted that the IFR does not provide a justification for deviating from the Circumvention of Lawful Pathways rule’s scheduling issues exception and expressed concern that while the Circumvention of Lawful Pathways rule’s exception has not been properly applied, the lack of such an exception in the IFR would expose migrants who are unable to access or use the CBP One app to the risk of refoulement.

Response: The Departments believe the exception for noncitizens who present at a POE pursuant to a pre-scheduled time and place, such as through the CBP One app, is consistent

with the INA and the purpose of the Proclamation and this rule.

As an initial matter, the Departments note that migrants do not apply for asylum with CBP at a POE. At POEs, CBP is responsible for the inspection and processing of all applicants for admission, including individuals who may intend to seek asylum in the United States. 8 CFR 235.1(a) (concerning all applicants for admission at POEs); *id.* 235.3(b)(4) (concerning individuals processed for expedited removal and claiming fear of persecution or torture). While the CBP One app is one key way that CBP is streamlining and increasing its capacity to process undocumented noncitizens, the app is not a method of seeking asylum in the United States, and CBP officers do not determine the validity of any claims for protection.

The Departments disagree that the use of the CBP One app to manage the flow of migration and intake into POEs and to encourage the use of safe, orderly, and lawful pathways constitutes a form of “digital metering,” unlawfully withholds or bars access to the asylum process, or conflicts with the agency’s duties under 8 U.S.C. 1225(a)(3). Any noncitizen who is processed for expedited removal upon arrival at a POE and who indicates an intention to apply for asylum or a fear of return, whether or not the noncitizen uses the CBP One app, will be referred for a credible fear interview. Further, as noted in Sections II.B and III.A of this preamble, the United States implements its non-refoulement obligations under the 1967 Refugee Protocol through the provisions governing withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), rather than through section 208 of the INA, 8 U.S.C. 1158, which governs asylum. Noncitizens who are ineligible for asylum under the rule, such as those who enter the United States without pre-scheduling an appointment through the CBP One app, and are unable to establish that exceptionally compelling circumstances exist remain eligible to seek statutory withholding of removal and CAT protection consistent with these obligations.

The Departments also disagree with commenter concerns regarding unlimited expansion of CBP One or the use of CBP One to release individuals. The CBP One app is intended to allow for the orderly processing of noncitizens and, under the Proclamation and this rule, use of the app is especially critical during emergency border circumstances because it allows DHS to maximize the use of its limited resources. 89 FR at 48737; *see also* 88 FR at 31317–18 (explaining that the CBP One app

“enables the POEs to manage the flows in a safe and efficient manner, consistent with [each POE’s] footprint and operational capacity, which vary substantially across the SWB”). Thus, because the CBP One app allows each POE to manage the daily number of appointments that the POE has the capacity to handle, commenter concerns that the use of CBP One appointments will be vastly expanded beyond CBP’s capacity to process them are unfounded, especially during the emergency border circumstances that the Proclamation and this rule are designed to address. In addition, with regard to concerns regarding the number of noncitizens released following the use of the CBP One app to schedule an appointment, use of the CBP One app does not guarantee a particular processing disposition, and all such determinations are made on a case-by-case basis.²²⁸

Regarding commenters’ concerns that the IFR does not provide an exception for those who present at a POE but are unable to access or use the CBP One app, here, and as noted in the IFR, the Departments choose not to include an exception to the rule’s limitation on asylum eligibility for those who present at a POE but have an inability to access the CBP One app due to significant technical failure or other ongoing and serious obstacle. 89 FR at 48732 n.171. The IFR explained that the Departments made this decision in part because of the different purposes of this rule and the Circumvention of Lawful Pathways rule. This rule, unlike the Circumvention of Lawful Pathways rule, applies only during emergency border circumstances as described in the Proclamation and the rule, when encounters strain the border security and immigration systems’ capacity. In contrast, the primary aim of the Circumvention of Lawful Pathways rule was to encourage the use of lawful, safe, and orderly pathways. Therefore, the Departments determined that the heightened need to address these emergency border circumstances necessitated limiting the scheduling issues exception in this rule.

Moreover, experience applying the Circumvention of Lawful Pathways rule in credible fear screenings indicates that

²²⁸ See Memorandum for Exec. Dirs., Headquarters & Dirs., Field Operations, OFO, from Ray Provencio, Acting Exec. Dir., Admissibility and Passenger Programs, OFO, *Re: Implementation of Presidential Proclamation and Interim Final Rule, Securing the Border* attach. 5–6 (June 4, 2024) (Muster); CBP, *CBP One™ Mobile Application* (last modified Sept. 23, 2024), <https://www.cbp.gov/about/mobile-apps-directory/cbpone> (“Upon arriving at a POE, CBP officers inspect and evaluate all individuals to determine the appropriate processing disposition.”).

the exception for presenting at a POE and being unable to access or use the CBP One app rarely applied.²²⁹ The Circumvention of Lawful Pathways rule excepted, in addition to UCs, three categories of noncitizens: (1) individuals provided authorization to travel to the United States to seek parole, pursuant to a DHS-approved parole process; (2) individuals who presented at a POE with a CBP One appointment or who presented at a POE and demonstrated “it was not possible to access or use the DHS scheduling system due to language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle”; and (3) individuals who sought asylum or other protection in a country through which the alien traveled and received a final decision denying that application. 8 CFR 208.33(a)(2)(ii), 1208.33(a)(2)(ii). Leaving aside UCs, as UCs are not subject to expedited removal, 8 U.S.C. 1232(a)(5)(D), noncitizens could establish at least one of these exceptions in only approximately 4.7 percent of total credible fear screenings conducted by USCIS under the Circumvention of Lawful Pathways rule (*i.e.*, including referrals from USBP and OFO).²³⁰ While DHS data do not differentiate among the types of exceptions, available data show that the exception for presenting at a POE and being unable to utilize the CBP One app applied in less than 5 percent of all credible fear determinations made by USCIS when considering whether the presumption of asylum ineligibility applied.²³¹

The data showing the limited application of the exception for presenting at a POE and being unable to use CBP One reinforce the Departments’ judgment not to adopt a similar exception in the emergency border circumstances in which this rule applies. Consistent with AOs’ obligation under 8 CFR 208.30(d) to elicit testimony on all potentially relevant information, USCIS guidance instructs AOs to elicit testimony related to all exceptions to the presumption of asylum ineligibility where they may apply and evaluate their applicability, which for the exception under the Circumvention of Lawful Pathways rule (8 CFR 208.33(a)(2)(ii)(B)) would be any case where the presumption of asylum ineligibility applied and the noncitizen presented at a POE. At a time where emergency border circumstances are present that trigger a suspension and limitation on entry and necessitate the

limitation on asylum eligibility in the current rule, the Departments do not believe it would be appropriate to expend the resources it would take to elicit testimony about possible ways a noncitizen was unable to access the CBP One app and analyze that information in every credible fear interview where the noncitizen presented at a POE without an appointment in order to apply an exception to the limitation on asylum eligibility similar to the one present at 8 CFR 208.33(a)(2)(ii)(B), particularly where recent experience shows that such an exception is rarely applicable in credible fear determinations.

In addition to these exceptions, the Circumvention of Lawful Pathways Rule also contains a “[r]ebuttal” ground for “exceptionally compelling circumstances.” 8 CFR 208.33(a)(3), 1208.33(a)(3). The Departments determined that this rule should also contain an exception for exceptionally compelling circumstances to ensure that noncitizens with a time-sensitive imperative for entering the United States without authorization may avoid application of this rule’s limitation on asylum eligibility. Notably, under the Circumvention of Lawful Pathways rule, across the set of all expedited removal cases that resulted in credible fear interviews (*i.e.*, from encounters at and between POEs), USCIS found that an “exceptionally compelling circumstances” rebuttal ground applied in over 10 percent of those cases where the rule’s presumption of asylum ineligibility was analyzed as part of the credible fear determination.²³² Under the present rule, the “exceptionally compelling circumstances” exception to the rule’s limitation on asylum eligibility was found to apply in approximately 11 percent of all encounters with credible fear determinations issued by USCIS where the limitation on asylum eligibility was considered.²³³ Under this rule, noncitizens may also be permitted to enter under one of the exceptions in section 3(b) of the Proclamation. For those who are unable to meet such an exception, the Departments believe that, in the emergency border circumstances in which this rule applies, such noncitizens should wait for a CBP One appointment. See 89 FR at 48732 n.171.

For those individuals seeking a CBP One appointment, CBP continues to take steps to make the process of seeking appointments more equitable and accessible. For instance, individuals have the chance to request an

appointment within a 12-hour period each day, with appointments allocated to the requesting group the following day.²³⁴ In addition, noncitizens are not required to use the same mobile phone or device to request an appointment each day, as appointment requests are allocated based on the requesting registration. In other words, if a noncitizen has a registration, they can request an appointment each day from any mobile device. Individuals are not required to utilize a single device for each step of the process, and they may use a shared or borrowed device to request and schedule an appointment.

If a noncitizen receives an appointment, they are notified by an email notification, a push notification to the device that made the appointment, an in-app message, and a change to their registration status in the app.²³⁵ The push notification that is sent to the device provides a notification to check the app, alerting a user to log into the app to review and confirm their appointment. This ensures that the notification is provided in multiple ways, such that those without continuous access to the same mobile device can still learn of their appointment status by logging into the app. If selected for an appointment, the individual then has 23 hours to complete the geolocation and liveness check and schedule the appointment.²³⁶ Individuals may also request an automatic 24-hour extension to complete the process, if needed. Again, this can be done via any mobile device.

Individuals who do not have a smartphone or have other phone-related problems can seek assistance from trusted partners, if needed. Individuals are also permitted to seek assistance from others to complete the registration, request, and appointment confirmation process.

ii. Wait Times for CBP One Appointments

Comment: Commenters expressed concerns with long wait times for those using the CBP One app to schedule an

²³⁴ See CBP, *CBP One™ Mobile Application* (last modified Sept. 23, 2024), <https://www.cbp.gov/about/mobile-apps-directory/cbpone>.

²³⁵ See DHS, DHS/CBP/PIA-076(a), *Privacy Impact Assessment Update for the Collection of Advance Information from Certain Undocumented Individuals on the Land Border: Post Title 42*, at 4 (2023), https://www.dhs.gov/sites/default/files/2023-12/23_1019_priv_pia-cbp-076%28a%29-advance-collection-appendix-update.pdf.

²³⁶ See DHS, DHS/CBP/PIA-076(a), *Privacy Impact Assessment Update for the Collection of Advance Information from Certain Undocumented Individuals on the Land Border: Post Title 42*, at 4 (2023), https://www.dhs.gov/sites/default/files/2023-12/23_1019_priv_pia-cbp-076%28a%29-advance-collection-appendix-update.pdf.

²²⁹ OHSS analysis of June 2024 Enforcement Lifecycle data (Fear Screening—CLP tab).

²³⁰ *Id.*

²³¹ *Id.*

²³² See *id.*

²³³ See OHSS analysis of June 2024 Enforcement Lifecycle data (Fear Screening—STB tab).

appointment, with one organizational commenter stating that waiting times routinely reach half a year due to the “enforced scarcity of appointments.” Several commenters expressed concern that capping CBP One appointments at 1,450 per day is insufficient to address the number of arrivals at the border. For example, a commenter stated that, while 1,450 CBP One appointments are assigned each day, the “average number of appointment requests made per month between January 2023 and February 2024 was just under 5 million.” A commenter stated that appointments are limited to less than 20 percent of the POEs at the SWB, while others noted that CBP One appointments are offered at only eight POEs along the almost 2,000 miles of the SWB.

Commenters further stated that the IFR would likely increase wait times by incentivizing more people to use the CBP One app—including Mexican nationals subject to the IFR—thereby exacerbating the significant backlog for securing an appointment.

Several commenters expressed additional concern that long wait times heighten the risk of danger for migrants in Mexico who intend to seek asylum in the United States. Specifically, multiple commenters warned that long wait times place migrants at severe risk of rape, assault, torture, kidnapping, and death, while leaving Mexican nationals to wait in the same country from which they are fleeing, and that those waiting for a CBP One appointment are vulnerable to being targeted by “criminal actors and detained or mistreated by Mexican government officials.” Other commenters expressed concern about the hot weather, insufficient housing, and lack of access to essential resources. Additionally, commenters remarked that violence, coercion, and apprehensions by Mexican authorities prevent migrants waiting in Mexico from attending their pre-scheduled appointments. Commenters further expressed that particularly vulnerable populations who are waiting in Mexico, including Black migrants and women, are particularly susceptible to discrimination, violence, and heightened barriers to report crimes and access support services.

A few commenters further addressed health concerns for noncitizens required to wait in Mexico for their CBP One appointment. A commenter observed that the wait times for an appointment are “neither predictable nor reliable,” which compounds stress and difficulties for noncitizens. The commenter further stated that health problems among certain noncitizens make it more

untenable for them to wait in Mexico. The commenter wrote that living conditions in Mexico exacerbate preexisting conditions such as asthma, cancer, and mental health concerns related to trauma, and that migrants have limited access to adequate medical care and life-saving medicine in Mexico. Likewise, another commenter observed that noncitizens living with HIV—both Mexican and non-Mexican—experience barriers to accessing treatment and medication while waiting in Mexico. Another commenter expressed concern over documented outbreaks of chicken pox in informal migrant encampments in Mexico City due to the high number of asylum seekers waiting for an appointment.

A commenter remarked that noncitizens may be granted appointments at a POE far from where they are physically located, despite the app’s purported use of geolocation technology, forcing individuals to risk travel within Mexico. The commenter stated that Mexican authorities do not issue and renew temporary humanitarian visas to a majority of migrants, despite the fact that these visas are required to access bus and airline travel. The commenter additionally wrote that Mexican authorities have set up checkpoints targeted at preventing individuals from accessing public transportation required to make it to their scheduled CBP One appointments.

Response: Regarding concerns about long wait times to schedule a CBP One appointment, and the uncertainty this may cause, in large part due to high levels of migration in the region, the Departments note that CBP One is a tool that facilitates safe and orderly processing of noncitizens at POEs, and has aided CBP’s efforts to increase processing at POEs.²³⁷ CBP currently allocates a certain number of appointments per day to those registrations that have been pending for the longest period of time, based on the date on which a registration was created. CBP also regularly monitors wait times to be able to address any issues. While average wait times have generally increased since June 2023 due to demand for appointments, as of August 25, 2024, CBP has not seen evidence that average wait times have

increased at a greater rate following the implementation of the Proclamation and IFR. Indeed, CBP One represents a significant expansion of CBP’s capacity to process noncitizens at SWB POEs: During the pre-pandemic period, CBP’s OFO processed around 330 people per day.²³⁸ From January 2023 (when CBP opened CBP One for direct scheduling) through August 31, 2024, OFO has processed four-and-a-half times that number daily.²³⁹ Although demand for appointments currently outpaces supply, there are now more CBP One appointments available daily (1,450) than average daily encounters at and between POEs between FYs 2011 and 2018 (1,300).²⁴⁰

With regard to concerns about the number of available CBP One appointments, DHS acknowledges that there are more noncitizens seeking appointments than there are available appointments. For example, in July 2024, CBP received an average of 282,824 CBP One appointment requests per day. The total appointment requests over multiple day periods include a significant number of repeat requests because individuals are encouraged to submit an appointment request each day until gaining an appointment, and thus monthly totals do not reflect an accurate count of unique individuals seeking appointments. However, this high level of demand reflects the high levels of migration throughout the region, which CBP has responded to by increasing capacity to process noncitizens at POEs. CBP has increased the number of available appointments since January 2023 but notes that POEs can safely and securely process only a finite number of migrants,²⁴¹ and that the current number of appointments reflects that capacity. The Departments disagree that there is “enforced scarcity” of appointments or that the number of appointments is set in an arbitrary manner. The number of appointments is determined by a port’s capability and capacity to process noncitizens. CBP’s ability to process undocumented noncitizens in a timely manner at land border POEs is dependent on CBP

²³⁸ See OHSS analysis of July 2024 Persist Dataset (OFO Encounters tab).

²³⁹ See *id.*

²⁴⁰ See OHSS analysis of July 2024 Persist Dataset (Encounters FY 2000–2024 tab).

²³⁷ See, e.g., Memorandum for William A. Ferrara, Exec. Ass’t Comm’r, OFO, from Troy A. Miller, Acting Comm’r, CBP, *Re: Guidance for Management and Processing of Undocumented Noncitizens at Southwest Border Land Ports of Entry* (Nov. 1, 2021), <https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/CBP-mgmt-processing-non-citizens-swb-lpoes-signed-Memo-11.1.2021-508.pdf>; 89 FR at 48737.

²⁴¹ See, e.g., Memorandum for William A. Ferrara, Exec. Ass’t Comm’r, OFO, from Troy A. Miller, Acting Comm’r, CBP, *Re: Guidance for Management and Processing of Undocumented Noncitizens at Southwest Border Land Ports of Entry 1–2* (Nov. 1, 2021), <https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/CBP-mgmt-processing-non-citizens-swb-lpoes-signed-Memo-11.1.2021-508.pdf>.

resources, including infrastructure and personnel.²⁴²

With regard to the number of POEs at which appointments are available and the locations of such ports, OFO must evaluate each POE's unique capabilities, both with respect to processing and staffing. There are also important variances between POEs due to geography, infrastructure, and workload. These considerations are evaluated continuously as OFO determines the number of appointments to schedule and at which ports to schedule them. OFO has limited use of CBP One to certain POEs that have the space and infrastructure to process elevated numbers of inadmissible noncitizens and has assigned staff to those POEs to conduct this processing. Adding additional POEs would require reallocation of that staffing, exchanging capacity in one location for another. Additionally, OFO has sought to utilize POEs that are located in or near urban areas with sufficient resources for migrants who may be released from OFO custody.

The Departments acknowledge that there may be humanitarian and health concerns for noncitizens in Mexico, including but not limited to individuals seeking a CBP One appointment, particularly for those with preexisting or underlying health conditions. The Departments also acknowledge that the congregation of groups of individuals can lead to increased transmission of communicable diseases. Similarly, the Departments acknowledge that some noncitizens seeking an appointment—including Mexican nationals—may be required to travel through Mexico to reach their appointment, and to wait in Mexico for their appointment, which may present safety concerns. The Departments also recognize that such concerns may be exacerbated by uncertainty about how long a migrant may have to wait to be processed at a POE, which may make it harder to schedule medical care or travel within Mexico.

Such circumstances, however, have been a reality that existed for migrants seeking to present at POEs prior to the introduction of CBP One. Indeed, before CBP One's introduction, migrants faced greater unpredictability given the high levels of migration in the region, which predate the introduction of CBP One,²⁴³

and the fact that before CBP One's introduction, migrants did not have the ability to wait anywhere in the expanded geographic boundaries now available to migrants using CBP One. In another respect, too, migrants would face worse conditions without this rule: As explained elsewhere in this preamble, the Departments assess that, when levels of encounters by USBP are elevated, such that DHS does not have the capacity to process most noncitizens through expedited removal and therefore must release a significant number of noncitizens pending section 240 removal proceedings, this dynamic serves to incentivize more migrants to travel through Mexico. This dynamic both exacerbates dangerous conditions along that route and exposes more migrants to dangerous conditions along the way. While CBP has continued to take steps to increase processing at POEs in an effort to provide a safe and orderly mechanism to enter the United States, it continues to be operationally impossible for CBP to immediately process all noncitizens seeking to enter the United States.

With regard to the location of scheduled appointments, the CBP One app does not arbitrarily designate the location for appointments. The location is selected by the user, and the location can be changed by the user every time the user requests an appointment. The Departments continue to believe that the use of CBP One to schedule appointments facilitates the safe and orderly entry of noncitizens at POEs, including migrants who are already waiting in Mexico to enter the United States. In particular, the use of the app enables migrants to schedule their arrival at a pre-determined date and time, providing migrants with certainty about the date of their entry. Migrants may then wait in whatever location they deem best before approaching the border for their appointment. To this end, as of August 23, 2024, the CBP One app allows non-Mexican nationals to request and schedule an appointment from the southern Mexican states of Tabasco and Chiapas in addition to their existing ability to request and schedule appointments from Northern and Central Mexico.²⁴⁴ Mexican nationals may request and schedule an appointment from anywhere in Mexico.²⁴⁵ CBP continues to encourage

migrants to make appointments at POEs close to where they may be geographically located in Mexico or seek to enter the United States.

With regard to claims regarding the actions of government authorities in Mexico, the Departments note that they do not control the actions or decisions of the Mexican government or Mexico's implementation of its own laws.

iii. Availability of and Access to CBP One Appointments and Concerns About Discrimination

Comment: Several commenters raised concerns about unequal access to POEs and asylum resulting from barriers to using the CBP One app, such as language, disability, resource, and other access issues that disparately impact and discriminate against migrants. A commenter acknowledged that CBP One may allow for certain positive gains in receiving and processing migrants, and also expressed concern that the application is wielded to penalize those with possible protection needs who cannot access it or obtain an appointment. One commenter called the CBP One app "inherently discriminatory," and another commenter articulated that the CBP One app has "pervasive" accessibility issues. A commenter cited a 2024 Amnesty International report,²⁴⁶ where that organization called on the United States to "stop the mandatory use of the CBP One application" due to concerns over language access, technological barriers, and privacy and surveillance.

In the same vein, numerous commenters raised concerns related to the accessibility of the app for those lacking the required technology. Specifically, commenters expressed concern that scheduling an appointment via CBP One is not a viable option for those who lack access to reliable internet, electricity, or a smartphone. Some commenters provided examples that migrants have reported that their phones have been stolen by Mexican authorities or cartels, or lost or damaged during their travels. A commenter stated that in encampments with limited access to electricity, migrants are charged high prices for access to an outlet to charge their phones. Another commenter expressed that the IFR places people who do not have access to technology in the prejudicial position of having to meet a higher standard of proof to receive a positive credible fear

²⁴² See, e.g., *id.*

²⁴³ See, e.g., Perla Trevizo, *Dozens of Families, Many from Guatemala, Arrive in Nogales Seeking US Asylum*, *Ariz. Daily Star* (Aug. 2, 2018), https://tucson.com/news/local/dozens-of-families-many-from-guatemala-arrive-in-nogales-seeking/article_4dd45e2f-0b19-5b7b-880e-74a82e3515ea.html; Ariel G. Ruiz Soto, *Record-Breaking Migrant*

Encounters at the U.S.-Mexico Border Overlook the Bigger Story, *Migration Pol'y Inst.* (Oct. 2022), <https://www.migrationpolicy.org/news/2022-record-migrant-encounters-us-mexico-border>.

²⁴⁴ See CBP, *CBP One™ Mobile Application* (last modified Sept. 23, 2024), <https://www.cbp.gov/about/mobile-apps-directory/cbpone>.

²⁴⁵ See *id.*

²⁴⁶ Amnesty Int'l, *CBP One Mobile Application Violates the Rights of People Seeking Asylum in the United States* (May 9, 2024), <https://www.amnesty.org/en/latest/news/2024/05/cbp-one-mobile-application-violates-the-rights-of-people-seeking-asylum-in-the-united-states/>.

determination, in violation of U.S. asylum law. A commenter remarked that in perpetuating the “division” between “classes of people seeking asylum”—“those who have a smartphone and access to the internet and are technologically literate” and “those who do not have these required items, skills or abilities”—the IFR fails to apply protections equally under U.S. and international law.

Many commenters also discussed limited language accessibility for the CBP One app, stating that the app is only available in Spanish, English, and Haitian Creole, and expressed that conditioning access to asylum on the use of a smartphone app that is only available in three languages denies equal access to asylum to those in need of protection who are unable to use the app. Commenters expressed concerns about the fact that different stages for securing a CBP One appointment are available in different sets of languages (e.g., *Login.gov*, the initial app registration page, and app form responses), as this results in noncitizens, even those who are literate in Spanish and Haitian Creole, requiring assistance with completing the CBP One app form. The commenter further remarked that the system is particularly difficult for vulnerable populations to navigate as a result of challenges with finding adequate translation services, reasoning, for example, that it can take up to a week to find interpretation for Indigenous languages.

Several commenters additionally raised concerns about access to the app among those who are illiterate, have disabilities, or have limited language and digital literacy. In particular, commenters expressed that the IFR assumes technological literacy in the use of smartphone apps, such as the ability to access an email account, check the account on an ongoing basis, upload a video, and enable Global Positioning System/geolocators with many people requiring assistance to undertake these steps. A commenter provided an account of their experiences with individuals in Ciudad Juarez who struggle to navigate the app despite knowing how to read in Spanish and Haitian Creole, and the inability of legal service providers to provide logistical support to all the individuals with potential asylum claims who lack the

digital literacy to navigate the mobile app.

Commenters further remarked on technological issues surrounding the app. Commenters expressed concerns that CBP One remains inaccessible to many due to facial recognition technology errors, which commenters stated are frequent for migrants with darker skin tones. Commenters stated that the app cannot read the faces of Black, Brown, Asian, and Indigenous people seeking asylum, and Haitians and Africans are particularly likely to experience “algorithm bias” while using the CBP One app which would prevent large classes of individuals from using the app to secure an appointment, and, therefore, from seeking asylum, perpetuating racism in the U.S. immigration system.

Commenters also noted additional technology concerns, such as issues with error messages, account access, and deactivated accounts. One commenter listed various reported issues with the CBP One app, such as difficulty uploading files, error messages only provided in English, saturated bandwidth resulting in delays, appointments being rejected if GPS is not activated, and phones unable to take video or photos of sufficient quality to be recognized by the app. Another commenter provided various anecdotal examples of individuals who were unable to access the CBP One app under the Circumvention of Lawful Pathways rule, and who the commenter said would similarly be harmed under the IFR, while another commenter added that complications with the app forced nongovernmental organizations to spend resources helping people use the app rather than assisting noncitizens with credible fear interviews, reviews of negative determinations, and representation in immigration court. A commenter also stated that “[t]here is a thriving black market for appointments available only to the wealthiest refugees.”

Separately, while some commenters expressed support for the “expansion of mechanisms for [CBP One] appointments,” commenters also stated that these expansions are insufficient to counteract noncitizens’ unawareness of the CBP One application and the inability to obtain appointments.

Lastly, a commenter asserted that the use of CBP One results in family separation due to different appointment dates. Furthermore, a commenter expressed additional concern that families with a CBP One appointment are not always guaranteed the ability to cross the border, citing examples of families who were turned away despite arriving on time for a valid appointment.

Response: The Departments disagree that the CBP One app is a barrier to asylum. Rather, it is a tool that DHS has established to process the flow of noncitizens seeking to enter the United States in a more orderly and efficient fashion. CBP One is also a free app, and noncitizens are not required to pay to register or schedule an appointment.

The Departments acknowledge that not all migrants may have access to a smartphone or be able to easily use the CBP One app, and that lack of or limited smartphone access or ability to use a smartphone (due to lack of digital literacy, disability, or other reasons) may limit a migrant’s ability to use the CBP One app to schedule an appointment. However, individuals who do not have a smartphone or who have other phone-related issues can seek assistance, including sharing phones, or translation or technical assistance, from trusted partners, if needed. In addition, as noted above, individuals may utilize shared or borrowed devices to register for the CBP One app and to schedule an appointment. CBP conducts extensive engagement with non-governmental organizations (“NGOs”) and stakeholders, and has received feedback and information about the challenges associated with the use of the CBP One app. Throughout these engagements, access to smartphones has been raised, although not as a significant concern for most individuals. CBP is aware that NGOs have discussed providing assistance with completing individuals’ CBP One registrations and offering continued assistance with requesting appointments. CBP also notes that individuals seeking to create a CBP One registration can do so from anywhere. To create a registration, users are not required to enable location services, although they are required to enable location services in order to request and schedule an appointment.

With regard to internet access, the Departments acknowledge there can be connectivity gaps, electrical outages, and unreliable wireless internet access in northern Mexico. However, CBP made significant updates to the appointment scheduling process in 2023, including transitioning CBP One scheduling to a daily appointment allocation process to allow noncitizens additional time to complete the process. Under this system, users must “ask for an appointment” each day, by selecting the relevant registration and submitting a request for that registration.²⁴⁷ If a noncitizen receives an appointment that day, they are notified in multiple ways, and have up to 23 hours to confirm that appointment.²⁴⁸ If a noncitizen does not receive an appointment, they must “request an appointment” the following day, again by selecting the relevant registration and requesting that registration. Individuals are not required to use the same mobile phone or device to request an appointment each day, and, as noted above, may use a shared or borrowed device to request and schedule the appointment. In addition, in July 2024, CBP updated the appointment allocator to increase the percentage of appointments allocated to users who had been waiting for longer periods of time, based on the date on which their registration was created.

CBP also continually takes steps to provide access to the app for individuals in different languages. The app was originally available in Spanish and English. Haitian Creole was added in February 2023 in response to feedback from external stakeholders. Additionally, after the user makes a language preference, error messages are available in the selected language (English, Spanish, or Haitian Creole). While the app remains available in Spanish, English, and Haitian Creole, quick reference guides are now available in many languages (including Russian, French, Portuguese, Arabic, Dari, Pashto, Punjabi, and Chinese). According to the UNHCR, of the top 5 nationalities of displaced individuals in Mexico, all are from Spanish-speaking countries and Haiti.²⁴⁹ Between May 11,

2023 (when the Title 42 public health Order terminated) and September 11, 2024, USBP data show that over 88 percent of noncitizens apprehended between POEs on the SWB were recorded as speaking Spanish or English. The next most common languages were Mandarin, representing just over 2 percent of apprehensions, followed by Portuguese and French, which each represent less than 2 percent of noncitizens apprehended.²⁵⁰ Finally, a CBP analysis conducted in September 2024 showed that, of all of the CBP One appointment requests during the first week of September 2024, approximately 90 percent were made by individuals from Spanish-speaking countries, with the next highest percentage, 5 percent, made by Haitians, and the remainder by other nationalities. The fact that Haitian nationals represent a relatively large proportion of the displaced persons in Mexico generally, are more likely to be encountered at POEs, and use the CBP One app further supports the prioritization of Haitian Creole and Spanish translations in the app. In addition, based on NGO feedback, CBP will be adding a French translation to the app. CBP has also been made aware of concerns with regard to the accuracy of the app’s Haitian Creole translation and is currently taking steps to improve its accuracy.

CBP acknowledges that individuals who do not speak Spanish, English, or Haitian Creole, including those who speak Portuguese or Mandarin, may have more difficulty accessing the app, but has determined that it is appropriate to prioritize translation services in the app to those languages spoken by the vast majority of users of the app and noncitizens in the region. And CBP believes that its efforts to make the app accessible in other ways, such as through the quick reference guides, are working. CBP has seen a significant number of individuals who do not speak Spanish, English, or Haitian Creole requesting appointments, suggesting that the quick reference guides, as well as other information about CBP One

available on CBP’s website,²⁵¹ are working to provide accessibility to the app even for those who do not speak one of those languages. With regard to concerns about different stages of the CBP One appointment process being in different languages, CBP does not exercise control over Login.gov, which is used to register for an appointment, as it is operated by the General Services Administration.²⁵² Login.gov is available in several languages, including English, Spanish, and French. And while Login.gov is not available in Haitian Creole, CBP analysis showed that, as noted above, Haitian nationals continue to be the second-highest population of noncitizens requesting CBP One appointments, indicating that Login.gov’s languages are not posing a substantial limitation for those users. Moreover, the CBP One quick reference guides include a description of the Login.gov steps in the process. The Departments also appreciate the concerns related to the information required to access or use the CBP One app. The Departments note that users of the app are not required to upload any documents in order to use the app. Users are required to submit a photograph, and may, although are not required to, upload document information, such as scanning their passport information. With regard to concerns raised by commenters relating to facial recognition and access to the app by individuals with darker skin tones, CBP and the third party responsible for liveness detection took steps in 2023 to improve the liveness capability of the application and increase bandwidth. Since that time, CBP has data showing that the app successfully matches liveness in 80–90 percent of attempts, with the difference in performance across ethnicities on the order of tenths of a percent. If an individual initially is not able to successfully match to their live photo, they are not prohibited from trying again, and they may seek an extension to continue to try to complete liveness. Individuals who continue to fail liveness are able to reach out to CBP either directly or, if appropriate, through an NGO or other external entity. CBP notes that it does not collect data on race or skin complexion.

CBP engages frequently with stakeholders to determine further updates and changes in the app that improve the users’ experience and

²⁴⁷ See CBP, CBP One™ Mobile Application, Frequently Asked Questions—English (last modified Sept. 19, 2024), <https://www.cbp.gov/about/mobile-apps-directory/cbpone>.

²⁴⁸ See CBP, CBP One™ Application Update Announcement—English (Mar. 1, 2024), <https://www.cbp.gov/document/guidance/cbp-one-application-update-announcement-english>.

²⁴⁹ See United Nations High Commissioner for Refugees (“UNHCR”), *Country Operations: Mexico, Population by Origin*, <https://reporting.unhcr.org/operational/operations/mexico#> (last visited Sept. 19, 2024). For purposes of this analysis, the Departments are excluding the nationalities

grouped as “various,” given a lack of information on what such category includes.

²⁵⁰ Due to the way that CBP’s OFO records and documents language services, data for languages used by those encountered at POEs are not readily available. Although there is a high volume of displaced Haitian nationals in Mexico, CBP’s experience is that, particularly in recent years, Haitian nationals have been much more likely to be encountered at POEs than between POEs. For instance, in FY 2023, more than 75,000 Haitian nationals were encountered at SWB POEs, compared with just over 1,000 between POEs. See OHSS analysis of July 2024 Persist Dataset (Haitian Encounters tab).

²⁵¹ See CBP, CBP One™ Mobile Application (last modified Sept. 23, 2024), <https://www.cbp.gov/about/mobile-apps-directory/cbpone>.

²⁵² See U.S. General Servs. Admin., *Login.gov*, <https://login.gov/> (last visited Aug. 10, 2024).

enhance access to its features. For example, because of NGO feedback, height and weight were made optional fields and additional response options were added such as “I don’t have one” for a foreign address and “Unknown” for parental information. CBP also acknowledges that reading comprehension and disability may present challenges for some users among this user population. CBP has improved the app’s text for users with low literacy and will continue to make improvements to the app for this population. The app has also undergone a compliance review pursuant to section 508 of the Rehabilitation Act regarding its accessibility to people with disabilities, with a final certification expected by the end of November 2024.

Regarding concerns raised by NGOs regarding the resources expended to address questions from migrants about the app and its impacts, the Departments are not able to comment on how such entities determine the use of their own resources. With regard to concerns regarding a “black market” for appointments, CBP has advised noncitizens and the general public that appointments that purport to be “for sale” are fraudulent, and migrants should not pay for such appointments.²⁵³

With regard to the commenters’ concerns related to whether noncitizens have sufficient awareness of the availability of the CBP One app and this rule, the Departments believe that they have provided sufficient notice to the public. The Departments note the use of, and benefits of, the CBP One app have been broadly publicized. Indeed, the CBP One app is widely used, as evidenced by the number of requests CBP receives each day for appointments. For example, in July 2024, CBP received an average of 282,824 CBP One appointment requests per day. Demand for CBP One appointments has outpaced supply, which has resulted in average wait times increasing since June 2023. CBP continues to regularly announce updates and improvements made to the app to the public. In particular, CBP regularly announces changes and updates to the app on its public website at <https://www.cbp.gov/about/mobile-apps-directory/cbpone>. This website also contains a number of detailed questions and answers regarding the use of the app. Additionally, DHS has

published a Privacy Impact Analysis (PIA) for CBP One, and subsequent updates to the original CBP One PIA to address privacy risks in the deployment and use of the CBP One app.²⁵⁴ Moreover, the Departments’ publication of the Circumvention of Lawful Pathways rule, the IFR, and this rule have provided (and in the case of this rule, will provide) further notice to the public and to noncitizens of the pathways available to them and the potential consequences of not availing themselves of such pathways. The Departments believe that such efforts provide sufficient information for noncitizens seeking to travel to the United States.

With respect to comments suggesting that families are processed separately or have been turned away, the Departments note that all individuals—including members of families—are processed pursuant to existing CBP policies and practices. Family members who register together on CBP One using a single registration number to schedule an appointment for their whole family are given the same appointment date and time. So long as they arrive as a family for their appointment at that date and time, they will be processed at that appointment time.

b. Regulatory Exception—Exceptionally Compelling Circumstances

Comment: Commenters raised concerns regarding the preponderance of the evidence standard for establishing exceptionally compelling circumstances under the IFR. Commenters argued that applying a limitation on asylum eligibility during credible fear interviews, and then requiring noncitizens to demonstrate exceptionally compelling circumstances by a preponderance of the evidence in order to overcome the limitation on asylum eligibility, is inconsistent with

the INA and congressional intent. Rather, commenters stated that Congress enacted a “significant possibility” standard for the credible fear interview in order to safeguard a noncitizen’s opportunity to present potentially viable asylum claims in full proceedings and to prevent noncitizens from being returned to persecution or torture.

Relatedly, commenters stated that noncitizens should not have to demonstrate exceptionally compelling circumstances unrelated to their asylum claim by a preponderance of the evidence in order to have their asylum claims adjudicated. Some commenters believed that the preponderance of the evidence standard was too onerous for noncitizens to meet during the credible fear interview, even if the noncitizen had experienced a situation or event prior to entry that should otherwise qualify as an exceptionally compelling circumstance.

Lastly, at least one commenter implied that AOs conducting credible fear interviews did not have adequate training and were not equipped to conduct the analyses required by the IFR, including applying the preponderance of the evidence standard to determine whether a noncitizen is subject to the limitation on asylum eligibility.

Response: Many of commenters’ concerns are based on an incorrect premise. The Departments recognize that the “significant possibility” standard is established by statute, *see* INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v), and the Departments lack the authority to—and have not sought to—alter this statutory standard through rulemaking. By statute, to determine whether a noncitizen has a “credible fear,” an AO must assess whether there is a “significant possibility . . . that the alien could establish eligibility for asylum.” INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). Thus, during credible fear proceedings, the overall standard of proof for establishing exceptionally compelling circumstances to overcome the limitation on asylum eligibility remains the “significant possibility” standard, which must be applied in conjunction with the standard of proof required for the ultimate determination (*i.e.*, preponderance of the evidence that the exception applies). *See* 89 FR at 48739. Accordingly, at the credible fear interview, the AOs assess whether there is a “significant possibility” that the noncitizen would be able to show at a future merits adjudication by a preponderance of the evidence that the limitation does not apply or that the noncitizen satisfies the rule’s exception.

²⁵⁴ *See* DHS, DHS/CBP/PIA–068, *Privacy Impact Assessment for CBP One™ Mobile Application* (2021 and subsequent updates), <https://www.dhs.gov/sites/default/files/2023-05/privacy-pia-cbp068-cbpmobileapplication-may2023.pdf>; DHS, DHS/CBP/PIA–068(a), *Privacy Impact Assessment [Update] for CBP One™ Mobile Application* (2024), https://www.dhs.gov/sites/default/files/2024-07/24_0725_priv_pia-cbp-068%28a%29-cbpone-update.pdf; *see also* DHS, DHS/CBP/PIA–076, *Privacy Impact Assessment for the Collection of Advance Information from Certain Undocumented Individuals on the Land Border* (2023), https://www.dhs.gov/sites/default/files/2023-01/privacy-pia-cbp076-advance-collection-for-undocumented-individuals-jan2023_0.pdf; DHS, DHS/CBP/PIA–076(a), *Privacy Impact Assessment Update for the Collection of Advance Information from Certain Undocumented Individuals on the Land Border: Post Title 42* (2023), https://www.dhs.gov/sites/default/files/2023-12/23_1019_priv_pia-cbp-076%28a%29-advance-collection-appendix-update.pdf.

²⁵³ *See* CBP, *CBP One™ Mobile Application, Frequently Asked Questions—English, CBP One™ Mobile Application*, “What if someone asks me to pay for an appointment?” (last modified Sept. 23, 2024), <https://www.cbp.gov/about/mobile-apps-directory/cbpone>.

Likewise, during credible fear reviews, IJs will apply the “significant possibility” standard to determine whether a noncitizen would ultimately be able to demonstrate by a preponderance of the evidence that the limitation on asylum eligibility does not apply or that the noncitizen satisfies the rule’s exception.

To the extent commenters voiced general opposition to requiring a noncitizen to demonstrate exceptionally compelling circumstances by a preponderance of the evidence so as not to be subject to the rule’s limitation on asylum eligibility, the Departments note that this standard is the general standard noncitizens must meet to determine that a ground of ineligibility does not apply in a merits adjudication. *See* 8 CFR 1240.8(d) (“If the evidence indicates that one or more of the grounds for mandatory denial of the application for relief may apply, the alien shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.”). Additionally, this burden for establishing exceptionally compelling circumstances was codified by the Circumvention of Lawful Pathways rule, which has been in effect since May 11, 2023. 88 FR at 31450–51 (codified at 8 CFR 208.33(a)(3), 1208.33(a)(3)). The Departments believe that maintaining consistency in the preponderance of the evidence standard between these two related rules promotes consistent adjudications when adjudicators must determine whether a noncitizen has demonstrated exceptionally compelling circumstances. In fact, to promote such consistency, the rule provides that if a noncitizen demonstrates an exceptionally compelling circumstance for purposes of this rule, then the noncitizen has necessarily demonstrated an exceptionally compelling circumstance for purposes of the Circumvention of Lawful Pathways rule, and vice versa, further underscoring the importance of maintaining a consistent analytical framework between the two rules. *See* 89 FR at 48754–55 (explaining that the IFR’s exception to the limitation on asylum eligibility mirrors the Circumvention of Lawful Pathways rule’s rebuttal grounds to simplify administration of each while both rules are in effect).

Further, contrary to commenter concerns, the preponderance of the evidence standard is not onerous or unduly burdensome such that a noncitizen would be unable to demonstrate exceptionally compelling circumstances. To the extent that commenters expressed concern with the preponderance of the evidence standard

during credible fear proceedings, the Departments again clarify that the applicable standard during credible fear proceedings is the “significant possibility” standard, INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v), and AOs will assess whether there is a significant possibility that the noncitizen would be able to show at a future merits adjudication by a preponderance of the evidence that the limitation does not apply or that the noncitizen meets the “exceptionally compelling circumstances” exception. Similar to the Circumvention of Lawful Pathways rule’s rebuttal grounds, *see* 88 FR at 31380, the Departments believe that there should generally be sufficient evidence available at the time of the credible fear interview for an AO to evaluate whether there is a significant possibility that the noncitizen would be able to establish exceptionally compelling circumstances by a preponderance of the evidence. Notably, the credible fear screening process involves eliciting testimony from noncitizens seeking protection, and the rule does not require noncitizens to provide any specific form of evidence, such as written statements or other documentation. *See* 89 FR at 48746 & n.239.

Indeed, DHS data show that the standard is not unduly challenging to meet at the credible fear stage. Since the IFR went into effect through August 31, 2024, USCIS determined that the limitation on asylum eligibility did not apply in over 2,200 cases (approximately 11 percent of credible fear interviews completed under the IFR during that period) because the noncitizen was able to demonstrate exceptionally compelling circumstances under the credible fear screening standard.²⁵⁵ The Departments believe that these data show that the exception is both meaningful and appropriately tailored to ensure that, during emergency border circumstances, only those with a time-sensitive imperative are able to avoid the rule’s limitation on asylum eligibility.

Regarding the preponderance of the evidence standard during a full merits adjudication, the Departments similarly do not believe that it imposes an onerous or unduly burdensome evidentiary standard. The INA explicitly provides that during full merits adjudication of an asylum claim “testimony of the applicant may be sufficient to sustain the applicant’s burden without corroboration” in

certain circumstances. INA 208(b)(1)(B)(ii), 8 U.S.C. 1158(b)(1)(B)(ii). Thus, as the Departments have explained, the preponderance of the evidence standard may be met through credible testimony alone. *See* 88 FR at 31395. For example, if a noncitizen or a member of the noncitizen’s family as described in 8 CFR 208.30(c) with whom they were traveling faced an acute medical emergency, an imminent and extreme threat to life or safety, or satisfied the definition of a victim of a severe form of trafficking in persons, or faced other exceptionally compelling circumstances, then the noncitizen could present testimony of those facts and circumstances.

Lastly, to the extent commenters expressed skepticism about an AO or IJ’s ability to properly apply the screening standard during a credible fear interview, the Departments note that both AOs and IJs receive extensive training in substantive law and procedure, *see* 88 FR at 31395 & nn.211–213, and the Departments are confident that AOs and IJs have the requisite knowledge, skills, and experience to properly apply the framework of this rule, as they have been doing for months.

Comment: Some commenters recommended that the Departments rescind the “exceptionally compelling circumstances” exception to the limitation on asylum eligibility, stating that the exception codifies “loopholes” that are easy for noncitizens to exploit and undermines the Departments’ goal of discouraging irregular migration across the SWB.

Response: The Departments decline to rescind the “exceptionally compelling circumstances” exceptions at 8 CFR 208.35(a)(2)(i) and 1208.35(a)(2)(i). As the Departments explained in the IFR, maintaining an exception to the limitation on asylum eligibility for exceptionally compelling circumstances is intended to mitigate potential adverse impacts of the rule on certain particularly vulnerable individuals and family members as described in 8 CFR 208.30(c) with whom they are traveling, without undermining the Departments’ stated policy objectives of disincentivizing irregular migration during emergency border circumstances. 89 FR at 48754. The Departments believe the nature of the exceptionally compelling circumstances—such as facing an acute medical emergency, facing an imminent and extreme threat to life or safety, or meeting the definition of a victim of a severe form of trafficking in persons—appropriately balances the Departments’ stated policy

²⁵⁵ *See* OHSS analysis of data downloaded from UIP on September 3, 2024 (Fear Screening—STB tab).

objectives and does not create a “loophole” as commenters suggest.

The Departments are also confident that AOs and IJs will appropriately assess a noncitizen’s testimony and any evidence presented to determine whether a noncitizen has established that the rule’s exception to the limitation on asylum eligibility applies. Indeed, DHS and EOIR personnel have the training and experience necessary to determine whether the exception applies, including several months of experience from implementing the IFR and other rules. For example, AOs were provided specific training for the implementation of the Circumvention of Lawful Pathways rule to elicit and analyze testimony related to whether a noncitizen can establish an exception or rebut the presumption of asylum ineligibility. *See* 88 FR at 31330. Additionally, before any AO can interview a noncitizen where the IFR’s limitation on asylum eligibility applies, or any supervisory AO can review such a case, they must receive specific training on the IFR, including on applying the IFR’s limitation on asylum eligibility and the “exceptionally compelling circumstances” exception.

Comment: Commenters stated that the enumerated per se exceptionally compelling circumstances in 8 CFR 208.35(a)(2) and 1208.35(a)(2) are, on the whole, too limited in number and narrow in scope, and are framed in a restrictive manner with a high burden of proof that commenters asserted many noncitizens will be unable to meet. According to commenters, because the exception is so difficult to establish, the vast majority of noncitizens who enter between POEs will be ineligible for asylum. Commenters also alleged that noncitizens may not have access to or be aware of what information or evidence is necessary to sufficiently demonstrate exceptionally compelling circumstances, particularly as they may not be aware of the rule and its evidentiary requirements until they are placed in proceedings. Similarly, commenters expressed concern about the evidentiary burden noncitizens would face in trying to establish that exceptionally compelling circumstances existed at the time of entry when their case may not be adjudicated until years after the date of entry due to existing backlogs, and when evidence and witnesses may be lost over time. Commenters offered, as an example, the difficulty that noncitizens would face in demonstrating that they or a family member with whom they traveled experienced an acute medical emergency, in the absence of concurrently issued medical documents.

Commenters stated that it will be difficult for AOs to evaluate whether a noncitizen satisfies an exception at the credible fear stage because it is a fact-intensive inquiry and will require significant development of the record. Commenters also stated that there is insufficient guidance about how, in practice, AOs are supposed to make a finding regarding exceptionally compelling circumstances. Further, commenters expressed concern that AOs are not required to elicit potentially relevant facts about the rule’s exceptions to ensure that noncitizens are not improperly subject to the IFR’s limitation on asylum eligibility and recommended that the Departments adopt a screening framework in which AOs have a shared burden to elicit all information relevant to asylum eligibility, preferably in a non-adversarial manner.

Response: The Departments believe that the rule’s exception to the limitation on asylum eligibility for exceptionally compelling circumstances, including the enumerated per se circumstances, are appropriate in scope and detail, and as such, the Departments decline to modify those provisions. Indeed, during emergency border circumstances, limiting the “exceptionally compelling circumstances” exception to those who are unable to wait for an appointment due to an acute medical emergency or an imminent and extreme threat to life or safety is important to deter irregular migration and provide for efficient border processing during a period of high encounters.²⁵⁶ *See* 89 FR at 48732 n.171. As discussed above in this section of the preamble, the data reflect that the “exceptionally compelling circumstances” exception is achieving this balance; USCIS determined that the exception had been met in approximately 11 percent of credible fear interviews completed between the IFR’s effective date and August 31, 2024.²⁵⁷

The Departments stress, however, that exceptionally compelling circumstances are not limited to the enumerated examples. Rather, similar to the rebuttal grounds adopted in the Circumvention

of Lawful Pathways rule, the examples are a non-exhaustive list intended to preserve AO and IJ flexibility and permit consideration of all facts giving rise to potential exceptionally compelling circumstances. 89 FR at 48733; 88 FR at 31394. Additionally, the Departments continue to prioritize family unity by extending these exceptions to qualifying family members with whom the noncitizen is traveling. *See* 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i).

Regarding concerns that establishing exceptionally compelling circumstances is a fact-intensive inquiry that will require significant development of the record, and that noncitizens will not have access to information and evidence of exceptionally compelling circumstances at the time of screening, the Departments note that relevant evidence of such circumstances generally relates to the situation immediately prior to the noncitizen’s entry into the United States, and focuses on relevant personal facts and circumstances within the noncitizen’s knowledge. Accordingly, the Departments expect that any evidence necessary for a noncitizen to demonstrate that they have a significant possibility of ultimately showing exceptionally compelling circumstances should generally be readily available—whether from the noncitizen in the form of credible testimony or other evidence or from government records relating to the noncitizen’s circumstances at the time of entry—at the time of the credible fear screening. With respect to cases where the existence of exceptionally compelling circumstances at the time of entry may be evaluated later in time, the Departments similarly note that the rule does not impose any requirement for the type of evidence necessary to establish exceptionally compelling circumstances, and a noncitizen’s testimony alone “may be sufficient to sustain [their] burden without corroboration” in a full merits hearing in certain circumstances. INA 208(b)(1)(B)(ii), 8 U.S.C. 1158(b)(1)(B)(ii). Regarding commenter concerns that noncitizens would have difficulty demonstrating that they faced an acute medical emergency at the time of entry without medical documents, the Departments expect that credible testimony about the medical emergency would generally be sufficient at the credible fear stage, and the rule does not require any specific type of evidence related to the acute medical emergency. *See* 89 FR at 48746 & n.239 (explaining that credible testimony is sufficient in a credible fear screening and that

²⁵⁶ Separately, noncitizens facing an urgent humanitarian situation may not be subject to the limitation at all if, under the Proclamation, a noncitizen is permitted to enter by the Secretary of Homeland Security, acting through a CBP immigration officer, based on the totality of the circumstances, including consideration of urgent humanitarian interests at the time of the entry or encounter. *See* 8 CFR 208.35(a)(1), 1208.35(a)(1); Section 3(b) of the Proclamation.

²⁵⁷ *See* OHSS analysis of data downloaded from UIP on September 3, 2024 (Fear Screening—STB tab).

corroborating evidence is not required); *see also* 88 FR at 31392 (discussing the analogous acute medical emergency rebuttal ground under the Circumvention of Lawful Pathways rule).

Additionally, when conducting credible fear interviews, AOs have an obligation to elicit testimony relevant to a noncitizen's claim, which will necessarily include any information related to exceptionally compelling circumstances.²⁵⁸ Moreover, during credible fear reviews before IJs, noncitizens have an opportunity to be heard and to be questioned by the IJ. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III). During section 240 removal proceedings, IJs also must develop the record, which will, as relevant, necessarily include facts and testimony pertaining to exceptionally compelling circumstances. *See* INA 240(b)(1), 8 U.S.C. 1229a(b)(1) (“[IJs] shall administer oaths, receive evidence, and interrogate, examine, and cross-examine the [noncitizen] and any witnesses.”); 8 CFR 1003.10(b) (same); *see also* *Quintero v. Garland*, 998 F.3d 612, 626 (4th Cir. 2021).

Finally, the Departments disagree with the assertion that there is insufficient guidance regarding making a finding related to exceptionally compelling circumstances. The rule clearly sets forth both the standard for the “exceptionally compelling circumstances” exception and the process for evaluating the limitation on asylum eligibility during credible fear determinations. *See* 8 CFR 208.35(a), (b), 1208.35(a), (b). Additionally, AOs must receive training on application of the limitation on asylum eligibility and the “exceptionally compelling circumstances” exception before any AO can interview a noncitizen where the limitation on asylum eligibility applies, or any supervisory AO can review such a case. Further, the Departments have experience in applying the “exceptionally compelling circumstances” standard in the context of the Circumvention of Lawful Pathways rule. *See* 89 FR at 48733 (explaining that the exception mirrors the rebuttal circumstances adopted in the Circumvention of Lawful Pathways rule and is intended to apply to the same circumstances); *see also* 88 FR at 31380, 31390–93 (explaining the standard for establishing and procedure for evaluating analogous rebuttal

grounds under the Circumvention of Lawful Pathways rule). The Departments also now have several months of experience implementing the IFR, and implementation itself yields valuable information on continued operation of its provisions. *See supra* Section II.A.2.

Comment: Commenters raised concerns that the “exceptionally compelling circumstances” exception does not provide adequate protection for vulnerable groups. Specifically, commenters alleged that the exceptions are insufficient to protect vulnerable groups who face a disproportionate risk of harm in Mexico, including LGBTQI+ noncitizens, Black and Indigenous noncitizens, women, and children, among others. Commenters observed that some such noncitizens, and particularly those without access to legal representation, may not understand the intricacies of the IFR or the requirements to establish an exception. Further, commenters stated that the complicated exceptions will contribute to confusion among and disparate treatment of such noncitizens, making them vulnerable to smugglers and undermining the Departments’ goal of orderly processing at the SWB.

Response: For general discussion regarding concerns related to specific vulnerable populations, please see Section III.B.2.a.iii of this preamble.

With regard to the “exceptionally compelling circumstances” exception and vulnerable populations specifically, the Departments believe that the exception provides sufficient protection for such populations. The exception focuses on relevant personal facts and circumstances within the noncitizen’s knowledge relating to potential harm they faced immediately preceding their entry into the United States. *See* 89 FR at 48747–48. To determine whether the exception applies, the AO questions the noncitizen regarding the circumstances of their entry into the United States, which does not require any particular legal knowledge by the noncitizen.

Further, the Departments disagree that the “exceptionally compelling circumstances” provision will make noncitizens more vulnerable to smugglers due to confusion about the rule. As the Departments explained in the IFR, 89 FR at 48733, the exception for exceptionally compelling circumstances was drafted to mirror the rebuttal grounds in the Circumvention of Lawful Pathways rule, which the Departments believe will help reduce any confusion among noncitizens or adjudicators. Moreover, the Departments believe that, overall, this rule is a key measure to combat illegal

smuggling activity by drastically reducing incentives for noncitizens without a lawful basis to remain in the United States to rely on smugglers for entry into the United States. *See* 89 FR at 48714–15 (explaining how the rule is necessary to combat illegal smuggling activity), *id.* at 48766. The “exceptionally compelling circumstances” exception is an important provision of this rule because it appropriately balances the essential need to use resources effectively during emergency border circumstances with consideration of whether a noncitizen or family member with whom they are traveling is specifically vulnerable to immediate harm and has entered the United States during emergency border circumstances due to serious and urgent needs to do so. *See* 89 FR at 48754.

Comment: Commenters stated that the exception to the IFR was subjective, highly discretionary, and insufficient to ensure individuals were not refouled. Commenters also expressed concern that the enumerated per se exceptionally compelling circumstances require a subjective assessment of the degree and temporal nature of the needs and threats faced by noncitizens at the time of entry, which commenters allege is inconsistent with the right to seek asylum and the principle of non-refoulement.

Response: The Departments disagree that the “exceptionally compelling circumstances” exception is overly subjective or affords too much discretion to AOs and IJs, as the Departments are confident in AOs’ and IJs’ ability to fairly and accurately apply the exception. AOs and IJs have significant training and experience in eliciting testimony and applying legal standards in immigration proceedings. *See, e.g.,* 89 FR at 48747 (noting that AOs and IJs have the training and experience necessary to elicit information required to determine whether a case meets the necessary requirements); 8 CFR 1003.10(b) (requiring IJs to “seek to resolve the questions before them in a timely and impartial manner consistent with the [INA] and regulations”).

Further, to the extent a noncitizen has concerns with an AO’s determination, all credible fear determinations undergo supervisory review to ensure consistency. 8 CFR 208.30(e)(8). Noncitizens may also request IJ review of negative credible fear determinations. 8 CFR 208.35(b)(2)(v). Moreover, if the limitation on asylum eligibility is applied to a noncitizen in section 240 removal proceedings, IJ determinations are subject to review by the BIA. 8 CFR 1003.1(b)(3).

²⁵⁸ *See, e.g.,* USCIS, RAO Directorate—Officer Training: Interviewing—Eliciting Testimony 11 (Apr. 24, 2024) (“In cases requiring an interview, although the burden is on the applicant to establish eligibility, equally important is your obligation to elicit all pertinent information.”).

With regard to concerns about potential refolement, the Departments note that, even in those cases where a noncitizen is unable to establish exceptionally compelling circumstances and is subject to the limitation on asylum eligibility, the noncitizen remains eligible to pursue statutory withholding of removal and CAT protection, which implement the United States' non-refoulement obligations. *See* 8 CFR 208.35(b)(2); 8 CFR 1208.35(b)(2)(iii). For additional discussion regarding the United States' non-refoulement obligations, please see Sections III.A.1.a and III.A.1.d of this preamble.

Comment: Commenters noted that the per se exceptionally compelling circumstances mirror the rebuttal grounds established in the Circumvention of Lawful Pathways rule; some commenters incorporated their previous objections to that rule, concerning the per se exceptionally compelling circumstances, into comments submitted in response to this IFR.

Response: Commenters correctly assert that the per se exceptionally compelling circumstances mirror the rebuttal grounds in the Circumvention of Lawful Pathways rule. *See* 89 FR at 48733. To the extent that commenters stated that they were incorporating their previous comments submitted in response to the Circumvention of Lawful Pathways NPRM, the Departments responded to those comments as part of the Circumvention of Lawful Pathways rulemaking, and commenters are encouraged to refer to that rule for the Departments' responses. *See, e.g.,* 88 FR at 31390–95 (responding to commenter concerns related to the grounds for rebutting the presumption of asylum ineligibility under the Circumvention of Lawful Pathways rule).

Comment: Commenters alleged that the “imminent and extreme threat to life and safety” exception is inadequate and illusory, claiming that CBP officers would, in practice, turn away noncitizens who could otherwise establish such threats. For example, commenters provided anecdotal reports of women being turned away from POEs after CBP officers determined that their accounts of being sexually assaulted and raped in Mexico did not fall within an exception.

Commenters also stated that the exception incentivizes noncitizens to wait in Mexico until they are subject to harm or violence before seeking protection. Further, commenters were concerned that the IFR included a per se exception for forward-looking threats,

but not for being a survivor of “recent and severe forms of violence.” Commenters stated that such survivors have a significant need for protection to mitigate past harm and to prevent further harm.

Commenters also noted that, in responding to comments about the analogous rebuttal ground in the Circumvention of Lawful Pathways rule, the Departments explicitly stated that generalized threats of violence, membership in a particularly vulnerable group, and dangerous country conditions will not rise to the level of an “imminent and extreme threat to life and safety,” which commenters believed was overly limiting.

Commenters further recommended broadening the per se exceptionally compelling circumstances, so that “acute medical emergencies” includes non-medical and non-life-threatening medical needs; and “imminent and extreme threats to life or safety” includes threats to life or safety that may not necessarily be “imminent” or “extreme.” Commenters further stated that the grounds for rebutting the presumption of asylum ineligibility contained within the Circumvention of Lawful Pathways rule have been interpreted narrowly, resulting in noncitizens wrongfully being unable to rebut the presumption, not receiving a full adjudication of their claims, and ultimately being ordered removed. Commenters also urged the Departments to ensure that these per se exceptionally compelling circumstances encompass the medical risks and harms reported by asylum seekers while waiting in Mexico.

Response: The Departments decline to amend the list of per se exceptionally compelling circumstances established in the rule. The per se circumstances contained in the rule—acute medical emergencies, imminent and extreme threats to life or safety, or being a victim of severe trafficking in persons—are intended to capture noncitizens with a time-sensitive imperative for entering the United States to avoid immediate, serious harm. *See* 89 FR at 48732 n.171. Broadening these per se circumstances further would undermine the goal of this rule: to address the significant strain on the United States' immigration system during emergency border circumstances. *See* 89 FR at 48726–31 (“Need for These Measures”).

Likewise, requiring a situation-specific analysis of potential harm to the noncitizen is necessary to limit the “exceptionally compelling circumstances” exception to only those noncitizens who truly require entry to the United States to avoid putting their

life or well-being at extreme risk. Allowing, for example, concern about generalized violence to establish an imminent and extreme threat to life or safety would be purely speculative as to an individual noncitizen, and further undermine the objectives of the rule. However, in requiring specific evidence of potential harm, the Departments note that more generalized evidence, such as membership in a particularly vulnerable group, “may be a relevant factor in assessing the extremity and immediacy of the threats faced at the time of entry.” 88 FR at 31393.

Additionally, the Departments disagree that the parallel rebuttal grounds in the Circumvention of Lawful Pathways rule have been interpreted too narrowly, and therefore, that the per se exceptions should be expanded in this rule. Departmental data show that, during the immediate post-pandemic period, over 10 percent of noncitizens subject to the Circumvention of Lawful Pathways rule's rebuttable presumption of asylum ineligibility were able to rebut the presumption during USCIS credible fear interviews.²⁵⁹ This indicates that those rebuttal grounds were meaningfully available to noncitizens, and the Departments note that Departmental data show that the parallel exceptions in this rule are being similarly applied. Since the IFR went into effect through August 31, 2024, USCIS determined that there was a significant possibility the noncitizen could demonstrate an “exceptionally compelling circumstances” exception to the limitation on asylum eligibility in over 2,200 cases—approximately 11 percent of credible fear interviews completed by USCIS that were subject to the IFR during that period.²⁶⁰

With regard to consideration of past harm, the Departments note that, to the extent a noncitizen suffered harm immediately preceding their entry into the United States, such harm can be relevant to whether the noncitizen faces further imminent and extreme harm or threats to their life or safety, and adjudicators could consider such immediate, past harm as relevant to making an “exceptionally compelling circumstances” determination.

The Departments also disagree with commenters' assertions that the imminent and extreme threat to life or safety exception incentivizes noncitizens to wait in another country until they are harmed to then seek an

²⁵⁹ *See* OHSS analysis of June 2024 Enforcement Lifecycle data (Fear Screening—CLP tab).

²⁶⁰ *See* OHSS analysis of data downloaded from UIP on September 3, 2024 (Fear Screening—STB tab).

exception under the rule. To the extent that waiting in another country could increase the risk of potential harm, the Departments note that noncitizens need not have actually been harmed or show that the feared harm was certain to occur to demonstrate exceptionally compelling circumstances. Rather, the rule states that those who demonstrate that they or a member of their family as defined in 8 CFR 208.30(c) with whom they are traveling “[f]aced an imminent and extreme threat to life and safety, such as an imminent threat of rape, kidnapping, torture, or murder” shall have demonstrated exceptionally compelling circumstances. 8 CFR 208.35(a)(2)(i)(B), (ii), 1208.35(a)(2)(i)(B), (ii). Therefore, this exception is intended to balance the emergency border circumstances necessitating implementation of the rule’s limitation on asylum eligibility with recognition that there may be noncitizens with a specific, time-sensitive safety imperative for entering the United States during times where DHS’s resource capacity to process noncitizens at the border is overwhelmed.

Finally, more generally, the Departments also clarify that CBP officers do not apply this rule’s “exceptionally compelling circumstances” exception during initial border encounters, although they do implement the Proclamation’s suspension and limitation on entry. Rather, the exception—and this rule’s limitation on asylum eligibility more broadly—is applied during credible fear screenings before USCIS, once a noncitizen has manifested a fear of return or expressed an intention to apply for asylum or other protection and is placed in the expedited removal process. *See* 8 CFR 208.35(b) (“Application in credible fear determinations.”).

Comment: Commenters stated that the enumerated “exceptionally compelling circumstances” exception for victims of a severe form of trafficking in persons is inadequate and that this rule imposes an impossible evidentiary hurdle on trafficking survivors. For example, commenters said that not all victims of a severe form of trafficking have proof of such crimes and, during initial fear screenings, AOs do not ask specific questions about trafficking history. Commenters also stated that the trafficking exception should be expanded to encompass both noncitizens who may be at risk of trafficking and noncitizens at risk of or who have experienced trafficking, regardless of the degree of severity of the trafficking.

Response: The Departments disagree that the existing “exceptionally compelling circumstances” exception for trafficking victims should be further amended. First, pursuant to section 3(b)(iv) of the Proclamation, noncitizens who are determined to be “a victim of a severe form of trafficking in persons” as defined in 22 U.S.C. 7102(16) are excepted from the Proclamation’s suspension and limitation on entry and, therefore, are not subject to the IFR’s limitation on asylum eligibility. 8 CFR 208.35(a)(1), 1208.35(a)(1) (providing that the limitation on asylum eligibility only applies to a noncitizen described in 8 CFR 1208.13(g) “and who is not described in section 3(b) of the Presidential Proclamation of June 3, 2024”); 89 FR at 48733 n.172.

Nonetheless, as explained by the Departments in the IFR, the Departments have retained the per se “exceptionally compelling circumstances” exception for human trafficking victims to avoid confusion and to ensure that the exceptions in this rule continue to mirror the rebuttal grounds adopted by the Departments in the Circumvention of Lawful Pathways rule. 89 FR at 48733 n.172. Under the rule’s exception for victims of human trafficking, both a noncitizen and any family members as defined in 8 CFR 208.30(c) with whom the noncitizen is traveling are excepted from the limitation on asylum eligibility if, at the time of entry, the noncitizen or family member satisfied the definition of “victim of a severe form of trafficking in persons” provided in 8 CFR 214.201. 8 CFR 208.35(a)(2)(i)(C), 1208.35(a)(2)(i)(C); 89 FR at 48733.

The Departments disagree that this rule creates an insurmountable evidentiary burden for trafficking survivors. While the Departments recognize that victims of trafficking often do not possess written or documentary evidence of their trafficking, the rule does not impose any requirements about the type of evidence a noncitizen must submit to establish exceptionally compelling circumstances. Indeed, during the credible fear screening process, AOs or IJs elicit testimony from noncitizens, and written statements or other documentation are not required. *See* 89 FR at 48746 n.239.

Regarding concerns that noncitizens will not be asked specific questions about any history involving trafficking, the Departments note that those concerns are unfounded because interview guides specifically designed for credible fear interviews pursuant to the Circumvention of Lawful Pathways rule and the IFR instruct AOs to ask

questions related to trafficking where they are relevant to the credible fear determination, including where either the Circumvention of Lawful Pathways rule’s presumption of asylum ineligibility or the IFR’s limitation on asylum eligibility applies. In such cases, AOs are instructed to elicit testimony related to potential “exceptionally compelling circumstances” rebuttal grounds (in the case of the Circumvention of Lawful Pathways rule) or the “exceptionally compelling circumstances” exception (in the case of the IFR), including the exceptionally compelling circumstance of the noncitizen or an accompanying family member satisfying the definition of a victim of severe form of trafficking in persons pursuant to 8 CFR 208.33(a)(3)(i)(C) and 208.35(a)(2)(i)(C). *See* 8 CFR 208.30(d). AOs receive extensive training in not only substantive law and procedure but in identifying and interviewing vulnerable noncitizens, including victims of trafficking.²⁶¹ Further, for merits adjudications, AOs and IJs receive training²⁶² and have experience in evaluating credibility and evidence, even in the absence of other documentation, and a noncitizen’s testimony alone “may be sufficient to sustain [their] burden without corroboration” in certain circumstances. INA 208(b)(1)(B)(ii), 8 U.S.C. 1158(b)(1)(B)(ii). The Departments are therefore confident in AOs’ and IJs’ ability to elicit relevant information from victims of trafficking and appropriately evaluate whether the noncitizen established exceptionally compelling circumstances.

Finally, the Departments believe that, as drafted, both section 3(b)(iv) of the June 3 Proclamation and the rule itself, which provides that being a victim of a

²⁶¹ *See* USCIS, *RAIO Directorate—Officer Training: Detecting Possible Victims of Trafficking* (Apr. 24, 2024).

²⁶² *See* USCIS, *RAIO Directorate—Officer Training: Decision Making* (Apr. 24, 2024); 8 CFR 1003.0(b)(1)(vii) (EOIR Director’s authority to “[p]rovide for comprehensive, continuing training and support” for IJs); 8 CFR 1003.9(b)(1) and (2) (Chief IJ’s authority to issue “procedural instructions regarding the implementation of new statutory or regulatory authorities” and “[p]rovide for appropriate training of the [IJs] . . . on the conduct of their powers and duties”); EOIR, *Legal Education and Research Services Division* (Jan. 3, 2020), <https://www.justice.gov/eoir/legal-education-and-research-services-division> (“[LERS] develops and coordinates headquarters and nationwide substantive legal training and professional development for new and experienced judges, attorneys, and others within EOIR who are directly involved in EOIR’s adjudicative functions. LERS regularly distributes new information within EOIR that includes relevant legal developments and policy changes from U.S. government entities and international organizations.”).

severe form of trafficking in persons is a per se exceptionally compelling circumstance, provide sufficient protections for victims of trafficking. The Departments decline to expand this exceptionally compelling circumstance to trafficking victims who do not rise to the level of being victims of “severe forms of trafficking in persons.” This is a statutorily defined term²⁶³ which includes “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age” and “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” 22 U.S.C. 7102(11). The Departments find that this statutory definition sufficiently encompasses noncitizens who have experienced exceptionally compelling circumstances that should except them from the limitation on asylum eligibility. This definition has long been employed in the immigration context, *see, e.g.*, INA 101(a)(15)(T)(i)(I), 8 U.S.C. 1101(a)(15)(T)(i)(I) (T nonimmigrant status for victims of severe forms of trafficking in persons); INA 212(a)(2)(H), 8 U.S.C. 1182(a)(2)(H) (ground of inadmissibility for those who engage in severe forms of trafficking), with which AOs and IJs are familiar, and commenters have not offered a persuasive reason for deviating from this well-established definition. Exceptionally compelling circumstances are intended to be narrow and preserved only for those who would generally be subject to the limitation, but present with the most urgent and immediate need to enter without a CBP One appointment or between POEs during times when the border system is overwhelmed. That said, noncitizens who do not satisfy the existing exception for trafficking victims (or other exceptionally compelling circumstances enumerated in the rule) may still seek to establish exceptionally compelling circumstances for another reason, and officers will evaluate every case based on its individual facts and circumstances.

Comment: Commenters asserted that the IFR did not provide sufficient clarity about the procedures for noncitizens to

seek an exception to the IFR’s limitation on asylum eligibility.

First, commenters stated that access to the IFR’s exceptions requires physical access to U.S. immigration authorities at POEs but alleged that there are many factors that impede such physical access, including security agents on the Mexican side of the border restricting access to POEs. Commenters asserted that such impediments to physically accessing U.S. immigration authorities undermine the IFR’s exceptions and prevent noncitizens who may satisfy an exception from accessing protection. Commenters also stated that it is unclear how the rule and Proclamation together impact access to POEs. Accordingly, commenters requested that the Departments establish clear, transparent procedures to guarantee that noncitizens seeking to establish an exception from the limitation on asylum eligibility can physically access U.S. immigration officials.

Response: The Departments believe that the IFR adequately explains the exception to the limitation on asylum eligibility for noncitizens who establish exceptionally compelling circumstances, including the process by which AOs and IJs will evaluate whether a noncitizen has satisfied the exception. *See* 89 FR at 48732–33. Regarding commenters’ concerns related to noncitizens’ ability to physically access U.S. immigration authorities, the Departments note that nothing in the IFR physically impedes a noncitizen from accessing U.S. immigration authorities and that insofar as these comments concern CBP’s implementation of the Proclamation, they are outside the scope of this rulemaking, as are concerns about conduct by individuals outside of the United States who are not U.S. immigration authorities—for example, on the Mexican side of the border. *Cf.* 89 FR at 48732 n.169 (explaining that “[w]hen it comes to determining the applicability of the Proclamation, CBP immigration officers, who first encounter noncitizens when they enter or attempt to enter, must determine whether a noncitizen is subject to the Proclamation under section 3(a), including whether the noncitizen is excluded from the suspension and limitation on entry under section 3(b)”).

Comment: Commenters recommended that the Departments exclude noncitizens who present at a POE from the IFR’s limitation on asylum eligibility, and instead limit application of any restrictions to those who cross irregularly, in order to guarantee access to border processing for noncitizens who present at a POE.

Response: The Departments decline to adopt an exception to the limitation on asylum eligibility for all noncitizens who present at a POE. As the Departments explained in the IFR, in the absence of congressional action, the changes made by this rule are intended to improve the Departments’ ability to deliver timely decisions and consequences to noncitizens who do not have a legal basis to remain in the United States, and the Departments expect that the limitation on asylum eligibility will encourage noncitizens to present at a POE pursuant to an appointment, pursue another lawful pathway, or decline to journey to the United States at all. *See* 89 FR at 48715; *id.* at 48730–31. The Departments have determined that excepting all noncitizens who present at a POE would undermine these objectives and undermine processes designed to manage border inflows at POEs. *See, e.g.*, 88 FR at 31318 (noting that the “ability to schedule a time and place to arrive at POEs and the availability of other orderly and lawful pathways” are designed to, among other things, “protect against an unmanageable flow of migrants arriving at the SWB”).

Comment: Commenters questioned why the IFR’s exceptions do not fully align with the exceptions available under the Circumvention of Lawful Pathways rule. In particular, commenters stated that the IFR does not provide an exception for technological failure of the CBP One app or for noncitizens who are unable to use the CBP One app due to illiteracy, a language barrier, a disability, or an inability to afford a smartphone or data plan. Noting ongoing technical and accessibility issues with the CBP One app, commenters urged the Departments to adopt an exception to the limitation on asylum eligibility for all noncitizens—whether they present at a POE or cross between POEs—who: (1) are unable to use the CBP One app due to accessibility issues with the app itself; (2) are unable to use the CBP One app due to illiteracy, disabilities, not speaking a language in which the CBP One app is provided, lack of knowledge about the existence of the CBP One app, or a lack of resources or other difficulties; or (3) fail to secure appointments after multiple attempts.

Additionally, commenters noted that the IFR does not contain an exception for being denied asylum in a country through which the noncitizen transited. Commenters stated that the Departments failed to provide a justification or explanation for eliminating such exceptions under the IFR and alleged that it is arbitrary for the Departments

²⁶³ The provisions at 8 CFR 208.35(a)(2)(i)(C) and 1208.35(a)(2)(i)(C) reference the definition of “victim of a severe form of trafficking in persons” in 8 CFR 214.201, and that regulatory provision references relevant statutory definitions, including definitions found at 22 U.S.C. 7102. *See* 8 CFR 214.201.

to include such exceptions under the Circumvention of Lawful Pathways rule but not under the IFR.

Commenters also asserted that the inconsistencies between the exceptions available under the IFR and the Circumvention of Lawful Pathways rule will create confusion for all parties, as it is unclear which rule will apply when emergency border circumstances are in effect.

Response: The Departments decline to add any additional exceptions to the limitation on asylum eligibility and disagree with commenters' assertions that the Departments did not provide adequate justifications for why the rule does not contain exceptions for an inability to access or use the CBP One app or being denied asylum in a transit country.

The Departments explained in the IFR that they were not adopting these exceptions from the Circumvention of Lawful Pathways rule because, unlike that rule, this rule only applies during emergency border circumstances, when the number of encounters strains the capacity of immigration and border security systems. 89 FR at 48732 n.171. Because of this rule's focus on emergency border circumstances, the Departments have determined that the rule's exceptions should be limited to noncitizens "with a time-sensitive imperative" to enter the United States. *Id.* For example, the rule focuses its exception for exceptionally compelling circumstances on noncitizens who require immediate entry into the United States, due to medical emergencies or imminent and extreme threats to life or safety, among other reasons. See 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i). The Departments have explained above why they have not included in the IFR and this rule the exception for difficulty using the CBP One app and refer readers to that discussion.

Similarly, and as explained in the IFR, the Departments did not include and are not adding an exception for noncitizens who received a final decision denying asylum in a country through which they transited because this rule serves a different purpose than the Circumvention of Lawful Pathways rule. 89 FR at 48732 n.171. While the Circumvention of Lawful Pathways rule sought to encourage noncitizens to seek protection in other countries, this rule is focused on deterring irregular migration and speeding up the border process during emergency border circumstances, when the immigration system is experiencing extreme and enduring strains. *Id.* Accordingly, the Departments believe that limiting exceptions to those noncitizens who

have the most immediate and urgent need to present at or cross the U.S. border is imperative. See *id.*

Importantly, however, noncitizens who were denied protection in another country remain eligible to apply for asylum if they "enter pursuant to an appointment, meet another exception to the Proclamation, or establish exceptionally compelling circumstances" under this rule. *Id.*

The Departments also disagree that omission of these exceptions will create confusion. The Departments clarify that both this rule and the Circumvention of Lawful Pathways rule are applied during credible fear screenings when emergency border circumstances are in effect. If it is determined that this rule does not apply, AOs and IJs will then consider the noncitizen's claim through the now familiar Circumvention of Lawful Pathways rule, which has been in effect for over a year. Given the Departments' experience in implementing the Circumvention of Lawful Pathways rule, the Departments are confident in adjudicators' ability to implement this rule, which is similar in structure to the Circumvention of Lawful Pathways rule, and to apply this rule's "exceptionally compelling circumstances" exception, which mirrors the rebuttal grounds in the Circumvention of Lawful Pathways rule. See 89 FR at 48739. If the noncitizen establishes exceptionally compelling circumstances under this rule pursuant to 8 CFR 208.35(a)(2)(i) or 8 CFR 1208.35(a)(2)(i), they will also have established exceptionally compelling circumstances under the Circumvention of Lawful Pathways rule. 8 CFR 208.35(a)(2)(iii), 1208.35(a)(2)(iii). However, adjudication of the additional exceptions in Circumvention of Lawful Pathways are unlikely to be dispositive in cases where both this rule and the Circumvention of Lawful Pathways rule apply, because if the noncitizen does not meet the exception to this rule, this rule's limitation on asylum eligibility will apply.

c. Implementation by CBP Officers

Comment: A few commenters expressed concern that, unlike the Circumvention of Lawful Pathways rule, in which AOs and IJs solely adjudicate the application of its presumption of asylum ineligibility and exceptions, the application of the Proclamation and the IFR are first adjudicated by CBP officers at the limit line, resulting in at-risk individuals and survivors of violence being denied entry. Relatedly, commenters stated that although the IFR allows CBP officials at POEs to assess whether a noncitizen qualifies for an

exception, it is unclear what guidance or training has been provided to those officials to ensure fair determinations or whether there is a mechanism for noncitizens to be screened for application of the bar when they approach a POE. A commenter noted that it is difficult to understand from the IFR how CBP will determine whether noncitizens are subject to the rule and how the rule and Proclamation would impact access to POEs and CBP conduct. Another commenter similarly stated that it is unclear whether the Departments would equip CBP officers or noncitizens to navigate the changes under the Proclamation and IFR, including in circumstances where the applicable legal standards could change within short windows of time, depending on whether crossing thresholds are being met.

Response: Comments relating to the implementation of the Proclamation itself are outside the scope of this rule, which applies a separate limitation on asylum eligibility. Additionally, to the extent that commenters expressed concern about CBP officials assessing whether a noncitizen qualifies for a regulatory exception to the limitation on asylum eligibility, commenters misunderstand the operation of the IFR. CBP officials may determine whether an exception to the June 3 Proclamation applies to a particular noncitizen, but do not apply the rule's limitation on asylum eligibility and its exception. Rather, it is AOs and IJs, during credible fear screenings and reviews, who must determine "whether there is a significant possibility that the noncitizen would be able to establish by a preponderance of the evidence that they were not subject to the rule's limitation on asylum eligibility or that they will be able to establish by a preponderance of the evidence exceptionally compelling circumstances." 89 FR at 48739; see also 8 CFR 208.35(b), 1208.35(b). AOs and IJs—not CBP officials—will thus be evaluating whether the limitation on asylum eligibility applies and whether a noncitizen has established a regulatory exception. See 8 CFR 208.35(b)(1); 8 CFR 1208.35(a), (b).

d. Application of the Limitation on Asylum Eligibility in Proceedings Before EOIR

Comment: Commenters stated broad concerns with the credible fear review process in general, including concerns over whether there are adequate opportunities to present supplementary evidence and testimony, questions over whether IJ review is truly de novo, concerns that IJs do not appropriately

weigh evidence in the record, and concerns that the outcome of credible fear reviews is dependent upon the IJ considering the case, rather than the strength of the claim.

Commenters also objected to the IFR's provision that would require noncitizens to affirmatively request IJ review of a negative credible fear determination. Commenters stated that this affirmative request requirement removes an important safeguard intended to minimize the risk of refoulement, with particular harm to the most vulnerable noncitizens. Commenters explained that, given the frequency of IJs reversing negative credible fear findings, IJ review is a necessary procedural protection for the integrity of the asylum screening process, especially since the IFR's changes may lead to erroneous decisions by AOs. Moreover, commenters stated that requiring noncitizens to affirmatively request review is especially problematic when combined with the other changes in the IFR, namely the limited opportunity to access counsel and the heightened standards of proof for pre-screening interviews. Commenters stated that there must be an opportunity for IJ review of negative fear determinations to be considered an effective remedy under international law.

Commenters also stated there are a multitude of reasons why a noncitizen may fail to request IJ review. For example, a noncitizen may fail to request IJ review due to mental health conditions, language barriers, trauma, or because they are not adequately informed of the procedure for requesting review. Similarly, one commenter stated that requiring noncitizens to affirmatively request review mirrors the Global Asylum Final Rule, 85 FR 80274, which the Departments later reversed in a subsequent rulemaking, *see* Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 FR 18078 (Mar. 29, 2022) ("Asylum Processing IFR"), citing fairness concerns and noting that treating a failure to elect review as a request for review better accounts for the range of explanations for a noncitizen's failure to seek review.

Commenters supported the IFR's requirement that DHS inform noncitizens of the procedure to request review and recommended that such information be provided both verbally and in writing in a language that the noncitizen understands. However, commenters said that noncitizens may find the concept of an IJ review hearing

confusing, and requiring noncitizens to request review may unfairly punish noncitizens for their confusion.

Response: To the extent that commenters raise concerns about the credible fear review process in general, such concerns are outside the scope of this rulemaking, which is focused only on the credible fear review process for noncitizens who are subject to this rule.

As to concerns about credible fear review under this rule, the Departments emphasize that, although the rule requires noncitizens to affirmatively request review of a negative credible fear determination, the statutory right to IJ review remains available. *See* INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III); 8 CFR 208.30(g), 1208.30(g)(2). The Departments will continue to seek to ensure noncitizens are aware of the right to IJ review and the consequences of failure to affirmatively request such review. *See, e.g.,* 88 FR at 11747. Specifically, if an AO enters a negative credible fear determination, the AO will provide the noncitizen with a written notice of decision and inquire whether the noncitizen wishes to have an IJ review the negative credible fear determination. 8 CFR 208.35(b)(1)(i), (2)(iii). Thus, contrary to commenters' concerns, this safeguard remains in place and the Departments believe that such notice sufficiently ensures that noncitizens who desire IJ review of negative credible fear determinations can elect it under this rule.

As explained in the analogous provision introduced in the Circumvention of Lawful Pathways rule, to ensure that the noncitizens referenced by commenters—including noncitizens with mental health conditions, those who have suffered trauma, or those who are unable to read or speak English—understand what review is available to them, DHS provides explanations to noncitizens "to make clear to noncitizens that the failure to affirmatively request review will be deemed a waiver of the right to seek such review." 88 FR at 11747. These explanations are provided by trained asylum office staff through an interpreter in a language understood by the noncitizen. As a result, the Departments believe it is reasonable to conclude that noncitizens who do not request IJ review after receiving sufficient notice, *see id.*, and the enhanced explanations described above, can be fairly processed as if they have declined to seek additional IJ review. *See* 88 FR at 11747.

Moreover, the Departments previously acknowledged in the Circumvention of Lawful Pathways rule that "the

procedure for IJ review of negative credible fear determinations . . . differ[ed] from the credible fear review procedures implemented by the Asylum Processing IFR." 88 FR at 31423 (citing 88 FR at 11744). There, the Departments explained that "the need for expedition under the current and anticipated exigent circumstances" weigh[ed] in favor of requiring noncitizens to affirmatively request IJ review of a negative credible fear determination." *Id.*

Following this reasoning, the Departments believe that this requirement that noncitizens affirmatively request IJ review of negative credible fear determinations continues to be necessary during times of emergency border circumstances, despite other measures to address the exceptionally high levels of irregular migration along the southern border, including the Circumvention of Lawful Pathways rule. *See* 89 FR at 48712–13 (listing measures). This rule has been adopted to address emergency border circumstances, times where the Departments' limited resources are under maximum strain to the point where border security and immigration systems are experiencing serious operative impacts and further fueling more lasting effects of a backlogged system. Accordingly, the Departments believe requiring noncitizens to affirmatively request IJ review of credible fear determinations will help ensure that such reviews take place only for those who desire such review. The alternatives suggested by commenters risk extending such review to those not actually interested in IJ review, thereby unnecessarily expending valuable adjudicatory capacity during a time when such resources are not available.

As to requests to provide information about review procedures verbally and in writing in a language that the noncitizen understands, noncitizens receive that information in writing (via a written English document), and noncitizens who do not speak English receive that information verbally through a real-time translation of the written document as well. This approach satisfies the Departments' statutory obligations, *see* INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv), and in DHS's judgment, provides adequate notice of the ability to seek review. It is neither required nor feasible to, in addition, provide that information in written form in all languages that may be spoken.

Comment: Commenters stated that the same complexity concerns about the IFR raised by commenters in the credible fear context will apply to removal proceedings before IJs. For example,

commenters stated that determinations as to the timing and applicability of emergency border circumstances, including determining whether emergency circumstances were in effect on the noncitizen's dates of entry, whether to apply this rule versus the Circumvention of Lawful Pathways rule, and whether exceptionally compelling circumstances apply, would only lead to longer, more complex removal proceedings, and an inefficient focus on inquiries having no bearing on the merits of the protection claim in an already backlogged immigration court system. Commenters said that proceedings could be prolonged due to a potential rise in the numbers of motions to reopen or reconsider and appeals to the BIA or Federal courts challenging application of the rule, among other reasons.

Commenters stated that these determinations will be especially complex for noncitizens who enter without inspection ("EWI"). Commenters explained that it is unclear how the Departments will accurately determine whether this rule applies, especially when few people who EWI remember the exact date they crossed the border and, regardless, will likely not have evidence of the time of such crossing. Therefore, commenters stated that the rule will result in arbitrary IJ decisions, because IJs will not be able to determine whether the rule applies. As a result, commenters suggest creating a specific policy for noncitizens who EWI.

Response: The Departments disagree with commenters' concerns about the complexity in applying this rule in EOIR proceedings. To the contrary, given the IJ's role as the fact finder in removal proceedings, IJs are well-equipped to make fact-based determinations, such as dates of entry and whether emergency border circumstances were in effect on a specific date. *See, e.g.,* INA 240(b)(1), 8 U.S.C. 1229a(b)(1) ("Authority of immigration judge"). For example, regarding commenters' concerns about noncitizens who EWI, the Departments note that IJs routinely make similar entry timing determinations, such as determining application of the one-year filing deadline for asylum and continuous physical presence for cancellation of removal for certain nonpermanent residents. INA 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B) (one-year time limit); INA 240A(b)(1)(A), 8 U.S.C. 1229b(b)(1)(A) (cancellation of removal for certain nonpermanent residents). Moreover, IJs have been applying the Circumvention of Lawful Pathways rule since its effective date, which similarly requires determining a

noncitizen's entry date. *See* 8 CFR 1208.33(a)(1)(i) (requiring determination as to whether a noncitizen entered the United States "[b]etween May 11, 2023, and May 11, 2025").

Additionally, one change made by this rule—requiring the 7-consecutive-calendar-day average to remain below 1,500 encounters between POEs for 28 consecutive calendar days before the 14-day waiting period is triggered—will further reduce complexity concerns by reducing the probability that emergency border circumstances will be discontinued and then continued or reactivated soon thereafter. This requirement not only better ensures that emergency border circumstances have abated, but also mitigates potential confusion in determining whether emergency border circumstances were in effect on a noncitizen's date of entry. Contrary to commenters' concerns, this rule's provisions will not consistently "turn off" one day and "turn on" the next day. Rather, when triggered, this rule will be in effect for a more sustained period of time, making it easier for noncitizens and adjudicators to determine the timing and applicability of emergency border circumstances. Lastly of note, at all times since issuance of the June 3 Proclamation and publication of the IFR, DHS has maintained a publicly available record of the dates that a suspension and limitation on entry is in effect.²⁶⁴ This DHS-maintained record will be available into the future, and the Departments believe that it will serve as an essential aid for IJs in determining whether the provisions of the rule should be applied based on a noncitizen's date of entry.

e. Family Unity Provisions

Comment: Commenters expressed general support for the family unity provisions in the IFR, stating that family unity is a key principle in both international and U.S. immigration law. However, commenters also raised concerns that the provisions were not sufficient, and that family unity would be better preserved by eliminating the rule's limitation on asylum eligibility altogether. For example, commenters stated that the family unity provisions are overly limiting, as they only benefit noncitizens who are able to meet the higher burden of proof for statutory withholding of removal.

Commenters were also concerned that the family unity provisions would create unnecessary procedural hurdles

for families. For example, commenters raised concerns that the family unity provisions only apply to qualifying family members who cannot independently establish other protection from removal. In doing so, commenters also questioned what forms of protection would qualify as "other protection from removal" sufficient to disqualify spouses or children from the family unity provisions.

Commenters stated that this requirement would result in ethical dilemmas where families would need to ensure that qualifying family members do not independently qualify for statutory withholding of removal so that the family members can receive derivative asylum relief under the family unity provisions. Commenters also claimed that this requirement would require family members to obtain separate counsel and sever proceedings, which will cause unnecessary financial hardship to the family and undue burdens to the Government. Rather, commenters recommended removing altogether the requirement that qualifying spouses or children not independently qualify for relief.

Commenters also raised procedural questions about how the family unity provisions function where a noncitizen is belatedly eligible for asylum under the family unity provisions, but after their spouse or child have undergone their own immigration adjudications.

Response: The Departments agree with commenters that keeping families unified and avoiding family separation is an important goal. Emergency border circumstances necessitated implementation of the IFR's limitation on asylum eligibility to better manage border operations and substantially improve the Departments' ability to deliver timely decisions and consequences to noncitizens who lack a lawful basis to remain in the United States. *See* 89 FR at 48715.

Nevertheless, recognizing the importance of family unity, the Departments included a number of provisions in the IFR to eliminate the risk of family separation. For example, the "exceptionally compelling circumstances" exception applies to all qualifying family members of the noncitizen's traveling party if the noncitizen, or the noncitizen's qualifying family member with whom the noncitizen is traveling, meets the exception. *See* 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i).

Similarly, the IFR made no changes to the family unity provision, which establishes an "exceptionally compelling circumstances" exception for noncitizens who can, among other

²⁶⁴ *See* DHS, *Securing the Border: Presidential Proclamation and Rule* (Aug. 6, 2024), <https://www.dhs.gov/immigration-laws>.

requirements, establish eligibility for statutory withholding of removal or CAT protection and could have, but for either the IFR's limitation or Circumvention of Lawful Pathways presumption, established eligibility for asylum. *See* 8 CFR 208.35(c), 1208.35(c); *see also* 88 FR at 11723–24 (explaining that the parallel Circumvention of Lawful Pathways family unity provision is intended to treat “the possibility of separating the family” as “an exceptionally compelling circumstance” when the provision's requirements are met). This provision allows qualifying noncitizens to pursue asylum, and its allowance for derivative beneficiaries, instead of statutory withholding of removal and CAT protection, with their comparatively fewer benefits. *See* INA 208(b)(3), 8 U.S.C. 1158(b)(3) (derivative asylum status).

Importantly, these provisions are not intended to serve as wholesale “family” exceptions to the IFR's limitation on asylum eligibility, which would significantly reduce the effectiveness of the limitation on asylum eligibility and incentivize families to engage in dangerous irregular migration to the United States. *See* 89 FR at 48757 (explaining that “[e]xcepting all family units that include minor children could incentivize families who otherwise would not make the dangerous journey and cross unlawfully to do so”). Rather, the exceptionally compelling circumstances family unity exceptions help ensure that noncitizens who qualify for the rule's exception are not separated from their qualifying spouses or children while pursuing relief or protection in the United States, including, for example, through derivative asylee status if granted relief, or through removal of the family unit if denied.

With regard to commenter concerns about qualifying spouses or children obtaining their own independent relief or protection, which would in turn make the IFR's family unity provisions inapplicable, the Departments clarify that the IFR's family unity provisions are intended as limited exceptions solely to prevent potential family separation due to the IFR's limitation on asylum eligibility. If qualifying spouses or children obtain independent relief or protection that allows them to remain in the United States, then they will have necessarily avoided the family separation concerns underlying the IFR's family unity provisions. *See, e.g.,* 88 FR at 11724 (explaining that the parallel Circumvention of Lawful Pathways family unity provision is intended to avoid family separation where “at least one other family member would not qualify for asylum or

other protection from removal on their own”). The Departments further note that asylum “or other protection” under this family unity provision refers to statutory withholding of removal and CAT protection. *See, e.g.,* Implementation of the 2022 Additional Protocol to the 2002 U.S.-Canada Agreement for Cooperation in the Examination of Refugee Status Claims From Nationals of Third Countries, 88 FR 18227 (Mar. 28, 2023) (noting that “asylum or other protection” refers to claims “relating to a fear of persecution or torture”).

Additionally, to the extent that commenters raised concerns over qualifying spouses or children independently receiving statutory withholding of removal, with comparatively fewer benefits than asylum, the Departments note that statutory withholding of removal protects the qualifying spouse or child from removal to a country where they more likely than not would be persecuted because of their race, religion, nationality, membership in a particular social group, or political opinion. *See* INA 241(b)(3)(A), 8 U.S.C. 1231(b)(3)(A); *INS v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999); *Stevic*, 467 U.S. at 429–30; *see also* 8 CFR 208.16, 1208.16. Moreover, if noncitizen families wish to pursue asylum relief specifically, the IFR and the Circumvention of Lawful Pathways rule are designed to encourage noncitizens to make an appointment to present at the SWB or take advantage of other lawful migration pathways. *See* 89 FR at 48730–31.

Relatedly, the Departments do not share commenters' concerns about potential ethical dilemmas faced by representatives related to pursuing independent relief for family members due to the family unity provisions. Representatives must be truthful to the court in presenting the record facts and will either be able to zealously advocate on behalf of all of their clients where the family members' interests present no conflict, or counsel can withdraw from such representation if they believe they cannot advocate for each client's interests equally. *See* 8 CFR 1003.102 (acknowledging that practitioners who appear before EOIR have a duty to zealously represent their clients “within the bounds of the law”); *see also* 8 CFR 1003.102(c) (setting forth that a practitioner may face disciplinary sanctions for “[k]nowingly or with reckless disregard” making a false statement of material fact or law).

Further, this rule does not impact EOIR's existing procedures for consolidating or severing cases, which

has always involved parties making assessments and strategic decisions on how best to proceed with their cases. *See* Immigration Court Practice Manual ch 4.21 (setting forth procedures for combining and severing cases). Prior to this rule, family units have been able to seek asylum and related forms of protection in consolidated proceedings, and family units are always permitted to sever their proceedings if they so choose, including for strategic reasons based on their own assessment about the strength of their individual claims. *Id.* Thus, the Departments disagree that the rule will meaningfully impact noncitizens choosing to sever their cases from those of their families in the way that commenters claim, especially given the family unity provisions included in the IFR and maintained in this final rule.

Lastly, with regard to procedural timing concerns in applying the family unity provisions, the Departments clarify that the family unity provisions only apply to qualifying family members who are accompanying the principal applicant or who are eligible to follow to join that applicant. *See* 8 CFR 208.35(c), 1208.35(c). Therefore, principal applicants and accompanying family members who are traveling together will generally have their claims adjudicated together in removal proceedings. *See, e.g.,* Immigration Court Practice Manual ch. 4.21(a) (Oct. 25, 2023) (explaining that immigration courts may consolidate cases together that involve immediate family members into a single adjudication). As a result, there are unlikely to be significant timing gaps between determinations on any individual relief or protection claims within a family unit.

Comment: Commenters supported the inclusion of a family unity provision in the AMI process, wherein DHS retains jurisdiction over an asylum application for further adjudication after a positive credible fear determination. Commenters stated that it is logical and efficient for AOs to apply the same family unity provision as IJs when adjudicating the merits of an asylum application. However, commenters also expressed concern that the family unity provision in the AMI process is discretionary for AOs, and urged the Departments to make the provision mandatory, similar to the family unity provision for IJs in the IFR. Commenters also recommended amending the Circumvention of Lawful Pathways rule to allow DHS to apply the same family unity exception under that rule to avoid confusion that the disparity would allegedly cause for applicants, counsel,

and AOs, particularly where the two rules are both in effect and overlapping.

Response: In the IFR, the Departments included a family unity provision in the AMI process before USCIS, but made it discretionary to provide USCIS with flexibility while implementing the new AMI process. *See* 89 FR at 48733. After further consideration, the Departments are retaining the discretionary nature of the family unity provision in the AMI process before USCIS.

USCIS maintains complete discretion to place a case with a positive credible fear determination into the AMI process or to issue an NTA. 8 CFR 208.30(f). In exercising this discretion, USCIS does not foresee that it would be a prudent use of resources to place cases into the AMI process where, at the credible fear stage, the IFR's limitation on asylum eligibility applied and there was not a significant possibility the noncitizen could establish an exception to the limitation. USCIS has a finite number of AOs, and it is more efficient at present to assign work in a manner that maximizes the number of credible fear interviews USCIS can conduct at the southern border. *See* 89 FR at 48756. Accordingly, it is unlikely that USCIS would adjudicate a case where the 8 CFR 208.35(c) family unity provision could apply in the foreseeable future.

With that understanding, were such a case ever to be placed into the AMI process, USCIS has the discretion to apply the 8 CFR 208.35(c) family unity provision, depending on the circumstances of the individual case. Importantly, if USCIS exercises its discretion not to apply the family unity provision, the noncitizen will not be prejudiced because, if USCIS does not grant asylum in such a case, the asylum application will be reviewed de novo by an IJ, 8 CFR 1240.17(i), who is required to apply the family unity provision in removal proceedings pursuant to 8 CFR 1208.35(c).

Additionally, the discretionary nature of the family unity provision before USCIS in 8 CFR 208.35(c) is necessary in order for USCIS to comply with the AMI regulatory timeline laid out in 8 CFR 208.9. This timeline requires USCIS to conduct the AMI interview no later than 45 days of the applicant being served with a positive credible fear determination, absent exigent circumstances, 8 CFR 208.9(a)(1), and prohibits extensions on the submission of additional evidence that would prevent the AMI decision from being issued within 60 days of service of the positive credible fear determination, 8 CFR 208.9(e)(2). While the IFR allows for USCIS to extend both of those timelines up to 15 days in the event

USCIS requires the noncitizen to submit a Form I-589, 8 CFR 208.35(b)(2)(ii), even with a 15-day extension, these are still accelerated time frames that would not accommodate applying the family unity provision in every AMI case where it could potentially apply before USCIS.

In some cases, USCIS may be able to apply the family unity provision without running afoul of the regulatory time frames, such as where the accompanying family members are also dependents on the AMI case, and the principal applicant is found eligible at the AMI for statutory withholding of removal with respect to their country of nationality based on the record before USCIS. In such a case, the AO could likely apply the family unity provision within the regulatory timelines, as there would likely be no need to request additional evidence verifying the qualifying family relationships. Additionally, if the principal applicant was already found eligible for statutory withholding of removal with respect to their country of nationality based on the record before USCIS, it is likely that they also would be found eligible for asylum if the limitation on asylum eligibility is not applied. In such a circumstance, USCIS could likely exercise discretion to apply the 8 CFR 208.35(c) family unity provision in a logical and efficient manner and complete the case within the regulatory time frame without issue.

In other cases, however, applying the family unity provision in an AMI case could prove excessively cumbersome within the regulatory time frame. For example, if the qualifying family relationship relates to a family member outside of the United States for which additional proof is needed to establish the relationship, it may be impossible for an AO to extend the timeline to accommodate the production of such evidence and still meet the processing timeline for an AMI under 8 CFR 208.9(e)(2). In a case where the AO finds the noncitizen is not eligible for asylum due to the IFR's limitation on asylum eligibility, and is not eligible for statutory withholding of removal, but would be eligible for withholding of removal under 8 CFR 208.16(c)(2) (withholding of removal under the CAT) based on the record before USCIS, requiring the AO to apply the 8 CFR 208.35(c) family unity provision would entail the AO conducting a cumbersome analysis, including revisiting the noncitizen's asylum eligibility, absent application of the IFR's limitation on eligibility, only to possibly still find the applicant ineligible for asylum on the merits and refer the case to the IJ, who

would then review the asylum application de novo. *See* 8 CFR 1240.17(i).

Indeed, if USCIS were required to apply the 8 CFR 208.35(c) family unity provision in all AMI cases, significant extra resources would likely have to be expended in any case where the provision might apply (including additional interview time, extending the evidentiary submission timeline, and additional time writing up the case) even where it would not result in a grant of asylum. If asylum is not granted by USCIS, asylum eligibility would still be reviewed de novo by an IJ. *See* 8 CFR 1240.17(i). Keeping the provision discretionary, in contrast, allows USCIS to apply the provision where it can do so in a logical and efficient manner without thwarting the regulatory timelines for AMI processing.

While logic and efficiency support keeping the 8 CFR 208.35(c) family unity provision discretionary for AMI cases before USCIS, it is also logical for the 8 CFR 1208.35(c) family unity provision to apply in all removal proceedings (whether they originated as AMI cases or not) before EOIR. Removal proceedings before the IJ are potentially the last opportunity the noncitizen will have to be granted asylum. In contrast, the AMI process before USCIS cannot result in a denial of asylum, only a referral to the IJ for a de novo review of the asylum application. 8 CFR 208.14(c)(1), 1240.17(i). Additionally, while removal proceedings for AMI cases operate on a streamlined time frame, there is still substantially more time allotted for removal proceedings before EOIR than for the initial AMI adjudication before USCIS, 8 CFR 208.9(a)(1), (e)(2), *id.* at 1240.17(f), so there is more flexibility in the time frame for the IJ to apply the family unity provision at the final adjudication stage than there would be for an AO to apply the provision in the AMI process before USCIS.

Separately, the Departments note that any comments regarding family unity amendments to the separate Circumvention of Lawful Pathways rule are outside the scope of this rulemaking.

2. Manifestation of Fear Standard

a. Legality Concerns

Comment: Commenters expressed concerns that implementing a manifestation of fear requirement would ultimately lead to noncitizens with valid claims being removed without proper evaluation, which would violate U.S. international non-refoulement obligations and "circumvent U.S. asylum law." One advocacy group

called the manifestation requirement a “deeply deficient” means of screening applicants for fear that will cause “credible fear pass rates to plummet and lead to refolement.” Another commenter described the change as “morally and legally troubling,” while a third commenter stated that it would create significant hurdles for noncitizens seeking statutory withholding of removal and CAT protection.

Commenters further asserted that the manifestation requirement violates specific international refugee laws or principles. Citing amicus briefs, the UNHCR handbook, and other UNHCR publications, one commenter stated that the United States has an “affirmative obligation” under international law “to elicit information that might reveal potential refugee status” and “conduct an individualized assessment to evaluate whether the individual is entitled to protection as a refugee,” which the manifestation requirement violates. In that same vein, another commenter observed that international refugee organizations have “long emphasized that to fully carry out . . . obligations under the Refugee Convention” the parties should implement procedures that “affirmatively identify” possible applicants and provide guidance to them on how to apply for relief and protection, and the IFR’s “reliance on manifestation of fear is inadequate to fulfill these basic requirements.”

Commenters stated that the manifestation requirement violated proper implementation of the credible fear process outlined in the INA. One commenter characterized the IFR’s manifestation requirement as an attempt to expand the reach of expedited removal by creating additional barriers to credible fear interviews, in violation of Federal law. Another commenter stated the manifestation requirement did not align with “Congressional intent” to “ensure that asylum was available to all those with legitimate claims.” Other commenters echoed the sentiment that the manifestation requirement was implemented without regard for the risk of refolement and purely as a means to efficiently remove noncitizens without a hearing.

Commenters also stated that eliminating the requirement that immigration officers affirmatively document and inquire about a noncitizen’s fear of persecution during initial encounters at the border is a “sharp break from prior practice by the Departments” that would ultimately lead to higher numbers of noncitizens being refoled. One commenter

described the change to using manifestation as “a dangerous reversal of a procedural safeguard” designed to ensure legal compliance, expressing concern that other safeguards are already being removed. Other commenters recommended that the Departments end the manifestation of fear approach and reinstate the previous policy of using preliminary questions to identify whom to refer for credible fear screenings.

Some commenters opposed the manifestation requirement due to concerns that it violated DHS’s obligations under section 235(b)(1)(B)(iv) of the INA, 8 U.S.C. 1225(b)(1)(B)(iv), and pointed to what they purport was the Government’s acknowledgment (see 89 FR at 48741 n.194) that an argument could be made that the IFR conflicts with the INA. Specifically, commenters argued that the INA requires DHS to provide information concerning credible fear interviews to noncitizens who may be eligible and eliminating use of the forms in lieu of a manifestation requirement was a violation of that statutory obligation. Commenters were specifically concerned that the alternatives outlined in the IFR—such as providing signs and videos in facilities—would not be “sufficient to put noncitizens on notice of how they may assert a claim for protection.”

Commenters pointed to different parts of the IFR where they believe the Government explicitly acknowledged that the manifestation requirement will result in refolement and stated that these purported acknowledgements are problematic. One commenter stated that the IFR was creating a standard that “knowingly accepts” a probability of violating non-refoulement and fails to satisfy the statutory requirement to provide information about credible fear interviews to noncitizens who may be eligible for such interviews. Another commenter highlighted part of the IFR that they said conceded that the manifestation requirement would result in the removal of noncitizens with valid claims. Similarly, commenters discussed the IFR’s purported admission that asylum seekers who are asked affirmative questions about whether they have a fear of returning to their home country are seven times more likely to assert a claim.

Response: The Departments disagree that the manifestation standard violates any international obligations or that it is inconsistent with Federal law.

As to concerns related to international law, commenters did not specify any binding international law source that creates such obligations and instead

cited publications and amicus briefs, which do not have the force of law and are not international treaties to which the United States is a party. As described in Section II.B of this preamble, the United States’ non-refoulement obligations are implemented through domestic law, and neither the 1967 Protocol nor the CAT are self-executing. Regardless, as outlined in the IFR, 89 FR at 48740–41, the applicable international laws do not specifically prescribe the minimum screening requirements that must be implemented to determine whether a noncitizen should be referred for a credible fear interview.²⁶⁵ Instead, it is up to each participating state “to establish the procedure that it considers most appropriate, having regard to its particular constitutional and administrative structure.”²⁶⁶ Thus, it is within the Departments’ discretion to revisit the screening process the United States implements during emergency border circumstances.

Moreover, the United States continues to uphold its non-refoulement obligations during emergency border circumstances.²⁶⁷ Under applicable international law, the United States has an obligation (1) not to return noncitizens to countries where they would be persecuted; and (2) not to return noncitizens to countries where it is more likely than not that they would be tortured. See Refugee Convention, 19 U.S.T. at 6276, 189 U.N.T.S. at 176 (outlining standard under the Refugee Convention); *Pierre v. Gonzales*, 502 F.3d 109, 114 (2d Cir. 2007) (outlining standard under the CAT). During the emergency circumstances at the southern border, the manifestation standard temporarily affords immigration officers the ability to refrain from affirmatively asking noncitizens about fear, and instead refer noncitizens to an AO for a credible fear interview if the noncitizen manifests a

²⁶⁵ See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* ¶ 189 (Jan. 1992 ed., reissued Feb. 2019), <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967> (highlighting that the process for identifying refugees is not “specifically regulated”).

²⁶⁶ *Id.*

²⁶⁷ The United States’ non-refoulement obligation under Article 33 of the Refugee Convention is implemented by statute through section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), for mandatory withholding of removal. And the United States implements its obligations under Article 3 of the CAT through regulations. See Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277, sec. 2242(b), 112 Stat. 2681, 2681–822 (8 U.S.C. 1231 note); see also, e.g., 8 CFR 208.16(c), 208.17, 208.18, 1208.16(c), 1208.17, 1208.18.

fear of return, expresses an intention to apply for asylum, expresses a fear of persecution or torture, or expresses a fear of return to the noncitizen's country or country of removal. 89 FR at 48739–40. This rule does not, in any way, prevent noncitizens from manifesting or expressing such fears; rather, the rule ensures that noncitizens who manifest or express such fears are properly screened consistent with United States' non-refoulement obligations. *See* 8 CFR 235.15(b)(4). As explained in the IFR and this rule, the Departments believe that this requirement represents the best way to remain consistent with U.S. international obligations while simultaneously addressing the emergency circumstances at the southern border.

The Departments also do not believe the manifestation standard violates the INA or any other Federal law. As addressed in the IFR, 89 FR at 48739–40, DHS has broad authority to change the procedures that immigration officers apply to determine whether a noncitizen subject to expedited removal will be referred for a credible fear interview by an AO, so long as those procedures are consistent with the INA.²⁶⁸ In using this authority, the Departments are confident the manifestation standard is fully consistent with the statutory procedures governing expedited removal under section 235(b)(1)(A) of the INA, 8 U.S.C. 1225(b)(1)(A). That statutory section provides that only those noncitizens who “indicate[] either an intention to apply for asylum . . . or a fear of persecution,” INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i), must be referred to an AO for a credible fear interview, INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii). As such—and contrary to commenters' assertions—the INA does not require immigration officers to affirmatively ask every noncitizen subject to expedited removal if they have a fear of persecution or torture, nor does it define what circumstances constitute the requisite indication of intent or fear. To the contrary, the onus under the statute is on the noncitizen to indicate either of the circumstances warranting referral, which the IFR provides a noncitizen can do at any time during the process. *See* 89 FR at

48740.²⁶⁹ Thus, as discussed in Section III.B.2 of this preamble, the rule's approach accords with section 235(b)(1)(A)(ii) of the INA, 8 U.S.C. 1225(b)(1)(A)(ii).²⁷⁰

Separately, regarding commenters' concerns about departing from the longstanding practice of providing individualized advisals and asking affirmative questions, the Departments disagree that there are insufficient procedural protections for individuals subject to the rule. As the IFR acknowledged, the practice of providing individualized advisals and asking affirmative questions was originally adopted to “ensure that bona fide asylum claimants [were] given every opportunity to assert their claim[s].” 89 FR at 48742 (quoting 62 FR at 10318–19). However, importantly, the legacy INS further explained that enacting these procedures was intended to “not unnecessarily burden[] the inspections process or encourag[e] spurious asylum claims.” *Id.* (quoting 62 FR at 10318). While such procedures have remained in place in the expedited removal context since 1997, this fact alone does not indicate that they are required by the INA, and DHS maintains discretion to update the procedures in a manner consistent with the INA. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (holding that an agency changing an established rule must show that there are good reasons for the new policy but need not necessarily “provide a more detailed justification

²⁶⁹ *Accord Indicate*, Merriam-Webster's Collegiate Dictionary 592 (10th ed. 1996) (“to point out or point to,” “to be a sign, symptom, or index of,” “to demonstrate or suggest the necessity or advisability of,” or “to state or express briefly”); *Indicate*, New International Webster's Comprehensive Dictionary of the English Language 644 (1996) (“To be or give a sign of; betoken,” “To point out; direct attention to,” or “To express or make known, especially briefly or indirectly”); *Indicate*, The American Heritage Dictionary of the English Language 918–19 (3d ed. 1996) (“To show the way to or the direction of; point out,” “To serve as a sign, symptom, or token of; signify,” “To suggest or demonstrate the necessity, expedience, or advisability of,” or “To state or express briefly”); *Indicate*, Webster's II New Riverside University Dictionary 622–23 (1994) (“To show or point out,” “To serve as a sign, symptom, or token of; signify,” “To suggest or demonstrate the need, expedience, or advisability of,” or “To express briefly”).

²⁷⁰ *See Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 543 (1978) (“Absent constitutional constraints or extremely compelling circumstances the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.” (quotation marks omitted)); *Knauff*, 338 U.S. at 543 (“[T]he decision to admit or to exclude an alien may be lawfully placed with the President, who may in turn delegate the carrying out of this function to a responsible executive officer of the sovereign, such as the Attorney General.”); *Las Americas Immigr. Advoc. Ctr.*, 507 F. Supp. at 18.

than what would suffice for a new policy created on a blank slate”). And indeed, when emergency circumstances are present on the southern border, the procedures adopted in 1997 are unduly suggestive and, thus, unnecessarily burden the inspections process, which necessitates revisiting screening referral processes to more effectively and efficiently identify those noncitizens who may have a fear of return to their native country or country of removal or indicate an intention to seek fear-based relief or protection. Given the extraordinary circumstances facing the Departments during times of emergency border circumstances, DHS has determined it is reasonable to implement the manifestation standard.

The Departments similarly disagree that discontinuing use of the Form I–867A and Form I–867B during emergency border circumstances violates DHS's obligations under section 235(b)(1)(B)(iv) of the INA, 8 U.S.C. 1225(b)(1)(B)(iv), which states that DHS “shall provide information concerning the asylum interview . . . to aliens who may be eligible.” DHS continues to provide information concerning credible fear interviews to noncitizens in CBP custody subject to expedited removal who may be eligible to receive such an interview via signs and videos in multiple languages, satisfying DHS's statutory duty under the INA. This is precisely what footnote 194 of the IFR explains. Rather than any purported acknowledgement of conflict with the INA, that footnote was simply included to clarify the points above and illustrate that the IFR does, in fact, satisfy this statutory obligation. Moreover, as the IFR explains, 89 FR at 48741–42, noncitizens who manifest a fear of return (and, thus, who are in fact eligible for a credible fear interview) are given a more detailed written explanation of the credible fear interview process prior to being referred for the interview.²⁷¹ Additionally, noncitizens who manifest a fear in CBP custody are shown a video prior to their credible fear interview, which also explains the credible fear process in more detail.

The Departments also recognize commenters' concern regarding the IFR's explicit acknowledgment that the manifestation standard may result in some noncitizens with meritorious claims not being referred to a credible fear interview. *See, e.g.*, 89 FR at 48743–44. The Departments included these statements to demonstrate their

²⁷¹ That explanation will be translated into certain common languages or will be read to the noncitizen if required. 89 FR at 48741 n.194.

²⁶⁸ *See* INA 103(a)(1), (3), 8 U.S.C. 1103(a)(1), (3) (granting the Secretary the authority to establish regulations and take other actions “necessary for carrying out” the Secretary's authority under the immigration laws); *see also* 6 U.S.C. 202; *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (emphasizing that agencies “must be given ample latitude to adapt their rules and policies to the demands of changing circumstances” (quotation marks omitted)).

thorough consideration of all possible issues that might arise from the implementation of a manifestation standard at the southern border during emergency circumstances. In that vein, the Departments emphasize that the manifestation standard is a temporary solution to emergency border circumstances. In light of those circumstances, it is critical to have a system in place that more effectively and efficiently identifies those who may have a fear of return or indicate an intention to seek fear-based relief or protection. Unfortunately, any screening mechanism—even affirmative questioning—could result in some noncitizens with potentially meritorious claims not being referred for a credible fear interview. But given the emergency border circumstances facing the Departments and discussed in the June 3 Proclamation, the IFR, and this rule, the Departments believe the manifestation standard is appropriate and necessary.

b. Concerns About the Efficiency and Complexity of the Manifestation Standard

Comment: Several commenters expressed doubts about the Departments' claims that the change to the manifestation approach would increase efficiency, while others observed that the change would make the system more complex and create further inefficiencies. Relatedly, multiple commenters questioned the stated purpose of efficiency for eliminating the credible fear questions by CBP officers, writing that it instead appears to be a desire to reduce referrals of noncitizens for fear interviews and described the assertion by DHS in the preamble that the questions are suggestive and do not result in grants of asylum as unfounded.

One commenter questioned whether the Departments are sacrificing legitimate claims in the name of speed. Commenters wrote that the three questions and explanation previously required by the Form I-867A and Form I-867B take only a few minutes to read and criticized the Departments for alleging efficiency gains of 20 to 30 minutes by eliminating critical questions that could prevent refoulement. The commenters further stated that investing in adequate training and enforcing compliance with the "standard" screening process would be more efficient than providing additional guidance and requiring CBP officers to complete additional training. Another commenter described the scenario of CBP officers directing noncitizens to interpreters, who will

refer to the informative signs and videos the IFR's preamble described in CBP waiting rooms, and questioned whether this process would be shorter.

Response: Regarding commenters' concerns regarding complexity and efficiencies, the Departments continue to believe that the manifestation standard outlined in the IFR meets the purposes for which it was implemented—to increase processing efficiency and avoid suggestive advisals and questioning, while still ensuring that noncitizens are able to seek protection in the United States.

As outlined in the preamble to the IFR, DHS determined that, in times of emergency border circumstances, it was appropriate to temporarily eliminate the use of affirmative advisals and questions on the Forms I-867A and I-867B, based on DHS's determinations that such advisals and questioning can be suggestive. *See* 89 FR at 48743–45. The Departments disagree with the assertion that this determination was "unfounded." It was based on CBP's experience that, when noncitizens are asked affirmative questions like those on the Form I-867B, noncitizens are more likely to respond in the affirmative. The affirmative questions thus can serve as a prompt for noncitizens in custody to respond in the affirmative, even if they do not actually have a fear of persecution or torture. As outlined in the IFR, the Departments' determination is also consistent with the behavioral science concept of "acquiescence," or the tendency of respondents to "consistently agree to questionnaire items, irrespective of item directionality." *See* 89 FR at 48743 n.220. Regarding concerns that such studies are less probative of noncitizens' experiences in CBP custody, DHS notes that it did not rely, and is not relying, on these studies as the sole basis for its determination that the advisals and affirmative questions are suggestive, nor is it asserting that these studies provide the only justification for the implementation of the manifestation standard in this rule. Rather, the implementation of the standard was, as noted above, based in part on CBP's experience in the years implementing the expedited removal process that providing affirmative advisals and asking affirmative questions was suggestive. As noted in the IFR, these studies provide illustrative support for this learned experience. *See* 89 FR at 48743.

DHS continues to believe that the concept of acquiescence supports its determination, based on its decades of experience in the processing of noncitizens who enter the United States,

that the affirmative advisals on the Form I-867A and the questions on the Form I-867B are suggestive. This determination is informed, in part, by information that agency personnel regularly receive about the activities of TCOs in the region, including information that TCOs guide or coach many noncitizens on what to say in order to remain in the United States. It is DHS's experience that, upon encounter and inspection, the questions on the Form I-867B can prompt noncitizens to follow this guidance, thus leading them to claim a fear even if they would not have done so on their own. While DHS acknowledges that noncitizens could similarly be prompted to manifest a fear under the approach of the IFR and this rule, DHS continues to believe that this approach will at minimum mitigate this problem by removing suggestive questions. Moreover, DHS continues to believe that it is likely that noncitizens with a fear of return or an intent to seek asylum will manifest a fear absent the affirmative advisals and questions on the Form I-867B. This is supported by the fact that DHS is referring on average more than 300 individuals in DHS custody for credible fear interviews each day.²⁷²

DHS's determination that it was appropriate to eliminate the use of affirmative advisals and questions on the Form I-867B was also based in part on its assessment that such action would make the process more efficient. In particular, the Departments anticipated that the implementation of the manifestation standard would save approximately 20–30 minutes of processing time, contributing to increased efficiencies in processing and across the immigration process. *See* 89 FR at 48745. This assessment was based on the experience of CBP officers and agents with extensive experience reading and completing these forms, and DHS thus disagrees with commenters' contention that the completion of these forms only takes a few minutes. This is, in part, due to the fact that, when completing a sworn statement, such as the Form I-867A, officers and agents ask a number of questions of the noncitizen, each of which may need to be translated; the noncitizens' answers may need to be translated; and the officers and agents must record the answers to each question in the processing system. The noncitizen also must sign the sworn statement, which requires additional explanation that may require

²⁷² *See* OHSS analysis of data downloaded from UIP on September 3, 2024 (IFR ERCF tab).

translation. This question-and-answer process is in addition to the potential need to provide translation services to noncitizens, if needed, when reading noncitizens the contents of the Form I-867A. While it is difficult to provide the exact time saved as a result of these changes in processes (because USBP systems do not automatically track processing time, standing alone), it is CBP's experience in the time since the Proclamation and IFR were implemented that the elimination of these questions and processes (including not reading the contents of the Form M-444) has, as anticipated, saved approximately 20–30 minutes per person, and led to more efficient and expedited processing overall.

With regard to concerns questioning the stated purpose behind the changes, the Departments disagree that the true purpose of the changes was to reduce the number of individuals referred for credible fear screenings. As explained in the IFR, the shift to a manifestation standard is intended to address suggestive questions and, in so doing, reduce the gap between high rates of referrals and screen-ins with historic ultimate grant rates as well as increase processing efficiency for DHS. *See* 89 FR at 48742–44 & n.220. As explained above in this section, there are multiple reasons why the referral rate observed under a direct questioning approach is very likely greater than the true rate of noncitizens who fear removal or intend to seek asylum—including coaching by TCOs and the possibility that the advisals and questions lead to an unduly high rate of false positives. *See id.* at 48743 & n.220. Seeking to address this problem is not the same as seeking to decrease the number of referrals for that purpose alone, as commenters suggest. Moreover, noncitizens who manifest or express a fear still have their claims adjudicated as required by the INA.

The Departments appreciate commenters' suggestion that, rather than implementing a manifestation standard, resources should be devoted to providing additional training to CBP officers and agents on the non-IFR process, but decline to eliminate or change the manifestation standard at this time. As noted in the IFR and in this section, the Departments believe that, in the emergency border circumstances outlined in this rule, the manifestation standard is appropriate. In addition, CBP notes that its officers and agents have had experience implementing the statutory and regulatory requirements of expedited removal since they became effective and were implemented by legacy INS in

1997, including experience identifying indicators of fear.²⁷³ Guidance authored at that time explained that inspectors were required to refer a noncitizen to an AO if that noncitizen indicated an intention to apply for asylum or a fear of harm or concern about returning home.²⁷⁴ The guidance stated that immigration inspectors should consider verbal as well as non-verbal cues given by the noncitizen; and it provided that, when determining whether to refer the noncitizen, “inspectors should not make eligibility determinations or weigh the strength of the claims, nor should they make credibility determinations concerning the alien’s statements.”²⁷⁵ The guidance also highlighted that “[t]he inspector should err on the side of caution and apply the criteria generously, referring to the asylum officer any questionable cases, including cases which might raise a question about whether the alien faces persecution.”²⁷⁶ CBP also notes that, like legacy INS, under the IFR procedures and consistent with agency policy, agents and officers are instructed to err on the side of caution and refer any questions to supervisory officers.²⁷⁷

The Departments also disagree with comments indicating that the manifestation standard creates complexities. They maintain that the manifestation standard, in fact, decreases the complexity of the process, given the more streamlined approach taken in the rule and disuse of the Form I-867A and the Form I-867B. In addition, as outlined in the preamble to the IFR and throughout this rule, the rule also allows DHS to effectively and efficiently remove inadmissible noncitizens who are subject to expedited removal orders while quickly identifying inadmissible noncitizens who require a credible fear screening by USCIS AOs. *See* 89 FR at 48742–43.

²⁷³ *See* Memorandum for Mgmt. Team, Reg'l Dirs., et al., from Off. of the Dep. Comm'r, Immigr. & Naturalization Serv., DOJ, *Re: Implementation of Expedited Removal* (Mar. 31, 1997).

²⁷⁴ *See id.* at 3.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *See* CBP, *Securing the Border IFR and Presidential Proclamation CBP Manifesting Fear Guidance*; CBP, Off. of Field Operations, *Muster, Documenting Noncitizen Asylum of Fear Claims or Fear Manifestations* (July 18, 2024); Memorandum for Dirs., Field Operations, & Dir., Preclearance Operations, Off. of Field Operations, from Acting Exec. Dir., Admissibility & Passenger Programs, Off. of Field Operations, CBP, *Re: Processing Expedited Removal Cases & attach. (Muster)*; Memorandum Mgmt. Team, Reg'l Dirs., et al., from Off. of the Dep. Comm'r, Immigr. and Naturalization Serv., DOJ, *Re: Implementation of Expedited Removal at 3* (Mar. 31, 1997).

c. Implementation Guidance and Accuracy of Manifestation to Identify Fear of Return

Comment: Several commenters described the manifestation approach presented by the IFR as an unclear method of assessing fear of return and critiqued the rule as confusing or lacking clear guidance on implementation. A commenter expressed concern that the criteria requiring referral for a credible fear interview are overly broad, including a “mere belief” that a noncitizen may have a fear of return. Similarly, another expressed concern that the IFR lacks guidance around what degree of manifestation is required, whether immigration officers will consistently implement the manifestation requirement, and whether noncitizens will be provided information “if and when the Departments begin to figure out what is sufficient under this test,” while another commenter added that the existing U.S. asylum infrastructure is inadequate to administer the multiple layered and broad-ranging changes of the IFR, including the change to use manifestation.

Many commenters wrote that it is difficult and inappropriate for immigration officers to use manifestation of fear to assess fear of return. Commenters expressed concern that the IFR creates a confusing, non-transparent, and unfair situation for CBP officers to consider. A commenter described the manifestation standard as “deficient” in refugee protection and far from an equitable standard. The commenter wrote that requiring officers to simultaneously interrogate people at the border while also determining if their behaviors indicate fear is “nonsensical.” Similarly, another commenter remarked that Border Patrol agents and CBP officers focus on border security and the identification and prevention of criminal activity at the border, often placing them in an adversarial role with noncitizens that would leave these workers ill-equipped to make careful and considered asylum determinations. The commenter also described the contrasting extensive trauma-informed training given to AOs to learn interviewing techniques designed for vulnerable populations, adding that research shows that many noncitizens who qualify for asylum relief have difficulty expressing their claims without the support of such training techniques.

A commenter referenced a statement in the IFR noting that although the video explaining the importance of expressing a fear of return will not be

played at small facilities, immigration officers at such facilities have resources to be able to “devote a great deal of attention to observing individuals” to see if they manifest fear or need a translator or reading assistance. *See* 89 FR at 48741 n.196. The commenter stated that this suggests that the opposite is true at the larger facilities, *i.e.*, that officers at larger facilities will not have the time or wherewithal to scrutinize noncitizens for nonverbal signs of fear, and, in fact, expect the videos and signs to do a great deal of work for them.

Multiple commenters critiqued the IFR's directive for immigration officers to assess non-verbal shaking, crying, or fleeing behaviors as "unworkable." Commenters further expressed concern that the officers would not be able to discern whether newly arrived noncitizens were cold, hungry, tired, or exhibiting other unconscious behaviors as opposed to a fear of return. Commenters described this directive in the IFR as "absurd and disingenuous," writing that it would be more effective and accurate for CBP officers to directly ask simple questions regarding fear than trying to be "mind readers." Another commenter referenced studies and stated that nonverbal cues of fear would likely go unheard, reasoning that express manifestations of fear are being ignored.

Several commenters recommended requiring CBP officers to ask, in a language understood by the noncitizen, one question regarding whether they have a fear of return.

Many commenters cited research—including a 2022 study by the Center for Gender & Refugee Studies that interviewed 97 families expelled during a previous use of a manifestation approach while the Title 42 public health Order was in effect—that requiring manifestation lowers the rate of noncitizens receiving fear screenings. Commenters stated that human rights monitors have documented that using the manifestation approach has resulted in “CBP failing to refer people who expressed a fear of return to the required fear screening interviews,” and that the “shout” test under the Title 42 public health Order resulted in the erroneous return of many people, including women and children, to situations of danger. Another commenter observed lower statistics of credible fear interviews granted to Haitian nationals when given the “shout test” at sea by the U.S. Coast Guard (“USCG”) compared to the historical rate of credible fear interviews granted to migrants encountered by immigration officials at land borders, when the shout

test was not used. Lastly, commenters stated that the IFR is already leading to failures in properly referring noncitizens for fear interviews.

In addition, several commenters referenced research²⁷⁸ and expressed strong concern that CBP officers have a pattern of ignoring signs of fear in migrants. They critiqued the Departments' discussion and statistics of the likelihood of migrants responding affirmatively to asylum questions regardless of a valid fear of return, stating that the IFR's preamble does not cite any statistics about noncitizens failing to present legitimate fear claims in their interview or account for greater numbers of people seeking fear interviews if they are told they are available. A commenter stated that the statistics cited by the Departments have been directly contradicted by other research findings.

Similarly, a couple of commenters cited research²⁷⁹ that some families have been ignored or chastised for requesting asylum, voiced concern that CBP officers were hostile and mistreated noncitizens at the southern border, and further expressed concerns that under “the Shout Test” immigration officers have prevented migrants from speaking or verbally abused them.

Response: The Departments disagree that the manifestation standard is an unclear, confusing, or inaccurate method of assessing fear of return and are confident that the manifestation process in the IFR—including the use of signage and a video to provide generalized notice of the right to seek asylum and protection and the way to raise such a claim—is sufficient to provide individuals with an opportunity to seek asylum and protection, while also maintaining the efficiency gains discussed above. During the time that the manifestation process has been in place under the IFR, there have been higher rates of manifestation than when the standard was recorded and tracked for family units under the Title 42 public health Order, and DHS is referring on average more than 300 individuals in DHS custody for credible fear interviews each day.²⁸⁰

The Departments acknowledge that immigration officers have historically provided advisals regarding the credible fear process and ascertained a

²⁷⁸ See, e.g., Ctr. for Gender & Refugee Studies, “Manifesting” Fear at the Border: Lessons from Title 42 Expulsions, Jan. 30, 2024, <https://cgrs.uclawsf.edu/our-work/publications/%E2%80%9Cmanifesting%E2%80%9D%E2%80%9Dtitle-42-expulsions/>

²⁷⁹ See, e.g., *id.*

²⁸⁰ See OHSS analysis of data downloaded from UIP on September 3, 2024 (IFR ERCF tab).

noncitizen's fear through affirmative questioning, through use of the Form I-867A and Form I-867B, and that removing these questions is a significant change. Thus, the Departments acknowledge that the manifestation process is, in the context of expedited removal, a new process both for officers and agents and for noncitizens. However, the Departments disagree that USBP agents and CBP officers are not equipped or trained to properly identify individuals who are vulnerable or who indicate or manifest fear. When implementing this process, agents and officers draw on their longstanding experience and practice observing and interacting with individuals, including observing any indications or behaviors of concern. Immigration officers have implemented the regulatory and statutory standards governing expedited removal since it was implemented in 1997, and, as noted above, they have had guidance regarding the treatment of noncitizens processed under these provisions since that time.

Additionally, CBP provided guidance to its frontline workforce implementing the IFR delineating how fear can be manifested by a noncitizen in many different ways, including verbally, non-verbally, or physically; CBP also provided examples and indicators. Such indicators include statements of fear; statements that the noncitizen was previously harmed in their home country or country of removal; evidence of physical injury consistent with abuse (e.g., bruises, scars); evidence of self-harm; or non-verbal actions that may indicate fear such as hysteria, trembling, shaking, unusual behavior, changes in tone of voice, incoherent speech patterns, panic attacks, or an unusual level of silence.

Furthermore, the recent guidance on IFR implementation provides that, if officers or agents are in doubt, or if ambiguity exists as to whether a noncitizen's statement, actions, or behavior constitute a manifestation of fear, expression of fear, or expression of an intent to seek asylum or related protection, then officers and agents should refer the matter to a supervisor.²⁸¹ And, as noted above, existing guidance and CBP practice is to err on the side of caution and on the side of referring an individual to USCIS.²⁸²

²⁸¹ See *id.*; see also CBP, Off. of Field Operations, *Muster, Documenting Noncitizen Asylum or Fear Claims or Fear Manifestations* (July 18, 2024).

²⁸² See Memorandum for Dir., Field Operations, & Dir., Preclearance Operations, Off. of Field Operations, from Acting Exec. Dir., Admissibility & Passenger Programs, Off. of Field Operations, CBP,

The Departments also disagree with the commenters' concerns that the manifestation of fear standard is difficult and inappropriate, confusing, or unfair for agents and officers to apply, or that agents and officers are ill-equipped to determine the nature of an individual's fear claim. Indeed, USBP agents and CBP officers, as immigration officers, are intimately familiar with the processing of individuals, including vulnerable populations or populations requiring additional care, safety, security, or medical assistance, and with recognizing the needs of such individuals. As a result of their experience and training, CBP immigration officers (both USBP agents and CBP officers) have skills and expertise in interacting with individuals and observing human behavior and in determining appropriate follow-up steps with regards to any behaviors or indicators of concern. *See* 89 FR at 48744. For instance, upon encountering a group of individuals who purport to be a family, USBP agents will observe the individuals to determine whether they evidence typical familial behavior or whether there are any concerns about the validity of the asserted familial relationship or the safety of any children in the group. *Id.* Additionally, agents and officers frequently encounter individuals who may be vulnerable, including those in physical or medical distress or in need of humanitarian care, as well as those who may be seeking protection in the United States. *Id.* Agents and officers can similarly use such skills and experiences to identify any manifestations of fear. *Id.* DHS believes that this experience, coupled with guidance, helps agents and officers effectively identify noncitizens with potential fear or asylum claims under a manifestation approach. *Id.*

The Departments acknowledge that interactions between agents and officers and noncitizens occur in the context of an immigration inspection and interview and in a custodial environment, but disagree with commenters' suggestion that the interview is "adversarial" in such a manner that noncitizens would be unlikely to manifest fear or officers would have difficulty recognizing manifestations of fear. Such immigration inspections and interviews are conducted for the sole purpose of

determining an individual's admissibility under the immigration laws of the United States and ensuring that they are processed accordingly.²⁸³ In addition, the Departments note that, when in use, the Form I-867A and Form I-867B are also completed in this same context. During such an immigration inspection, officers and agents have face-to-face interactions with the noncitizen and thus have a chance to closely observe the individual who is being inspected, to identify those who may have a fear of return or indicate an intention to seek fear-based relief or protection.²⁸⁴ The Departments reiterate that agents and officers do not assess the merits of an individual's claim of fear. The Departments acknowledge that fear can be manifested in many different ways, including verbally, non-verbally, or physically, and that when doubt or ambiguity exists, officers and agents should involve supervisors or managers to ensure appropriate decisions are made. The Departments also reiterate that USBP agents and CBP officers do not determine whether a noncitizen is excepted from the rule's limitation on asylum eligibility. Such decisions are made by a USCIS AO or, for those processed with an NTA, by an IJ. *See* 8 CFR 208.35(b)(1); 8 CFR 1208.35(a). Agents and officers are responsible for identifying whether an individual has manifested or expressed a fear and, if so, referring them for further consideration by an AO.

Additionally, the Departments note that, under the manifestation standard, a noncitizen is not required to verbally express or state that they have a fear. Contrary to commenters' concerns, the IFR does not impose a "shout test." As outlined in the IFR, manifestations of fear may be verbal, non-verbal, or physical. 89 FR at 48739–45. Thus, a migrant can manifest a fear through an unconscious behavior. *Id.* at 48744. The Departments acknowledge and appreciate that some noncitizens may have difficulty volunteering a fear of return to agents and officers during processing. However, certain migrants may also have difficulty volunteering their fear in response to the previous questions on the Form I-867B, given that the questions are asked by immigration officers in the context of the immigration process. Additionally, for noncitizens who may be hesitant to answer questions or to affirmatively express a fear, the manifestation

standard and CBP officer and agent training and experience, as well as observations from the inspection itself, take into account physical and non-verbal manifestations, some of which may be unconscious by the noncitizen.

The Departments acknowledge a two-page document cited by commenters regarding the prior use of a manifestation standard under the Title 42 public health Order.²⁸⁵ The document asserts that from June through October 2022, advocates interviewed at least 97 families expelled to cities along the SWB, of whom over half reported that they had verbally expressed a fear of return and nearly three-quarters reported having non-verbally expressed a fear. According to the document, multiple migrants sought to raise fear claims with "CBP officers" but such officers did not allow them to speak and ultimately expelled them to Mexico. The Departments lack a basis to independently evaluate the advocates' methodology (which is largely undescribed) or the accuracy of migrants' claims as described in the document. At the same time, the Departments note that most of the specific allegations in the document involve behavior—officers not allowing noncitizens to speak—that would be a violation of CBP policy under the Title 42 public health Order, under this rule,²⁸⁶ and under the Form I-867A/B approach that applies when emergency border circumstances are not in place.²⁸⁷ For this reason, and due to the distinctions between processing under the IFR and during the implementation of the Title 42 public health Order described below, DHS does not regard this study as providing persuasive evidence that the manifestation approach of the IFR and this rule has not been and will not be effective.

The Departments disagree with commenters' implicit suggestion that the implementation of the IFR is substantially similar to the

²⁸⁵ *See* Ctr. for Gender & Refugee Studies, "Manifesting" Fear at the Border: Lessons from Title 42 Expulsions (Jan. 30, 2024), <https://cgrs.uclawsf.edu/our-work/publications/%E2%80%9Cmanifesting%E2%80%9Dfear-border-lessons-title-42-expulsions>.

²⁸⁶ *See, e.g.,* CBP, *Securing the Border IFR and Presidential Proclamation CBP Manifesting Fear Guidance* (requiring officers and agents to refer any noncitizen who manifests a fear for a credible fear interview with USCIS).

²⁸⁷ *See* Memorandum for Dirs., Field Operations, & Dir., Preclearance Operations, Off. of Field Operations, from Acting Exec. Dir., Admissibility & Passenger Programs, Off. of Field Operations, CBP, *Re: Processing Expedited Removal Cases & attach. at 1 (Muster)*; Memorandum for Chief Patrol Agents, Tucson & Laredo Sectors, from David V. Aguilar, Chief, USBP, *Re: Expedited Removal Policy at 7–8 (Aug. 11, 2004)*.

Re: Processing Expedited Removal Cases & attach. (Muster); Memorandum for Chief Patrol Agents, Tucson & Laredo Sectors, from David V. Aguilar, Chief, USBP, *Re: Expedited Removal Policy (Aug. 11, 2004)*; Memorandum for Mgmt. Team, Reg'l Dirs., et al., from Off. of the Dep. Comm'r, Immigr. & Naturalization Serv., DOJ, *Re: Implementation of Expedited Removal (Mar. 31, 1997)*.

²⁸³ *See, e.g.,* INA 235(a)(3), 8 U.S.C. 1225(a)(3); 8 CFR 235.1; 8 CFR 235.3(a).

²⁸⁴ *See* CBP, *Securing the Border IFR and Presidential Proclamation CBP Manifesting Fear Guidance*.

implementation of the manifestation standard used during the Title 42 public health Order, such that experience under Title 42, including in the study mentioned above, demonstrates that the manifestation standard is inherently unreliable. As an initial matter, the manifestation under the IFR occurs in the context of immigration processing under title 8, rather than in the context of processing and expulsion under Title 42. Immigration processing is, as a general matter, a more complex process than the processing that occurred under Title 42, with noncitizens generally interacting with immigration officers during processing for a longer period of time than occurred during processing for expulsion. For example, the processing of an individual for expulsion under Title 42 took, on average, less than 30 minutes, as compared to, under the current processes under the IFR, approximately 1.5 hours. Therefore, noncitizens have a longer period of time to interact with the processing agents or officers, and potentially manifest a fear. In addition, noncitizens processed under title 8 procedures under the IFR provisions are generally in CBP custody for longer than under Title 42, and can manifest a fear at any time in DHS custody.

Additionally, based on best practices and lessons learned during the implementation of the Title 42 public health Order, the Departments have implemented several operational advancements and information sharing developments. Under the IFR and this rule, noncitizens have access to signage explaining that they may manifest fear during their time in DHS custody. Noncitizens in large-capacity facilities can also view videos explaining the manifestation standard and the general process they are receiving. 89 FR at 48741–42. As noted above, during implementation of the public health Order under Title 42, the DHS process was more expedited. This resulted in a narrower window of opportunity for a noncitizen to manifest a fear in DHS custody. This difference can be seen through the higher number of noncitizens manifesting fear under the IFR. Since the implementation of the IFR, 27 percent of noncitizens encountered between POEs at the SWB have manifested fear while in DHS custody.²⁸⁸ Between June 3, 2022, and May 11, 2023, when the use of the manifestation standard for noncitizens encountered and subject to the Title 42 public health Order was tracked, less than 7 percent of individuals in family

units processed under the Title 42 public health Order nationwide were recorded as having manifested a fear in USBP custody and were, in general, excepted from the Title 42 public health Order. As evidenced by the significantly higher manifestation rate under the IFR as compared to what had been recorded during implementation of the Title 42 public health Order, the two circumstances are not comparable. Noncitizens encountered along the SWB under the IFR have manifested a fear and been referred to an AO for a credible fear interview on a much more frequent basis. At the same time, as discussed in Section II.A.2 of this preamble, fear-claim rates remain well below the very high rates following the ending of the Title 42 public health Order and prior to the IFR. During emergency border circumstances, it is critical for the Departments to devote their processing and screening resources to those urgently seeking protection while quickly removing those who are not. DHS believes that the manifestation standard, rather than affirmative questioning, better achieves this balance in emergency border circumstances. See 89 FR at 48744.

With regards to commenters' concerns that, particularly at large-capacity facilities, officers and agents may not be able to "scrutinize" noncitizens for nonverbal signs of manifestation of fear, the Departments disagree. As acknowledged in the preamble to the IFR, CBP has placed signs in its facilities along the SWB advising noncitizens of their ability to express or manifest a fear, and has placed videos in its larger facilities. 89 FR at 48741–42. DHS explained that, at smaller facilities, such videos are not played, but officers and agents have had sufficient resources to devote to observing individuals to determine if they manifested a fear. *Id.* at 48741 n.196. This statement was intended to explain why a video was not necessary at such facilities, but is not intended to convey any lack of attention to such claims at large-capacity facilities. Indeed, as noted above, agents and officers interview and observe noncitizens during their immigration inspection and interviews, which occur one-on-one. CBP operations at any CBP facilities with noncitizens in custody are staffed and operate 24 hours a day. Every CBP officer and agent receives annual training on CBP National Standards on Transport, Escort, Detention, and Search (TEDS)—which provide standards for the custodial conditions in CBP facilities—that ensures every noncitizen in CBP

custody is monitored for care and safety, including a provision requiring officers and agents to "physically check" areas where noncitizens are held "on a regular and frequent manner," providing noncitizens with an opportunity to raise any concerns or needs directly with CBP personnel conducting the checks.²⁸⁹ Noncitizens in custody at CBP facilities are generally under continuous and direct supervision by multiple personnel and may seek assistance or ask questions of any of those individuals supervising their holding areas at any time. See 89 FR at 48744. DHS is confident that, during this time, even in large-capacity facilities, agents and officers have sufficient experience and expertise to identify manifestations or expressions of fear. Likewise, noncitizens in custody at ICE facilities may seek assistance or ask questions and are supervised such that officers, who have experience and expertise in these interactions, can identify manifestations or expressions of fear. It is important to note that a noncitizen does not have a finite or limited number of opportunities to manifest fear, but rather may manifest fear at any point while in DHS custody.

Further, regarding comments that express concerns and reference reports concluding that the manifestation standard has resulted in failures to refer noncitizens for a required fear interview, and comments recommending that, given this, officers and agents should ask, at a minimum, a question about fear in the noncitizen's native language, the Departments are aware of these studies and their conclusions. The Departments acknowledge that, under the manifestation approach outlined in this rule, there may be some noncitizens who have a fear of persecution or a fear of return, but who are not referred for a credible fear interview. However, the Departments do not believe that such a possibility is unique to the manifestation standard, and, in any event, DHS has taken steps, including posting signs and videos and providing guidance to its personnel, to help mitigate this possibility. Having considered the reports commenters cite, as well as the mitigating steps DHS has taken and the lessons learned from DHS's experiences during processing under the Title 42 public health Order, the Departments continue to believe that the manifestation standard is

²⁸⁸ See OHSS analysis of data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

²⁸⁹ CBP, *National Standards on Transport, Escort, Detention, and Search (TEDS)* 4.6, at 16 (Oct. 2015), <https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search>.

appropriate in the circumstances outlined in the IFR and this rule. Moreover, as explained earlier in this response, the Departments' implementation of the IFR has resulted in a fear-claim rate substantially higher than the rate observed under the Title 42 public health Order, further suggesting that the circumstances from other operational contexts, including those studied in earlier research, may be inapposite.²⁹⁰ DHS acknowledges that asking a single question about fear would be an alternative to the approach adopted in this IFR. However, DHS declines to implement such an option, as it would be subject to the same concerns that DHS outlined in the preamble to the IFR with regards to a short, individualized advisal. As noted in that preamble, DHS has determined that, during times of emergency border circumstances, a short, individualized advisal would be unlikely to convey information more effectively than signs and videos. *See* 89 FR at 48744. In particular, the Departments assessed that if an advisal could be developed that was short enough to avoid unduly lengthening processing times in the current emergency situation, such an advisal would be unlikely to convey information more effectively than the existing signs and videos, and such an advisal would still have the suggestiveness problems of the current system. The Departments assess that asking a single question—particularly in the context of the expedited removal process under the IFR where there are no individualized advisals provided—would likely present the suggestiveness problems of the current system. DHS thus declines to implement this change.²⁹¹

²⁹⁰ As noted in the IFR, the manifestation standard is used by the USCG, a DHS component, to determine whether an at-sea protection screening interview is required for migrants interdicted at sea. *See* 89 FR at 48744. Although the Departments believe these other uses support the view that a manifestation standard can be effective, having implemented the IFR's manifestation standard and observed the results of that standard, the Departments now believe that the difference between the operational contexts limits the usefulness of the direct comparison as suggested by some commenters.

²⁹¹ As noted in the preamble to the IFR, the Departments acknowledge that there are some studies articulating that the Form I-867A and Form I-867B provide important protections. As explained in the IFR, DHS disagrees with these studies to the extent that they conclude that individualized advisals and affirmative questions are not suggestive, based on DHS's longstanding experience with this process. Indeed, such studies are now nearly two decades old and were done at a time when, as described above, the ER process was very different from what it is now. Additionally, given that the studies do not account for the signs, videos, and other means of providing information under the IFR's approach, DHS does not believe they are

To the extent that there are allegations that an agent or officer ignored expressions or manifestations of fear by a noncitizen, such conduct is contrary to DHS policies and practices, and would be treated as such. The Departments again note that, to the extent it exists, such employee misconduct would not be unique to the implementation of this rule. Nor do such claims provide a persuasive reason to depart from the approach this rule adopts to address emergency border circumstances. As already explained, DHS has provided guidance to CBP and ICE agents and officers on how to identify manifestations of fear; that guidance directs them to refer individuals who manifest fear for a credible fear screening, including instructing them to err on the side of referral. 89 FR at 48744. If agents or officers disregard those instructions—which could occur with or without this rule—DHS has procedures in place for reporting misconduct.²⁹² DHS relies on

particularly probative as a means of assessing the effectiveness of this approach.

²⁹² CBP takes allegations of employee misconduct very seriously, and allegations of serious misconduct are investigated by CBP's Office of Professional Responsibility (OPR). CBP, *Office of Professional Responsibility*, <https://www.cbp.gov/about/leadership-organization/professional-responsibility> (last modified Mar. 29, 2024). Allegations of misconduct by a CBP employee or contractor can be sent to CBP OPR's Intake Center via email: JointIntake@cbp.dhs.gov, or via phone: 1-877-2INTAKE (246-8253), Option 5. Similarly, ICE's Office of Professional Responsibility ("OPR") takes employee misconduct very seriously and manages and investigates allegations of employee misconduct and oversees a variety of other integrity programs that protect the public trust and preserve the highest standards of integrity and accountability across the agency. ICE, *Office of Professional Responsibility*, <https://www.ice.gov/about-ice/opr> (last updated May 15, 2024). To promote integrity, mitigate risk, and uphold the agency's professional standards, the OPR-led Integrity Coordination Center receives and assesses information and refers any allegations of employee misconduct to appropriate offices for investigation, if necessary. ICE, *Office of Professional Responsibility*, <https://www.ice.gov/about-ice/opr> (last updated May 15, 2024). This process ensures that allegations of criminal or administrative misconduct against ICE personnel are properly assessed and thoroughly investigated. ICE, *Office of Professional Responsibility*, <https://www.ice.gov/about-ice/opr> (last updated May 15, 2024). Allegations of misconduct by an ICE employee or contractor can be sent to ICE OPR's Integrity Coordination Center via email: ICEOPRIntake@ice.dhs.gov, via phone: 1-833-4ICE-OPR (833-442-3677), or via the "File a Complaint" web link. ICE, *Integrity Coordination Center—Intake Form*, <https://www.ice.gov/webform/opr-contact-form> (last updated Jan. 9, 2024).

Additionally, the DHS Office of Inspector General and the DHS Office for Civil Rights and Civil Liberties are also available for the public, including previously removed noncitizens, to provide feedback and make complaints involving DHS employees, including officers and agents, or programs; to submit allegations of civil rights and civil liberties violations; and to submit other types of grievances. *See, e.g.*, DHS, Off. of Inspector Gen.,

these procedures generally to ensure that personnel are following applicable law and guidance, and DHS assesses that these procedures are generally effective. If allegations of misconduct are found to be substantiated and misconduct is found, such findings may lead to, for instance, disciplinary action against involved personnel and referral for criminal charges if a determination is made that any laws were violated. In addition, regardless of whether any such findings are substantiated, DHS may impose additional training and policy measures consistent with the rule's provisions.

Concerns about misconduct by individual employees are further mitigated by the reality that, as explained above, noncitizens do not have just one chance to manifest fear while in CBP or ICE custody: Noncitizens will typically interact with multiple agents and officials, and they can manifest fear to any of them. Noncitizens will have these opportunities, moreover, after being exposed to signs and videos explaining that they can manifest fear. From June 5, 2024, through August 31, 2024, the median processing time from encounter through repatriation for a case with no fear claims was 6 days.²⁹³

Moreover, commenters have provided no evidence that there is a widespread problem of CBP officers and agents ignoring fear claims under the IFR. As described above, there are a number of mechanisms within the Department for such complaints and concerns to be raised, and CBP is not aware of any substantiated allegations of misconduct raised through these channels. And the data showing a manifestation rate of 27 percent under the IFR—though not alone proving a negative or showing that no fear claims are being missed—indicate that officers and agents are following their guidance and reporting manifestations of fear in a large number of cases. For all these reasons, DHS does not believe the commenters' arguments provide a reason to depart from the rule's approach.

Comment: A few commenters reasoned that because the manifestation of fear approach does not require documentation, unlike affirmative questioning, the IFR removes appropriate accountability. One commenter described the change to using manifestation as "a dangerous reversal of a procedural safeguard that

Hotline, <https://www.oig.dhs.gov/hotline> (last visited Sept. 21, 2024); UDHS, *Office for Rights and Civil Liberties*, <https://www.dhs.gov/office-civil-rights-and-civil-liberties> (last visited Sept. 21, 2024).

²⁹³ OHSS analysis of data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

has been implemented to ensure the United States' compliance with its international obligations," expressing concern that other safeguards are already being removed. A commenter expressed concern that the Departments have eliminated the Form I-867A and Form I-867B without replacing them with any other documentation, which they wrote could make it impossible to have any record of missed viable claims for asylum or the total extent of any such errors. Another commenter asserted that the previous system of requiring immigration officials to complete and sign two forms incentivized officials to be honest and critiqued the manifestation approach as leaving no paper trail. Another commenter stated that the manifestation standard would worsen already problematic interactions between CBP officers and noncitizens. The commenter referenced a report²⁹⁴ finding that CBP officers had an "alarming" rate of irregularities and non-conforming practices when assessing fear of return, including failing to read the required script for the Form I-867A, failing to record answers correctly, and using questionable interpretation practices. Another commenter discussed reports finding that many interviews conducted by CBP and ICE were marked by inaccuracies, mistranslations, and fabricated information, as well as research showing that in most situations when migrants stated that CBP agents did not ask about their fear of return, the immigration records showed instead that this question had been asked and answered.

Response: The Departments disagree that the manifestation of fear standard removes accountability or eliminates official documentation of a fear claim. As an initial matter, while CBP officers and agents are not required to provide noncitizens with an M-444 and do not complete a Form I-867A or Form I-867B when the IFR's provisions are in effect, fear claims are documented in the relevant electronic systems. Guidance issued to both USBP and the OFO requires that, when a noncitizen subject to the Proclamation and the IFR is being processed for expedited removal, and manifests a fear, that noncitizen is to be processed under a particular disposition code in the electronic processing

system.²⁹⁵ This code is unique to those who are processed for expedited removal and who manifest a fear. Additionally, while noncitizens processed for expedited removal under the IFR procedures are not required to be provided the Form M-444, they continue to be provided information about the credible fear process, through a tear sheet called *Information about Credible Fear Interview* and by video, and they are provided the opportunity to consult with an individual of their choosing.²⁹⁶ CBP facilities also have signage and, in some cases, videos, providing notice to all noncitizens in custody that, if they have a fear of return, they should inform an agent or officer. 89 FR at 48741. This manifestation may occur at any point during a noncitizen's time in CBP custody, and if such a claim is made, it must be documented in the relevant electronic system at that time.

ICE maintains an electronic system to record case management actions for noncitizens, including referrals to an AO and the disposition of a noncitizen's credible fear determination.²⁹⁷ If a noncitizen manifests or expresses a fear after their initial encounter with CBP, while in ICE custody, ICE guidance requires officers to refer the case to USCIS for a credible fear interview, including having an opportunity to

consult with an individual of their choosing prior to their credible fear interview.²⁹⁸

Per applicable guidance, ICE documents any manifestation or expression of fear on the Form G-166C, which also verifies that the noncitizen has been provided information on the credible fear interview process and the specific language in which it was provided.²⁹⁹ ICE guidance requires that all documentation, including the claim of credible fear and USCIS fear referral package, are captured in an electronic system of records.³⁰⁰

ICE and CBP utilize the same electronic database system for case management of noncitizens and have electronic access to these records.³⁰¹ ICE tracks noncitizens transferred from CBP to ICE custody who have manifested fear through the same system.³⁰² This system ensures that information relating to a noncitizen's case, including fear manifestation, is properly referred to USCIS.³⁰³

²⁹⁸ ICE, *Implementation Guidance for Noncitizens Described in Presidential Proclamation of June 3, 2024, Securing the Border, and Interim Final Rule, Securing the Border*, at 4 (June 4, 2024) ("If ERO determines that a noncitizen subject to expedited removal manifests a fear of return or expresses an intention to apply for asylum or related protection, or expresses a fear of persecution or torture, or expresses a fear of return to his or her country or designated country of removal, the officer will provide the noncitizen with the Information About Credible Fear Interview Sheet and refer the noncitizen to USCIS for a credible fear interview.").

²⁹⁹ ICE, Broadcast message for Field Office Directors and Deputy Field Office Directors, from Asst. Dir. for Field Operations, *Re: Procedures for Processing Noncitizens that Fall Under the Presidential Proclamation and Interim Final Rule* (June 7, 2024).

³⁰⁰ *Id.*

³⁰¹ DHS, *Privacy Impact Assessment for the Enforcement Integrated Database (EID)*, at 2, 4 (Dec. 3, 2018), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-eid-december2018.pdf>.

³⁰² ICE, Broadcast message for Field Office Directors and Deputy Field Office Directors, from Asst. Dir. for Field Operations, *Re: Procedures for Processing Noncitizens that Fall Under the Presidential Proclamation and Interim Final Rule* (June 7, 2024) ("The new processing dispositions [by CBP] can be tracked in the ICE [system's] Dashboard . . . by selecting these new processing dispositions . . ."); DHS, *Privacy Impact Assessment for the Enforcement Integrated Database (EID)*, at 2, 4 (Dec. 3, 2018), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-eid-december2018.pdf>.

³⁰³ ICE, Broadcast message for Field Office Directors and Deputy Field Office Directors, from Asst. Dir. for Field Operations, *Re: Procedures for Processing Noncitizens that Fall Under the Presidential Proclamation and Interim Final Rule* (June 7, 2024) (for cases transferred to ICE from CBP after a noncitizen has manifested fear, "[t]he existing automated referral solution using the 'Refer Credible Fear to USCIS button' in [the electronic system] will be available for use . . . [and the automated] functionality will function as designed."); DHS, *Privacy Impact Assessment for the Enforcement Integrated Database (EID)*, at 2, 4

Continued

²⁹⁴ See U.S. Comm'n on Int'l Religious Freedom, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal*, at 19 (Aug. 2, 2016), <https://www.uscirf.gov/publications/barriers-protection-treatment-asylum-seekers-expedited-removal>.

²⁹⁵ See Memorandum for All Chief Patrol Agents & All Exec. Directorates, from Jason D. Owens, Chief, USBP, *Re: Processing Guidelines for Noncitizens Described in Presidential Proclamation, Securing the Border and Interim Final Rule, Securing the Border* at 4-5 (June 4, 2024); Memorandum for Exec. Dirs., Headquarters, & Dirs., Field Operations, Off. of Field Operations, from Ray Provencio, Acting Exec. Dir., Admissibility & Passenger Programs, Off. of Field Operations, CBP, *Re: Implementation of Presidential Proclamation and Interim Final Rule, Securing the Border* attach. at 3-5 (June 4, 2024) (Muster).

²⁹⁶ See Memorandum for All Chief Patrol Agents & All Exec. Directorates, from Jason D. Owens, Chief, USBP, *Re: Processing Guidelines for Noncitizens Described in Presidential Proclamation, Securing the Border and Interim Final Rule, Securing the Border* 4-5 (June 4, 2024); 6.4.24 USBP Field Guidance ER IFR 1; Memorandum for Exec. Dirs., Headquarters, & Dirs., Field Operations, Off. of Field Operations, from Ray Provencio, Acting Exec. Dir., Admissibility & Passenger Programs, Off. of Field Operations, CBP, *Re: Implementation of Presidential Proclamation and Interim Final Rule, Securing the Border* attach. at 4 (June 4, 2024) (Muster).

²⁹⁷ ICE, Broadcast message for Field Office Directors and Deputy Field Office Directors, from Asst. Dir. for Field Operations, *Re: Procedures for Processing Noncitizens that Fall Under the Presidential Proclamation and Interim Final Rule* (June 7, 2024) (ICE officers are instructed "to document the Claim Credible Fear, Fear Referral package submitted, and all subsequent CF related actions in [the electronic system's] Actions and Decisions Tab"); DHS, *Privacy Impact Assessment for the Enforcement Integrated Database (EID)*, at 2, 4 (Dec. 3, 2018), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-eid-december2018.pdf>.

With regard to a commenter's concern that the absence of affirmative questioning will result in irregularities and non-conforming practices when assessing fear of return, the Departments disagree. The Departments acknowledge that, under the standard outlined in this rule, official documentation will indicate if a noncitizen expressed or manifested a fear, but will *not* contain an express similar record of a lack of such manifestation. DHS acknowledges that this is a change from non-IFR practices, in which a noncitizen's case file will reflect that the individual was provided with the Form I-867A advisals and will contain the noncitizen's response to the questions in the Form I-867B. DHS disagrees that the lack of such documentation under the manifestation of fear standard removes accountability from CBP officers and agents, incentivizes any falsification of records, or undermines the validity of the manifestation process. During immigration processing, CBP officers and agents ask a noncitizen a number of questions, including about their biographic information, nationality, and purpose of travel to the United States. The processing officer or agent records the noncitizen's answers to these questions in the electronic processing system.³⁰⁴ In addition, as noted above, any individual who is processed for expedited removal and manifests or expresses a fear is processed using a unique code in the electronic system.³⁰⁵ Officers and agents have an obligation, as law enforcement officers and Federal employees, to ensure that the record of a particular individual's case file is accurate and complete,³⁰⁶ which

(Dec. 3, 2018), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-eid-december2018.pdf>.

³⁰⁴ See DHS, *Privacy Impact Assessment for the CBP Portal (E3) to ENFORCE/IDENT, DHS/CBP/PIA-012*, at 1, 3 (July 25, 2012), <https://www.dhs.gov/publication/cbp-portal-e3-enforceident> (discussing the type of information collected from noncitizens and how it is recorded in the electronic system).

³⁰⁵ See Memorandum for All Chief Patrol Agents & All Exec. Directorates, from Jason D. Owens, Chief, USBP, *Re: Processing Guidelines for Noncitizens Described in Presidential Proclamation, Securing the Border and Interim Final Rule, Securing the Border* at 4 (June 4, 2024); Memorandum for Exec. Dirs., Headquarters, & Dirs., Field Operations, Off. of Field Operations, from Ray Provencio, Acting Exec. Dir., Admissibility & Passenger Programs, Off. of Field Operations, CBP, *Re: Implementation of Presidential Proclamation and Interim Final Rule, Securing the Border* attach. at 3–5 (June 4, 2024) (Muster).

³⁰⁶ See, e.g., 44 U.S.C. 3101 (providing that federal agencies “make and preserve records containing adequate and proper documentation of the [official activities] of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons affected by the agency's activities”).

includes any manifestations or expressions of fear. Thus, the lack of such a code indicates that the individual did not manifest a fear. However, to the extent that an officer or agent failed to accurately record a manifestation of fear, the lack of the unique code in the noncitizen's file itself would provide a record of that failure—just as an inaccurate “no” answer to a question on a Form I-867B would if a noncitizen actually answered “yes” to the question. To the extent that commenters are concerned about potential misconduct by officers and agents, CBP and ICE take allegations of misconduct very seriously and have mechanisms in place to investigate and respond to such allegations as discussed above.

Comment: Multiple commenters expressed concern that the IFR and “shout test” approach avoids the provision of necessary interpretation by immigration officers and thwarts appropriate language access for migrants, often adding that immigration officers are not likely to understand expressions of fear in languages other than English or Spanish. Commenters further stated that the IFR might disproportionately impact speakers of Indigenous languages, who may be able to communicate regarding basic information in Spanish but may be unable to discuss the complicated matter of a fear-based claim in anything other than their native language. Similarly, a commenter observed that noncitizens are held in facilities for only a limited time and that during that time language needs might be overlooked. In the same vein, another commenter expressed concern that the IFR and the preamble are not clear regarding how noncitizens who speak languages other than English or Spanish are expected to manifest fear, when they may be able to communicate only basic identification in English or Spanish and Border Patrol agents are not incentivized to seek an interpreter in the noncitizen's language.

Response: The Departments disagree with commenters expressing a belief that immigration officers are not likely to understand expressions of fear in languages other than English or Spanish and that they are not incentivized to seek an interpreter. As noted, noncitizens are not required to verbally express or state a fear. A fear can also be manifested non-verbally or physically. In addition, CBP has legal and policy obligations to provide language access services and translation and has long recognized the importance of effective and accurate communication between CBP personnel and the public. Ensuring effective communication with

all persons, including limited English proficiency (“LEP”) persons, facilitates CBP's mission.

It is the policy of CBP to take reasonable steps to provide LEP persons with meaningful access, free of charge, to its operations, services, and other conducted activities and programs without unduly burdening the Agency's fundamental mission.³⁰⁷ This policy applies to all methods of communication—e.g., verbal (including telephone); correspondence (including emails); websites; newsletters; community engagement activities; and flyers, posters, pamphlets, and other documents explaining CBP programs.³⁰⁸ This policy also applies to interactions with the public, including law enforcement encounters (e.g., questioning, processing, etc.).³⁰⁹ As a result of and related to these policy obligations, CBP agents and officers have extensive experience and training in identifying whether an individual requires a translator or interpreter or is unable to understand a particular language. In addition, CBP facilities have “I Speak” signs, which are signs that assist literate individuals to identify a preferred language from one of over 60 possible languages.³¹⁰ Upon implementation of the IFR, signs were posted in areas of CBP facilities where individuals are most likely to see those signs, instructing individuals that, in addition to being able to inform the inspecting immigration officers of

³⁰⁷ See, e.g., CBP Directive 2130–031, *Roles and Responsibilities of U.S. Customs and Border Protection Offices and Personnel Regarding Provision of Language Access* (Dec. 4, 2018); CBP, *Supplementary Language Access Plan* (2020), <https://www.dhs.gov/sites/default/files/publications/cbp-updated-language-access-plan-2020.pdf>.

³⁰⁸ See, e.g., CBP Directive 2130–031, *Roles and Responsibilities of U.S. Customs and Border Protection Offices and Personnel Regarding Provision of Language Access* (Dec. 4, 2018); CBP, *Supplementary Language Access Plan* (2020), <https://www.dhs.gov/sites/default/files/publications/cbp-updated-language-access-plan-2020.pdf>.

³⁰⁹ See, e.g., CBP Directive 2130–031, *Roles and Responsibilities of U.S. Customs and Border Protection Offices and Personnel Regarding Provision of Language Access* (Dec. 4, 2018); CBP, *Supplementary Language Access Plan* (2020), <https://www.dhs.gov/sites/default/files/publications/cbp-updated-language-access-plan-2020.pdf>.

³¹⁰ See CBP, *Language Access Plan 7* (2016), <https://www.dhs.gov/sites/default/files/publications/final-cbp-language-access-plan.pdf>; DHS, *I Speak . . . Language Identification Guide*, <https://www.dhs.gov/sites/default/files/publications/crcl-i-speak-poster-2021.pdf> (last visited Sept. 3, 2024); DHS, *I Speak . . . Indigenous Language Identification Poster*, https://www.dhs.gov/sites/default/files/publications/Habla%20Poster_12-9-16.pdf (last visited Sept. 3, 2024); see also DHS, *DHS Language Access Resources* (July 17, 2023), <https://www.dhs.gov/publication/dhs-language-access-materials>.

urgent medical or other concerns, they should inform the inspecting immigration officer if they have a fear of return, and that, if they do, they will be referred for a screening. 89 FR at 48741. Moreover, in CBP's large-capacity facilities—where the vast majority of individuals subject to expedited removal undergo processing—a short video explaining the importance of raising urgent medical concerns, a need for food or water, or fear of return is shown on a loop in the processing areas and will also be available in commonly-spoken languages. To the extent that noncitizens do not speak one of these languages, CBP provides language assistance services consistent with CBP's Language Access Plan.³¹¹ Furthermore, individuals who are unable to read the signs or communicate effectively in one of the languages in which the signs and videos are presented will be read the contents of the signs and videos in a language they understand.

Comment: One commenter expressed concern that, as a result of the signs and videos in CBP facilities advising migrants of their ability to manifest or express a fear, noncitizens are “in essence . . . coached” by DHS with regard to manifesting fear.

Response: With regard to this concern that the existence of signs and videos amount to DHS “coaching” migrants with regards to manifesting or expressing a fear, the Departments are cognizant that, for some individuals, such messaging may result in migrants expressing or manifesting a fear when they otherwise would not. However, as explained in the preamble to the IFR, DHS adopted the approach outlined in this rule—a manifestation standard, coupled with a general notice of the right to express or manifest a fear—in an effort to mitigate this potential, compared with the existing practice of asking affirmative questions. See 89 FR at 48743–44. DHS believes that the approach taken in this rule appropriately reflects and accounts for DHS operational needs while protecting noncitizens' ability to seek protection in the United States.

d. Trauma Impacting Manifestation and Vulnerable Populations

Comment: Many commenters expressed concern that noncitizens have endured significant trauma en route to

the United States or are under stress after escaping harm and “might not be able to explicitly state their fears” and, thus, would fail the manifestation requirement. One commenter pointed out that trauma does not always present with the physical cues identified in the IFR, such as “shaking, crying, or signs of physical injury.” The commenter stated that the relevant USCIS Training Module “explains that survivors of severe trauma may appear emotionally detached”; the commenter wrote that removing an affirmative individualized explanation of the process makes it even harder for survivors to pursue protection for which they are entitled to apply. Other commenters similarly observed that people who have suffered trauma “often have great difficulty raising their fears of return in non-confidential group settings” and might be hesitant to disclose their fear to armed, uniformed officials. One commenter expressed concern that many migrants have fled violence at the hands of government officials and would have difficulty volunteering their fear of return to uniformed CBP agents who are not asking questions about their fear but about other aspects of their situation, while another commenter observed that “all people [seeking] asylum remain traumatized, and very few are able or prepared to tell their full story even if they understand the consequences of the [credible fear interview] process.” Commenters also asserted that noncitizens may not understand the importance of their first encounter with a government official or may believe they will have an opportunity to raise their claim later in the process.

Response: The Departments acknowledge that many noncitizens arriving in CBP custody may have experienced trauma of some kind and that being taken into immigration custody may exacerbate some of this trauma. The Departments also acknowledge that it may be difficult for some noncitizens to articulate details of their fear claim to CBP officers and agents during processing, and may, in general, have negative reactions to law enforcement officials in uniform. On this point, however, the Departments note that, during CBP processing, the relevant factor determining whether a noncitizen is referred to USCIS is whether the noncitizen manifests a fear. They are not required to, nor expected to, articulate the full scope of their fear or the rationale behind it. Indeed, CBP agents and officers do not determine the validity of any fear claim. Additionally, to the extent that an individual may

react negatively to a CBP officer or agent in uniform, such concerns are not limited to the process under the IFR and would ostensibly apply to any screening process implemented by the Departments. CBP has taken steps over the past several years to integrate trauma-informed care for all persons in custody, with a particular focus on UCs.³¹² In particular, in CBP holding facilities, the agency has taken steps to ensure that processing procedures are informed by the potential for trauma experienced by individuals in custody, with a particular emphasis on providing a sense of safety and security, providing caregivers for children in custody and increased custodial oversight, increasing medical standards for individuals in CBP custody, providing regular orientation and assistance, and providing activities and recreation for children.³¹³ In addition, CBP has taken steps specific to the credible fear process, for those going through the process in CBP custody, to protect the privacy of noncitizens during their interviews, where noncitizens may discuss traumatic situations. These interviews occur in confidential and private phone booths intended for use both for consultation and for the credible fear interview. While DHS has taken steps to mitigate the impact of such trauma on the effectiveness of the screening process, including through its signage and videos, it is not possible to develop a screening process that completely eliminates the potential effects of past trauma.

Comment: Many commenters expressed specific concerns that certain vulnerable populations of noncitizens would be at a particular disadvantage when seeking protection due to the manifestation requirement. Some commenters highlighted survivors of sexual violence, political dissidents, and LGBTQI+ populations as particularly disadvantaged, in that they may not easily manifest fear in asylum settings due to their specific history of oppression. For example, one commenter wrote that political dissidents may have a fear and mistrust of government officials and be unlikely to reveal their stories to immigration officials. They also discussed the significant harm that they believe the manifestation requirement will have on members of the LGBTQI+ community who are fleeing persecution and thus are

³¹¹ See CBP, *Language Access Plan* (2016), <https://www.dhs.gov/sites/default/files/publications/final-cbp-language-access-plan.pdf>; CBP, *Supplementary Language Access Plan* (2020), <https://www.dhs.gov/sites/default/files/publications/cbp-updated-language-access-plan-2020.pdf>.

³¹² See Memorandum for Exec. Assistant Comm'rs, et al., from Chris Magnus, Comm'r, U.S. Customs and Border Protection, *Re: Directive for U.S. Customs and Border Protection Approach to Trauma-Informed Care for Persons in Custody* at 1 (Apr. 29, 2022).

³¹³ *Id.* at 2–4.

likely afraid to reveal intimate details of their lives in immigration facility spaces that lack privacy and confidentiality.

Response: Regarding concerns that certain populations, including LGBTQI+ individuals, survivors of sexual violence, and political dissidents, may not be comfortable expressing the details of their fear claim to CBP officers and agents, the Departments reiterate that, at the time of CBP processing, agents and officers do not inquire about or ask questions about the nature of an individual's fear claim, nor do they evaluate the validity of that claim. Thus, such migrants are not required to—and are not expected to—provide the details of any fear claim, or even the basis for their claim, during CBP processing. In addition, the Departments note that concerns regarding the ability of these populations to articulate their fear claims are not limited to the process under the IFR, and would seemingly apply to any screening process implemented by the Departments, including the process utilizing the Form I-867A and Form I-867B.

e. A Manifestation of Fear Does Not Sufficiently Align With a Valid Claim for Asylum

Comment: Several commenters critiqued the assertion in the IFR that a manifestation of fear aligns with a valid claim for asylum. One commenter articulated that the Departments provided no rationale to think that the new manifestation of fear approach would only affect people with “frivolous claims” to asylum and wrote that this conclusion was contrary to common sense. A commenter wrote that requests for relief or visibly detectable signs of fear are not proxies for a strong claim and that other factors, such as coaching by a smuggler, might determine whether or not a migrant manifests fear.

Response: Contrary to the contention contained in the comments, the IFR did not state that the manifestation standard will only impact those with “frivolous” claims. The Departments noted in the preamble to the IFR that they believed that the manifestation standard “is reasonably designed to identify meritorious claims even if a noncitizen does not expressly articulate a fear of return.” 89 FR at 48744. This decision was informed by the Department's experience that providing the affirmative advisals on the Form I-867A and asking the affirmative questions on the Form I-867B is, in some cases, suggestive, and by the Departments' belief and experience that those with meritorious claims will make their fear or desire to request asylum known when

given the opportunity to do so. However, the Departments also acknowledge that any screening mechanism may result in some noncitizens with valid claims not being referred for a credible fear interview. *Id.* at 48743–44. Nonetheless, the Departments believe that the manifestation standard will allow DHS to identify claims that may be meritorious in an efficient and effective manner, and that this change remains appropriate and necessary in light of the emergency border circumstances in which this rule is implemented. *Id.* at 48744.

f. Noncitizens May Not Understand Their Legal Right To Seek Asylum

Comment: Multiple commenters wrote that some noncitizens may not know that they legally can raise their fears of harm. Other commenters wrote that many immigrants would be unable to meet the requirement to express their fear of return explicitly, due to lack of access to legal counsel or unfamiliarity with the legal requirements. A commenter remarked that noncitizens may not understand that the experiences they suffered based on gender, racism, or homophobia or transphobia in their countries of origin might be grounds for asylum in the United States.

Some commenters described the signs and videos discussed in the IFR as insufficient for communicating the complex concepts of manifestation of fear and credible fear screenings. A commenter criticized the content and design of the signs as insufficient to inform the reader that they forfeit their right to seek asylum if they do not manifest a fear of their return. Another commenter noted that the videos would not necessarily even be played at smaller facilities.

Some commenters stated that signs or videos are an inadequate systematic approach to reaching a broad pool of noncitizens with valid asylum claims, particularly given the limited number of languages used. One commenter criticized the “arbitrary” limitation on the number of languages used for the signs and videos and stated that the IFR at footnote 195 (89 FR at 48741 n.195) suggests the signs and videos in CBP facilities will be posted in English, Spanish, Mandarin, and Hindi, but the ICE Implementation Guidance says only that the signs must be posted in English and Spanish without mentioning additional languages to be used on the signs themselves.³¹⁴ The comment

stated that limiting language access to these four languages will clearly leave many without any way to understand the procedure they must follow to have their claims heard. The commenter stated that neither the Implementation Guidance nor the Rule explain how someone who cannot understand one of these four languages would know to seek out translations in the law library, as indicated in the rule, or if all facilities even have a law library.

Response: The Departments disagree with the commenters' assertions that the signs and videos are not sufficient to notify noncitizens that they can manifest a fear. CBP has posted signs in areas of its facilities where individuals are most likely to see those signs. In addition, CBP has developed a video that is shown on a loop in the processing areas of its large-capacity facilities. Commenters are correct that these videos are not shown in smaller facilities. However, as outlined in the IFR, in such smaller facilities, the signs are posted, and officers and agents are generally able to devote significant attention to noncitizens in custody and identify either fear manifestations or language needs. *See* 89 FR at 48741 n.196. Contrary to commenters' assertion that the list of languages in which these signs and videos are provided is arbitrary, they are provided in the languages spoken by the most common nationalities encountered by CBP and thus will likely be understood by most of the individuals in CBP custody who are subject to the rule. And if a noncitizen does not speak one of these languages, CBP provides language assistance services in accordance with CBP's Language Access Plan.³¹⁵

These signs and videos have also been provided in short, concise language, rather than explaining the complex details of the credible fear process or the standards for addressing a claim for asylum or other protection. This is based on DHS' experience that short, concise, and simple notifications are most effective for noncitizens in custody at CBP facilities, given the nature of CBP facilities and CBP operations.³¹⁶ In

³¹⁴ 2024, *Securing the Border, and Interim Final Rule, Securing the Border*, at 5 (June 4, 2024) (“These signs must be posted in English and Spanish. ERO will have additional translations available in facility law libraries in the following languages. . . .”).

³¹⁵ *See* CBP, *Supplementary Language Access Plan: Fiscal Years 2020–2021*, at 6 (Feb. 7, 2020), <https://www.cbp.gov/about/language-access>.

³¹⁶ *See* CBP, *Directive 2130–031: Roles and Responsibilities of U.S. Customs and Border Protection Offices and Personnel Regarding Provision of Language Access*, at 1, 4–5 (Dec. 4, 2018), <https://www.cbp.gov/document/directives/2013-031-roles-and-responsibilities-us-customs-and-border-protection-offices?language=pt>.

³¹⁴ ICE, *Implementation Guidance for Noncitizens Described in Presidential Proclamation of June 3,*

particular, CBP's role in the credible fear screening process is to identify those who may be seeking protection in the United States, in order to ensure that such individuals are referred to a USCIS AO. This role thus requires officers and agents to identify claims of fear, and, at this initial stage, err on the side of caution.³¹⁷ In addition, noncitizens in CBP custody go through a number of steps and may move between various locations in a single facility while completing processing and awaiting transfer out of CBP custody. Therefore, it is CBP's experience that short, simple signs, which can be noticed and read quickly, are more effective for communicating with noncitizens than signs with more complex language. Such claims of fear are, under non-IFR procedures, identified in part through the questions on the Form I-867B. Under this rule, such claims may be manifested or expressed to an officer or agent at the time of processing. However, this rule does not change the role of either the noncitizen or CBP immigration officers in the process—a noncitizen may express or manifest a fear, and, once that fear is expressed, CBP refers the individual to an AO. Additionally, those noncitizens who are referred and who undergo their credible fear interviews in CBP custody are provided additional information about the credible fear process, through the *Information about Credible Fear* tear sheet and the USBP video explaining the credible fear process.

Additionally, for those transferred to ICE custody, commenters are correct that initial ICE guidance called for ICE to provide signage in English and Spanish,³¹⁸ but ICE subsequently directed the relevant facilities to post signage in the same four languages as CBP. In addition, as noted by the commenter, ICE has translations available in facility law libraries in the following languages: Arabic, Bengali, French, Haitian Creole, Hindi, K'iche' (Quiché)/Kxlantzij, Portuguese, Punjabi, Romanian, Russian, Simplified Chinese, Turkish, and Vietnamese.³¹⁹

³¹⁷ See CBP, *Securing the Border IFR and Presidential Proclamation CBP Manifesting Fear Guidance*, at 1 (“If doubt or ambiguity exists as to whether a noncitizen’s statement, actions, or behavior constitute a manifestation of fear, expression of fear, or expression of an intent to seek asylum or related protection, then CBP officers and agents should refer the matter to a supervisor.”).

³¹⁸ Memorandum for Enforcement and Removal Operations Exec. Assoc. Dir. Daniel A. Bible, from ICE Deputy Dir. and Senior Off. Performing the Duties of the Dir. Patrick J. Lechleitner, *Re: Implementation Guidance for Noncitizens Described in Presidential Proclamation of June 3, 2024, Securing the Border*, and Interim Final Rule, *Securing the Border* at 5 (June 4, 2024).

³¹⁹ *Id.*

Noncitizens in ICE detention facilities have access to law libraries for at least five hours per week.³²⁰ Furthermore, ICE has access to an ICE-wide 24/7 language services contract for interpretation and translation, and guidance and best practices materials for identifying LEP individuals and their primary language to secure the necessary interpretation and translation services for them.³²¹ ICE detention standards provide that oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.³²² Each detained noncitizen in an ICE detention facility is provided an ICE National Detainee Handbook,³²³ which is currently available in 16 languages (English, Spanish, Arabic, Bengali, French, Haitian Creole, Hindi, K'iche' (Quiché)/Kxlantzij, Portuguese, Punjabi, Romanian, Russian, Simplified Chinese, Turkish, and Vietnamese).³²⁴ The Handbook describes the noncitizen's ability to ask for relief from removal, including by seeking asylum, and also provides information regarding the law library and additional resources available to noncitizens.³²⁵ All ICE detainees have the right to use the facility's law library to access approved legal materials.³²⁶

³²⁰ ICE, *Attorney Information and Resources: Other Legal Resources Available to Noncitizens in ICE Custody* (Aug. 9, 2024), <https://www.ice.gov/detain/attorney-information-resources>.

³²¹ ICE, *Language Access Information and Resources* (May 7, 2024), <https://www.ice.gov/detain/language-access> (describing current language access policies); ICE, *ICE Language Access Plan, Supplemental Update Covering Fiscal Years 2019 and 2020*, at 3–5 (July 21, 2020), <https://www.ice.gov/doclib/about/offices/ero/pdf/iceLanguageAccessPlanSupplemental2020.pdf>; ICE, *Language Access Plan*, at 7, 10, 13 (June 14, 2015), <https://www.ice.gov/sites/default/files/documents/Document/2015/LanguageAccessPlan.pdf>.

³²² See, e.g., ICE, 6.3 *Law Libraries and Legal Material*, at 422 (revised Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/6-3.pdf>.

³²³ ICE, *Detention Management, National Detainee Handbook* (Sept. 4, 2024), <https://www.ice.gov/detain/detention-management/national-detainee-handbook>.

³²⁴ *Id.*

³²⁵ ICE, *National Detainee Handbook*, at 9, 16 (2024), <https://www.ice.gov/doclib/detention/ndHandbook/ndhEnglish.pdf> (“You have the right to ask for relief from removal based on various legal grounds if you believe you qualify. These might include cancellation of removal, adjustment of status, asylum, withholding of removal, or relief under the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. For example, you have the right to ask for asylum to stay in the U.S. if you were (or are afraid that you will be) persecuted in your native country or a country where you last lived because of your race, religion, nationality, political opinion, or membership in a particular social group.”).

³²⁶ *Id.* at 16.

With regard to concerns that migrants may not know that their experience in their home country or on their journey to the United States may be grounds for asylum, the Departments note that this has always been the case, even under non-IFR credible fear processes. In any event, the Departments note that the current signs and videos use general language to advise noncitizens that they should tell an officer if they “[f]ear persecution or torture if removed from the United States.” This open-ended language does not require a noncitizen to fully understand the legal nuances or complexities of their claim at the time it is manifested. CBP therefore believes that the existing signs and videos are sufficient.

3. “Reasonable Probability” Screening Standard for Statutory Withholding of Removal and CAT Protection

Commenters largely opposed the heightened “reasonable probability” screening standard for statutory withholding of removal and CAT protection for noncitizens subject to this rule. By contrast, one commenter supported the “reasonable probability” standard for this rulemaking and recommended more broadly applying it to all withholding of removal credible fear screenings.

Comment: Commenters stated the “reasonable probability” standard was too high and would lead to refoulement. Some commenters stated that the “reasonable probability” standard is inconsistent with the statutory “significant possibility” standard for asylum in credible fear screenings, and that any attempt to change the “significant possibility” standard was ultra vires. Commenters also explained that the higher standard would cause credible fear passage rates to drop dramatically and result in the removal of noncitizens with valid asylum claims. Commenters stated that Congress intended, as evidenced by the plain language of the statute, for the threshold credible fear screening standards to be low so as not to exclude legitimate asylum seekers, and not to ensure the quick imposition of consequences for irregular entry as described in the IFR.

Similarly, commenters believed the “reasonable probability” standard was set too close to the ultimate burdens of proof for statutory withholding of removal and CAT protection and would require excessively specific evidence, particularly as the credible fear process is designed to move quickly. Rather, commenters suggested that only claims that were “manifestly unfounded” should be screened out at the credible fear stage and that, as much as possible,

asylum, statutory withholding of removal, and CAT protection claims should be adjudicated in full removal proceedings before an IJ, as such claims are complex and require robust processes with more procedural safeguards. Commenters noted a number of issues that would make it difficult for noncitizens to provide the specific evidence required to establish a reasonable probability under this rule, including the inability to obtain counsel during the credible fear process; being interviewed shortly after arriving in the United States; difficulties sharing information due to trauma, exhaustion, or translation availability; additional stress placed on vulnerable populations; detention status; challenges surrounding placement into the non-detained Family Expedited Removal Management (“FERM”) process, such as challenges involving children attending credible fear interviews and difficulty obtaining Indigenous language interpreters; and difficulties procuring documentary evidence, expert opinions, or witnesses.

Response: The Departments disagree with commenters that the rule’s reasonable probability screening standard for statutory withholding of removal and CAT claims is too high and decline to make changes to the standard. The Departments believe the reasonable probability screening standard is more appropriate in light of the ultimate burden of proof for statutory withholding of removal and CAT protection, better captures the population of noncitizens with potentially valid claims for such protection, and will assist the Departments in addressing the emergency border circumstances described in the IFR. *See* 89 FR at 48745–46.

To start, and as discussed in Section III.A.1 of this preamble, the Departments note that the “reasonable probability” standard neither affects nor changes the “significant possibility” standard used to screen for asylum eligibility, which is set by statute and remains in effect for asylum claims in the credible fear process. *See* INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v) (a credible fear of persecution “means that there is a significant possibility” that a noncitizen could establish eligibility for asylum). Commenter concerns about changes to the statutory “significant possibility” standard are therefore misplaced.

While Congress clearly expressed its intent that the “significant possibility” standard be used to screen asylum claims, section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), and FARRA section 2242 are silent as to what screening

procedures are to be employed with respect to statutory withholding of removal and CAT protection. The Departments therefore have some discretion to articulate the screening standard for such claims. And in the context of the emergency border circumstances described in the IFR and this rule, the Departments believe the “reasonable probability” screening standard better captures the population of noncitizens with potentially valid claims and is more appropriate in light of the ultimate burden of proof for statutory withholding of removal and CAT protection.

As explained in the IFR and the June 3 Proclamation, resource limitations, outdated laws, and significantly elevated encounter levels at the southern border have made it difficult for the Departments to quickly grant relief or protection to those who require it and to quickly remove those who do not establish a legal basis to remain in the United States. In light of the emergency border circumstances outlined in the June 3 Proclamation, the IFR, and this rule, the goal of this rule is to reduce irregular entries at the southern border and to quickly issue decisions and impose consequences on those who cross our border irregularly and lack a legal basis to remain. *See* 89 FR at 48731. The Departments believe that imposing a “reasonable probability” screening standard for statutory withholding of removal and CAT protection is needed to further this goal and is consistent with all statutory and regulatory requirements and the United States’ international law obligations.

Specifically, the elevated “reasonable probability” screening standard will better allow the Departments to screen out claims that are unlikely to be meritorious, as the higher screening standard is more proportional to the ultimate burdens of proof for statutory withholding of removal and CAT protection, which are each higher than that for asylum. *See, e.g.,* 89 FR at 48747 (noting that the higher screening standard will help better predict the likelihood of success on the ultimate application for relief or protection); *see also* Regulations Governing the Convention Against Torture, 64 FR at 8485 (applying a higher screening standard for statutory withholding of removal and CAT protection in the reasonable fear context “[b]ecause the standard for showing entitlement to these forms of protection (a probability of persecution or torture) is significantly higher than the standard for asylum (a well-founded fear of persecution)”). Identifying non-meritorious claims early

in the process is an important deterrent to disincentivize noncitizens from making the perilous journey to the United States under the belief that they will be released and able to remain in the United States for a significant period, or indefinitely. Instead, under this rule, those who do not establish eligibility for statutory withholding of removal or CAT protection under the “reasonable probability” standard will be swiftly removed rather than being released into the United States to potentially wait years for a hearing. This will also allow the Departments to focus limited resources on processing of those who are most likely to be persecuted or tortured if removed, and to more quickly provide stability and benefits to noncitizens whose asylum claims are granted. *See, e.g.,* INA 209, 8 U.S.C. 1159 (“Adjustment of status of refugees”).

The Departments made a similar determination in the Circumvention of Lawful Pathways rule in implementing the “reasonable possibility” standard for statutory withholding of removal and CAT protection for noncitizens subject to that rule. *See* 88 FR at 31336 (noting that the heightened standard would help in “reducing the strain on the immigration courts by screening out and removing those with non-meritorious claims more quickly”). That determination has been subsequently validated, as the elevated standard for statutory withholding of removal and CAT protection in credible fear screenings under the Circumvention of Lawful Pathways rule resulted in an approximately 30 percent decrease in positive credible fear findings. *See* 89 FR at 48745–46 (providing Circumvention of Lawful Pathways data).

The Departments recognize that, as identified by commenters, noncitizens may face difficulties in their journeys to the United States and in presenting their claims during credible fear screenings. However, the statutory expedited removal process is predicated on the requirement that noncitizens must explain their fear during a credible fear screening. *See* INA 235(b)(1)(B), 8 U.S.C. 1225(b)(1)(B) (implementing credible fear “[a]sylum interviews,” to include “material facts as stated by the applicant”). As part of this threshold screening, the “reasonable probability” standard is not intended to be an insurmountable hurdle; rather, it requires noncitizens to provide greater specificity in their testimony related to their claim than that which might be sufficient to meet the “reasonable possibility” or “significant possibility” screening standards. *See* 89 FR at

48746–48 (explaining that “the new standard requires a greater specificity of the claim in the noncitizen’s testimony”). This greater specificity is intended to be straightforward for noncitizens to provide, as it entails answering standard credible fear screening questions, such as variations of the following questions: Why do you fear return to the country of removal? Who do you believe would harm you if you were removed from the United States? Have you been previously harmed in the country of removal? If so, why were you harmed? Having the noncitizen answer these types of questions with greater specificity is not intended to require legal expertise and instead seeks to have communicated relevant personal facts and circumstances within the noncitizen’s knowledge. Moreover, such evidence is generally provided through testimony at the credible fear screening stage, and credible testimony alone can satisfy the noncitizen’s burden. *See, e.g.*, 89 FR at 48746.

Furthermore, to the extent that commenters expressed concerns about the compounding effects of trauma resulting in difficulty expressing fear, less time for consultation, and the need to meet a “reasonable probability” standard at the screening stage, the Departments note that AOs have significant training and experience in engaging in non-adversarial interview techniques, working with interpreters, cross-cultural communication, and eliciting information from trauma survivors and other vulnerable populations.³²⁷ As discussed at greater length at section III.B.2.a.ii(2) of this preamble, while the length of the consultation period is outside the scope of this rulemaking, this rule ensures that noncitizens are provided with all of the rights due to them under the statutory expedited removal and credible fear processes, including the right to consult with a legal representative or other individual of their choosing prior to the credible fear interview and to have such an individual present during their credible fear interview, provided it will not unreasonably delay the process. *See* INA 235(b)(1)(B)(iv), 8 U.S.C.

1225(b)(1)(B)(iv); 8 CFR 208.30(d)(4). AOs apply the same training and draw from the same breadth of experience in eliciting testimony and conducting non-adversarial interviews described above regardless of the screening standard that is being applied. Noncitizens are not expected to have legal knowledge or to be familiar with specific standards or elements related to a persecution or torture screening; rather, they are only expected to truthfully testify about their claim and testimony alone can be sufficient to support a positive fear determination.

The Departments take seriously concerns raised by commenters related specifically to difficulties faced by families in the non-detained FERM process, including children attending credible fear interviews and challenges obtaining Indigenous language interpreters. Where issues arise in non-detained credible fear interviews in the FERM process, just as when issues arise in any interview, AOs and supervisory AOs tap into their extensive training and experience and follow existing procedures to address the issue.³²⁸ USCIS has established procedures in place in order to obtain interpreters of rare languages for credible fear interviews and ensure appropriate steps are taken where an interpreter is not available, including issuing a discretionary NTA where warranted. And while there are inherent challenges in conducting non-detained interviews with families, including attending to children during an interview, these issues are not unique to the FERM process. They are issues dealt with during interviews where children may be present in various situations, including affirmative asylum interviews; and AOs, supervisory AOs, and asylum office staff handle these issues as they arise in various circumstances. Whether the credible fear interview is taking place in a detained setting or is taking place in a non-detained setting as part of the FERM process, AOs apply their extensive training related to non-adversarial interviewing, combined with their substantive legal training, to make a determination as to whether a noncitizen meets the given screening standard. Additionally, all credible fear determinations must be reviewed by a supervisory AO before they become final. 8 CFR 208.30(e)(8).

Moreover, as provided by statute and as the IFR makes clear, noncitizens have a right to request review by an IJ of the AO’s credible fear determination. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III); 8 CFR 208.35(b)(2)(iii)–(v), 1208.35(b)(1); 89 FR at 48748. Where it is requested, the IJ conducts a de novo review of the negative credible fear determination, including the application of the rule’s limitation on asylum eligibility and possible exceptions to that limitation. 8 CFR 1208.35(b). Importantly, noncitizens will have additional time to consult with other persons prior to this review. 8 CFR 235.15(b)(4) (requiring written disclosure of a noncitizen’s right to consult with other persons prior to an interview or any review thereof). During such review, noncitizens will have the opportunity to make statements in support of their claims, and IJs may also consider other such facts as are known to the IJ. *See* 8 CFR 1003.42(c)–(d); *see also* Immigration Court Practice Manual ch. 7.4(d)(4)(E), <https://www.justice.gov/eoir/reference-materials/ic/chapter-7/4> (noting that “[e]ither the noncitizen or DHS may introduce oral or written statements” during a credible fear review). IJs have significant training and experience in eliciting testimony from individuals who have experienced trauma and developing the record accordingly.³²⁹ As further explained in the IFR, AOs, supervisory AOs, and IJs receive training and have experience applying asylum, statutory withholding of removal, and CAT protection screening standards and in applying and reviewing decisions related to the ultimate asylum (for USCIS and EOIR) and statutory withholding of removal and CAT protection (for EOIR) merits standards. As such, they are well-suited to be able to identify in a screening whether the information the noncitizen has provided is sufficiently specific to lead them to believe that the noncitizen may be able to establish eligibility at the

³²⁷ *See* USCIS, *RAIO Directorate—Officer Training: Interviewing—Introduction to the Non-Adversarial Interview* (Apr. 24, 2024); USCIS, *RAIO Directorate—Officer Training: Interviewing—Eliciting Testimony* (Apr. 24, 2024); USCIS, *RAIO Directorate—Officer Training: Interviewing—Working with an Interpreter* (Apr. 24, 2024); USCIS, *RAIO Directorate—Officer Training: Cross-Cultural Communication and Other Factors That May Impede Communication at an Interview* (Apr. 24, 2024); USCIS, *RAIO Directorate—Officer Training: Interviewing Survivors of Torture and Other Severe Trauma* (Apr. 24, 2024).

³²⁸ *See, e.g.*, USCIS, *RAIO Directorate—Officer Training: Interviewing—Working with an Interpreter* (Apr. 24, 2024); USCIS, *RAIO Directorate—Cross-Cultural Communication and Other Factors That May Impede Communication at an Interview* (Apr. 24, 2024).

³²⁹ *See* 8 CFR 1003.0(b)(1)(vii) (authorizing the provision of comprehensive training and support to IJs); 8 CFR 1003.9(b)(2) (authorizing the Chief IJ to provide “appropriate training . . . on the conduct of their powers and duties”); *Fact Sheet: Executive Office for Immigration Review Immigration Judge Training 2* (June 2022), <https://www.justice.gov/eoir/page/file/1513996/dl?inline>; DOJ EOIR, *Legal Education and Research Services Division* (Jan. 3, 2020), <https://www.justice.gov/eoir/legal-education-and-research-services-division> (“The Legal Education and Research Services Division (LERS) develops and coordinates headquarters and nationwide substantive legal training and professional development for new and experienced judges, attorneys, and others within EOIR who are directly involved in EOIR’s adjudicative functions. LERS regularly distributes new information within EOIR that includes relevant legal developments and policy changes from U.S. government entities and international organizations.”).

merits stage. *See* 89 FR at 48747. In sum, the Departments believe the procedural safeguards in place that comport with all statutory requirements and the extensive training and experience of AOs, supervisory AOs, and IJs in conducting screening interviews and making and reviewing fear determinations will ensure that noncitizens in the credible fear process, including those experiencing the effects of trauma and other vulnerable populations, will be screened for potential claims in a sensitive and fair manner at the applicable fear standard.

Comment: Commenters stated that the rule's "reasonable probability" definition—which requires "substantially more than a 'reasonable possibility,' but somewhat less than more likely than not"—is vague and amorphous; overly subjective; and lacks interpretive guidance or similar usage in other comparative contexts. Commenters stated that the definition would result in inconsistent application due to a lack of meaningful instruction for AOs and IJs, who would instead rely on their own discretion.

Response: The Departments believe that the "reasonable probability" definition set forth in the IFR, which comparatively references the "reasonable possibility" and "more likely than not" legal standards, provides adequate guidance for AOs and IJs and noncitizens to understand the level of evidentiary proof needed to satisfy the threshold credible fear screening process. Both "reasonable possibility" and "more likely than not" are longstanding legal standards familiar to AOs and IJs and representatives, so implementing a new "reasonable probability" standard that falls between those two existing standards provides a stable benchmark for determining whether the new standard has been satisfied. *See, e.g.,* 8 CFR 208.13(b)(1)(iii)(B), 1208.13(b)(1)(iii)(B) ("reasonable possibility" standard); 8 CFR 208.16(b)(2), 1208.16(b)(2) ("more likely than not" standard). AOs and IJs also receive training on the applicable legal screening standards.³³⁰

Moreover, as explained in the IFR, evaluating evidence under both the "reasonable probability" standard and the "reasonable possibility" standard remains the same, "save for the degree of specificity required." 89 FR at 48747; *see also id.* at 48746 (explaining the difference between the two standards "as being that the new standard requires

a greater specificity of the claim in the noncitizen's testimony"). Indeed, USCIS AOs and supervisory AOs have applied this new standard in a manner that is consistent with expectations, resulting in a somewhat, but not drastically, lower screen-in rate for USBP credible fear cases screened by USCIS under the IFR (51 percent for all fear screening cases subject to the rule, including 48 percent of those screened under the "reasonable probability" standard)³³¹ than USBP credible fear cases screened by USCIS under the Circumvention of Lawful Pathways rule (54 percent overall, including 51 percent of those screened under the: reasonable possibility" standard).³³² In addition, during credible fear reviews overall, IJs have vacated negative credible fear determinations under the IFR at a much lower rate than under the Circumventing Legal Pathways rule.³³³

Comment: Commenters stated that an additional "reasonable probability" screening standard in the credible fear process will lead to confusion amongst adjudicators. Commenters explained that there are now three different legal standards in credible fear screenings—significant possibility, reasonable possibility, and reasonable probability—all of which could be applicable in some cases. Moreover, commenters noted that the governing standards might change depending on whether emergency border circumstances are in effect under this rule. Commenters were concerned that multiple standards would lead to AOs and IJs applying the wrong standard, or conflating the requirements of each standard, which could result in potential refolement because there will be few mechanisms for accountability if a mistake occurs.

Commenters also stated that adding another screening standard is inefficient, as AOs and IJs will need to

determine which standard applies to each aspect of a case. Commenters also noted that this will require more resources from legal organizations to gather necessary evidence.

Response: The Departments disagree with commenters' claims that the "reasonable probability" screening standard for statutory withholding of removal and CAT protection will result in confusion or adjudication errors or would otherwise be inefficient. AOs and IJs regularly work with various standards, and determine which standards apply, in the course of their adjudications, such as the "extraordinary circumstances" standard to determine whether an asylum applicant qualifies for an exception to the one-year filing deadline, *see* INA 208(a)(2)(D), 8 U.S.C. 1158(a)(2)(D), and the discretionary "compelling reasons" standard to determine whether an applicant who has suffered past persecution but lacks a well-founded fear of future persecution should be granted asylum in the exercise of discretion, *see* 8 CFR

208.13(b)(1)(iii)(A), 1208.13(b)(1)(iii)(A). Indeed, deciding which legal standard applies is a critical aspect of the role of AOs and IJs. *See* 8 CFR 1003.10(b).

Further, AOs and IJs have significant training and experience in eliciting testimony and applying evidentiary standards in immigration proceedings. *See, e.g.,* 89 FR at 48747. The Departments are similarly confident that AOs and IJs will efficiently apply the "reasonable probability" standard, which is similar to the "significant possibility" and "reasonable possibility" standards. *See id.* at 48748 (explaining that the reasonable probability standard "is not a significant departure from the types of analyses AOs, supervisory AOs, and IJs conduct on a daily basis" but is rather "a matter of degree"). Further, credible fear determinations are reviewed by a supervisory AO before they become final to ensure consistency and quality and are subject to de novo review by an IJ if a noncitizen requests such review. *See* 8 CFR 208.30(e)(8), 1208.35(b); 89 FR at 48748. Additionally, to avoid confusion, any changes regarding the applicability of emergency border circumstances are communicated to AOs, IJs, and the public, and have been made publicly available since the June 3 Proclamation and publication of the IFR.³³⁴

For comparison, under the Circumvention of Lawful Pathways rule,

³³⁰ *See, e.g.,* USCIS, *RAIO Directorate—Officer Training: Evidence* 20–26 (Apr. 24, 2024); EOIR, *Fact Sheet: Immigration Judge Training* (June 2022), <https://www.justice.gov/eoir/page/file/1513996/dl?inline>.

³³¹ *See* OHSS analysis of data downloaded from UIP on September 3, 2024 (Fear Screening—STB tab). Data are limited to SWB encounters between POEs. The total rate excludes cases referred for fear screening but determined by USCIS not to be subject to the IFR.

³³² *See* OHSS analysis of June 2024 Enforcement Lifecycle data (Fear Screening—CLP tab). The overall rate includes Mexican nationals (even though they are not technically covered by the rule) and excludes cases referred for fear screening but determined by USCIS not to be subject to the Circumvention of Lawful Pathways rule. Data are limited to SWB encounters between POEs.

³³³ *See* OHSS analysis of June 2024 Enforcement Lifecycle data and data downloaded from UIP on September 3, 2024 (IFR ERCF tab and Imm Post-Pandemic ERCF tab). During the immediate post-pandemic period, OHSS estimates that IJs vacated 16 percent of negative fear credible fear interviews resulting from USBP ER cases, and 6 percent of all credible fear interviews; under the IFR the corresponding rates for USBP ER cases through July 31, 2024, were 9 percent and 4 percent.

³³⁴ *See* DHS, *Securing the Border: Presidential Proclamation and Rule* (Aug. 6, 2024), <https://www.dhs.gov/immigrationlaws>.

AOs and IJs have successfully applied the “significant possibility” screening standard to asylum claims and the “reasonable possibility” screening standard to statutory withholding of removal and CAT protection claims since its implementation. *See* 8 CFR 208.33(b)(2)(ii), 1208.33(b)(2)(ii). And for several months, AOs and IJs have successfully applied the “reasonable probability” standard in screenings under the IFR. Therefore, the Departments believe that AOs and IJs can continue to apply the “reasonable probability” standard implemented in this rule.

With regard to concerns from legal service organizations about gathering additional evidence under the “reasonable probability” standard, the Departments again reiterate that the relevant evidence largely remains the same, and simply requires more specificity. *See* 89 FR at 48746–47. Much of this specificity is likely to come through the noncitizen’s testimony, which will require the noncitizen to describe why they, in particular, are likely to be harmed or threatened with harm. This testimony focuses on relevant personal facts and circumstances within the noncitizen’s knowledge, which should not significantly increase the burden of production on the noncitizen or legal service providers.

Comment: Commenters raised concerns with the IFR’s justifications for implementing the “reasonable probability” standard.

Commenters argued that the ultimate asylum grant rate should not be the sole justification for implementing the “reasonable probability” standard. Commenters noted that the disparity between positive credible fear determinations and ultimate asylum grant rates itself was not a reason to raise the credible fear screening standard. Commenters explained that the credible fear screening threshold was intended to be low to avoid refoulement and, therefore, the credible fear screening passage rate should necessarily be higher than the ultimate asylum grant rate.

Commenters also believed the IFR relied on misleading statistics in claiming that the screening standard should be raised because the credible fear screening passage rate was significantly higher than the ultimate asylum grant rate in removal proceedings. Commenters explained that the ultimate asylum grant rate statistic in removal proceedings includes all disposition types—not just grants and denials—and also includes factors such as a lack of counsel, poor

translation, and variable IJ grant rates, which does not necessarily mean that the asylum claim itself was insufficient. Moreover, commenters pointed to additional EOIR statistics, which they stated showed that the ultimate asylum grant rates were higher than portrayed in the IFR.

Commenters also stated that the Departments did not adequately explain why they imposed a higher screening standard in this rule while, in the previous Asylum Processing IFR (87 FR 18078), the Departments argued that the “significant possibility” standard was preferable for screening statutory withholding of removal and CAT protection claims. Separately, commenters argued that the “reasonable probability” standard would not meet the IFR’s stated goals of deterring irregular migration, asserting that the Circumvention of Lawful Pathways rule’s increased screening standard did not “significantly lower” the credible fear passage rate. Lastly, commenters stated that the Departments did not consider that deterrence-based policies, such as a heightened standard, only result in temporary reductions in border crossings.

Response: The Departments disagree with objections to the IFR’s justifications supporting the “reasonable probability” standard.

First, the Departments disagree that the disparity between the credible fear screening passage rate and ultimate asylum grant rate is irrelevant or should not be relied upon. This disparity is a clear indication of how many positive credible fear determinations ultimately translate into grants of asylum relief. The Departments understand that the credible fear screening process is only a threshold determination and will, by design, result in asylum claims that meet the initial screening standard but fail during the ultimate merits adjudication. However, for purposes of the IFR, the Departments cited to this disparity to explain that such a wide disparity ultimately indicates a screening process that is excessively overinclusive, resulting in a large number of non-meritorious asylum claims increasing adjudicatory backlogs. *See* 89 FR at 48746 (explaining that, under the Circumvention of Lawful Pathways rule, the “screen-in rate remains significantly higher than the grant rate for ultimate merits adjudication for SWB expedited removal cases that existed prior to the rule” and that, under the IFR, the existence of emergency border circumstances necessitates focusing limited resources on “processing those

who are most likely to be persecuted or tortured if removed”).

The Departments also disagree that any cited statistics in the IFR regarding asylum grant rates in section 240 removal proceedings are misleading. While commenters are correct that section 240 removal proceedings may be completed without an ultimate adjudication on an asylum application (such as through dismissal or termination of proceedings), EOIR data are consistent that, for completed cases, only a small percentage of asylum claims referred from the credible fear process are ultimately granted in section 240 removal proceedings, which was a relevant concern underlying the IFR’s justification for the heightened “reasonable probability” standard.³³⁵ For example, in 2023, only 18 percent of referred asylum claims ultimately resulted in an asylum grant at the completion of section 240 removal proceedings, even when excluding cases that were administratively closed or did not have the asylum claim adjudicated.³³⁶ Moreover, the Departments note that the data also demonstrate that a large percentage of completed cases without an ultimate asylum adjudication of grant or denial involve noncitizens who never filed an asylum application once placed in section 240 removal proceedings.³³⁷ Additionally, to the extent that section 240 removal proceedings are terminated before an asylum application is adjudicated, the termination does not necessarily have any bearing on the ultimate strength or weakness of the asylum claim.

In response to commenters’ concerns regarding the Departments’ decision in the 2022 Asylum Processing IFR to maintain the “significant possibility” screening standard for statutory withholding of removal and CAT protection, the Departments note that they addressed these concerns in the Circumvention of Lawful Pathways rule. *See* 88 FR at 31336. In response to similar comments on that rule, the Departments explained that “the current and impending situation on the ground along the SWB warrants departing in some respects from the approach generally applied in credible fear screenings” and that the “Asylum Processing IFR was designed for non-existent circumstances.” *Id.* Similarly, as explained in the IFR and this rule, prior to implementation of the IFR, migration

³³⁵ *See, e.g., EOIR, Adjudication Statistics: Asylum Decisions in Cases Originating with a Credible Fear Claim* (Apr. 19, 2024), <https://www.justice.gov/eoir/media/1344831/dl?inline>.

³³⁶ *See id.*

³³⁷ *See id.*

patterns and other factors resulting in emergency border circumstances had only intensified, thereby necessitating a further change to the relevant credible fear screening standard for statutory withholding of removal and CAT protection. *See* 89 FR at 48724 (“While the Circumvention of Lawful Pathways rule and complementary measures have yielded demonstrable results, the resources provided to the Departments still have not kept pace with irregular migration.”); *see also supra* Section II.A.1 (“Basis for the IFR”).

Lastly, the Departments disagree with commenters regarding the overall efficacy of this rule and of the “reasonable probability” standard in particular. Contrary to commenters’ claims, the Departments have seen a significant decrease in the credible fear screen-in rate since the Circumvention of Lawful Pathways rule’s implementation of the “reasonable possibility” standard, and a further decrease since the IFR’s implementation of the “reasonable probability” standard. *See* 89 FR at 48745–46 (showing a 31 percent decrease in the screen-in rate under the Circumvention of Lawful Pathways rule); *see also* Section II.A.2 of this preamble (providing statistics on the IFR’s efficacy to date). The Departments also disagree that deterrence-based policies have only temporary or limited effects, but they do note that deterrence is only one part of an overall border and migration strategy that can help to better manage migratory flows. *See* 89 FR at 48729–30 (explaining that DHS’s migration strategy focuses on “enforcement, deterrence, encouragement of the use of lawful pathways, and diplomacy”).

Overall, the Departments believe that the screening standard changes made in this rule will help better manage an overwhelmed immigration system, while also noting that, as explained in IFR, this rule is only a piece of broader efforts that will likely require further congressional action. *See* 89 FR at 48715 (“Although the Departments are adopting these measures to respond to the emergency situation at the southern border, they are not a substitute for congressional action—which remains the only long-term solution to the challenges the Departments have confronted on the border for more than a decade.”).

Comment: Commenters noted that the “reasonable probability” standard could also apply in the context of the consideration of mandatory asylum bars as proposed in a separate DHS rulemaking, Application of Certain Mandatory Bars in Fear Screenings, 89

FR 41347 (May 13, 2024) (“Mandatory Bars NPRM”). Commenters stated that the Departments should not apply the “reasonable probability” standard to noncitizens found to be barred from asylum due to a mandatory bar, noting the Mandatory Bars NPRM.

Response: The Departments agree with commenters that the “reasonable probability” standard may apply in the context of consideration of mandatory bars if DHS finalizes the DHS Mandatory Bars NPRM as proposed, as the Departments noted in the IFR. *See* 89 FR at 48739 n.186 (explaining that, if the DHS Mandatory Bars NPRM is finalized, the “reasonable probability” standard would still apply when a noncitizen is subject to this rule’s limitation on asylum eligibility).

The Departments decline to amend the “reasonable probability” standard so that it would not apply to considerations of mandatory bars. First, as stated above in this section, the Departments have determined that a higher “reasonable probability” standard is needed in light of the emergency border circumstances. Accordingly, the Departments decline to make edits to reduce the standard’s applicability. If DHS ultimately decides to consider the mandatory bars as part of fear screenings under the steady-state regulations and the Circumvention of Lawful Pathways rule, it would be appropriate for DHS to consider those bars under this rule as well, also under a “reasonable probability” standard. *See* 8 CFR 208.35(b)(2)(i). This would be consistent with the overall purpose of the DHS Mandatory Bars NPRM. *See* 89 FR at 41351 (explaining that the proposed rule “is consistent with the Administration’s demonstrated record of providing operators maximum flexibility and tools to apply consequences, including by more expeditiously removing those without a lawful basis to remain in the United States, while providing immigration relief or protection to those who merit it at the earliest point possible” and that the proposed rule would “allow DHS to quickly screen out certain non-meritorious protection claims and to swiftly remove those noncitizens who present a national security or public safety concern”).

4. Other Comments on the Regulatory Provisions

a. Application to Mexican Nationals

Comment: Commenters raised several concerns regarding the applicability of the IFR’s limitation on asylum eligibility to Mexican nationals. Generally, commenters argued that Mexican

asylum seekers should be exempt from the rule’s limitation on asylum eligibility and should not be forced to wait in Mexico, the country where they fear persecution or torture, during emergency border circumstances. Commenters stated that requiring Mexican asylum seekers to wait in the country where they claim to face persecution is tantamount to refoulement in violation of international law and would further expose them to the threat of future harm. Similarly, commenters stated that Mexican nationals cannot be expected to apply for asylum in Mexico—the country where they are claiming harm—which commenters explained was a “common-sense principle” that the Departments abandoned in the IFR.

Relatedly, commenters stated that the Departments’ available pathways to pursue asylum, including the CBP One app, are too limited for Mexican nationals, who would be exposed to an increased risk of persecution if forced to wait in Mexico for the ability to pursue asylum. Commenters expressed further concerns about the rule’s lack of exceptions, including that, if the IFR’s exceptions are intended to “mirror” the Circumvention of Lawful Pathways rule, it is “unfair and dangerous” for the IFR to apply to Mexican nationals, and that the IFR’s requirements would “trap” Mexican nationals in the country of alleged persecution in violation of international law and non-refoulement obligations.

Response: The Departments decline to change the rule’s applicability to Mexican nationals, as excepting Mexican nationals from the rule would undermine the rule’s foundational purpose to alleviate strain on border security and immigration systems while entry is suspended and limited under the Proclamation. *See* 89 FR at 48738–39. The strains that resulted in emergency border circumstances and necessitated implementation of the IFR were driven in part by a recent sharp increase in Mexican nationals processed for expedited removal and referred for credible fear interviews. *Id.* The Departments believe that these emergency border circumstances weigh heavily in favor of applying the rule to Mexican nationals in order to better process increased inflows of Mexican nationals and return border processing to more manageable levels.

Moreover, the rule’s applicability to Mexican nationals does not violate non-refoulement obligations because the United States implements its non-refoulement obligations under Article 33 of the Refugee Convention (via the Refugee Protocol) through the statutory

withholding of removal provision in section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3). All noncitizens, including Mexican nationals, maintain the opportunity to make a threshold showing for statutory withholding of removal and CAT protections during the credible fear screening process, as the rule's limitation on asylum eligibility does not extend to those forms of protection. *See* 8 CFR 208.35(b)(2), 1208.35(b)(2).

The Departments also disagree that Mexican nationals do not have sufficient paths for seeking relief or protection in the United States. First, Mexican nationals may avail themselves of lawful, safe, and orderly pathways to the United States, such as making an appointment through the CBP One app. *See, e.g.,* 8 CFR 208.33(a)(2)(ii)(B); *see also* 89 FR at 48754 (explaining that CBP One appointments create an efficient and orderly process at POEs). To the extent a Mexican national cannot wait in Mexico for a CBP One appointment due to urgent safety concerns, the rule contains an exception for exceptionally compelling circumstances, including for imminent and extreme threats to life or safety. *See* 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i). This exception maintains the rule's efficacy by ensuring that Mexican nationals with specific, urgent safety needs to enter the United States can do so, while otherwise allowing the rule to apply to those Mexican nationals who, for example, are able to safely wait in another part of Mexico for their appointment. Furthermore, as of August 23, 2024, the Departments note that Mexican nationals are able to request and schedule a CBP One appointment from anywhere within Mexico.³³⁸ This new adjustment to the CBP One app will enable Mexican nationals facing imminent danger in a specific area of Mexico to internally relocate while waiting for their CBP One appointment.³³⁹

Second, this rule ensures that noncitizens are able to avoid refoulement through the availability of statutory withholding of removal, in addition to CAT protection. *See* 8 CFR 208.35(b)(2), 1208.35(b)(2). Third, the rule contains a number of provisions that may apply to Mexican nationals. For example, the limitation on asylum eligibility does not apply to groups that are excepted from the suspension and limitation on entry under section 3(b) of

the Proclamation, including UCs. *See* 8 CFR 208.35(a)(1), 1208.35(a)(1). The rule also provides an exception for noncitizens who can establish the aforementioned exceptionally compelling circumstances. *See* 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i). Additionally, the rule includes a provision to ensure family unity and avoid potential family separation for certain noncitizens who can establish eligibility for statutory withholding of removal or CAT protection. *See* 8 CFR 208.35(c), 1208.35(c). Taken together, these provisions help ensure that, while some Mexican nationals may not be granted asylum after entering the United States during emergency border circumstances, sufficient options exist for Mexican nationals to pursue available protection and avoid immediate harm.

Comment: Commenters stated that the rule's exceptions are inadequate for Mexican nationals. Commenters stated that, for Mexican nationals, the facts underlying their asylum claim would be conflated with the rule's exception for an "imminent and extreme threat to life or safety." According to commenters, in practice, this would result in Mexican nationals having to essentially present their full asylum claim to establish the exception.

Response: If a Mexican national is unable to remain in Mexico while awaiting a CBP One appointment due to an imminent and extreme threat of harm, the rule provides an exception for exceptionally compelling circumstances, in order to provide a potential avenue for the Mexican national to avoid application of the rule's limitation on asylum eligibility. *See* 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i). The Departments disagree that this exception for noncitizens who demonstrate exceptionally compelling circumstances is inadequate for Mexican nationals.

The Departments clarify that the analysis to determine whether any noncitizen—including a Mexican national—has demonstrated exceptionally compelling circumstances based on an "imminent and extreme threat to life or safety" at the time of entry is separate from the ultimate determination regarding the merits of a noncitizen's asylum claim, even if, in certain circumstances, some of the same facts underlying a Mexican national's asylum claim may also be relevant to a determination on the rule's exception. For purposes of the "imminent and extreme threat to life or safety" exception, noncitizens need only provide evidence focused on threats that the noncitizen faced at the time they

crossed the SWB, such that the noncitizen could not wait for an opportunity to present at a POE. *See, e.g.,* 88 FR at 11723 (explaining operation of similar ground for rebutting presumption of ineligibility for asylum under the Circumvention of Lawful Pathways rule). In contrast, for the asylum claim itself, the noncitizen must demonstrate that they otherwise have a credible fear of persecution or torture during credible fear proceedings and, during a full merits adjudication, that they satisfy the eligibility requirements for asylum. *See* 8 CFR 208.35(b)(1)(iii), 1208.35(b)(2)(ii) (directing AOs and IJs to proceed under 8 CFR 208.30 and 1208.30, respectively, in credible fear proceedings where a noncitizen has established the exception to the limitation on asylum eligibility based on exceptionally compelling circumstances); *see generally* 8 CFR 208.13, 1208.13 (describing asylum eligibility requirements).

Relatedly, the Departments also clarify that the "exceptionally compelling circumstances" exception is applied during the credible fear process, and not during any initial border encounter with CBP. *See* 8 CFR 208.35(b) ("Application in credible fear determinations.").

Comment: Commenters stated that the rule discriminates against Mexican nationals, both in intent and effect. Commenters stated that, by comparison, the rule is more restrictive than prior Departmental policies, including the Circumvention of Lawful Pathways rule and the now-defunct MPP, which specifically exempted Mexican nationals. Thus, commenters stated, this rule was issued to limit the entry of Mexican nationals and would result in more drastic consequences for Mexican nationals than those other rules and policies. Furthermore, commenters argued that, because the Circumvention of Lawful Pathways rule does not apply to Mexican nationals, there will be significant confusion in applying these rules together during the credible fear process.

Response: The Departments disagree with commenters' assertions that this rule discriminates against Mexican nationals. Commenters stated that the discriminatory intent and purpose is evidenced by the Circumvention of Lawful Pathways rule's comparative inapplicability to Mexican nationals. However, the Departments emphasize that this rule and the Circumvention of Lawful Pathways rule serve different objectives. For example, unlike with respect to this rule, traveling through a third country is a key requirement of the Circumvention of Lawful Pathways rule

³³⁸ *See* CBP, *CBP One™ Mobile Application: Recent Updates* (last modified Sept. 23, 2024), <https://www.cbp.gov/about/mobile-apps-directory/cbpone>.

³³⁹ *See id.*

because requiring that noncitizens apply for protection in a third country is one means for providing protection in the United States where necessary while also sharing the responsibility of providing necessary protections with the United States' regional partners. *See* 8 CFR 208.33(a)(1)(iii); 1208.33(a)(1)(iii); 88 FR at 31316. Thus, the Circumvention of Lawful Pathways rule generally does not apply to Mexican nationals residing in Mexico, who would not need to travel through another country to reach the United States. To the contrary, this rule applies uniformly to all noncitizens who enter the United States at the southern border during emergency border circumstances and are not excepted under the June 3 Proclamation or able to establish exceptionally compelling circumstances, without consideration of the path of transit to the southern border. *See* 8 CFR 208.13(g), 1208.13(g).

Additionally, since the implementation of the Circumvention of Lawful Pathways rule, emergency border circumstances dictate applying the rule broadly in order to reduce irregular entries at the southern border and to quickly issue decisions and impose consequences on those who cross the southern border irregularly and lack a legal basis to remain. *See* 89 FR at 48731. As relevant here, the United States saw a sharp increase in the number of encounters of Mexican nationals at the SWB during the COVID-19 pandemic prior to implementation of the Circumvention of Lawful Pathways rule, which continued into the immediate post-pandemic period.³⁴⁰ During the same period, the United States saw a corresponding increase in credible fear referrals, which necessitates applying the rule to Mexican nationals. *See id.* at 48738.

Moreover, the Departments do not believe that the rule's broad applicability will cause confusion, as the rule maintains a straightforward application to noncitizens who enter the United States at the southern border during periods of emergency border circumstances and are not excepted under the Proclamation or able to establish exceptionally compelling circumstances.

Comment: Commenters stated that the rule's expediency justification for subjecting Mexican nationals to the limitation on asylum eligibility is insufficient. Commenters argued that the statistics provided in the IFR cannot justify extending the limitation on asylum eligibility to Mexican nationals,

noting that statistics evincing recent increases in Mexican nationals making fear claims indicate increasingly dangerous conditions in Mexico and an increased need for protection. Another commenter claimed that applying the rule to Mexican nationals is contrary to the record before the agency because, according to the commenter's characterization of that record, encounters of Mexican nationals have actually declined significantly. Similarly, a commenter objected that the IFR subjects Mexican nationals fleeing persecution to extensive stays in Mexico if they wish to seek asylum in the United States, but fails to consider the impact on Mexican nationals or provide any rationale for that result.

Response: The Departments have considered the commenters' concerns and reaffirm the justifications for applying the IFR's limitation on asylum eligibility to Mexican nationals. The foundational basis of the June 3 Proclamation and the IFR is to address substantial migration levels at the southern border, including a "sharp increase" in SWB encounters of Mexican nationals. *See, e.g.,* 89 FR at 48726–27; *id.* at 48738. Addressing these migration levels, and their significant impact on border processing and the United States' immigration system more broadly, thereby necessitates applying the rule's limitation on asylum eligibility to all noncitizens, with limited exception, who enter the United States across the southern border during emergency border circumstances, including Mexican nationals.

The Departments believe the cited data fully support the rule's application to Mexican nationals. Departmental data show that excluding Mexican nationals would undermine the rule's deterrent effect, as Mexican nationals comprise the largest portion of recent (post-IFR) SWB encounters between POEs, at approximately 41 percent.³⁴¹ And, contrary to one commenter's claim, the data in the IFR did not show a decline in encounters of Mexican nationals. Rather, the Departments explained that, since 2010, the makeup of border crossers has significantly changed, expanding from Mexican single adults to single adults and families from northern Central American countries, and then to single adults and families from throughout the hemisphere (and beyond), many of whom are more likely to seek asylum and other forms of protection. *See* 89 FR at 48721. The Departments further explained that, as the demographics of border encounters

have shifted in recent years to include a higher rate of Mexican nationals claiming fear, in addition to larger encounter numbers of other nationalities with high historical rates of asserting fear claims, the deterrent effect of apprehending noncitizens at the SWB has become more limited. *See id.* at 48731 n.167 (explaining that for noncitizens encountered at and between SWB POEs from FY 2014 through FY 2019 who were placed in expedited removal, nearly 6 percent of Mexican nationals made fear claims that were referred to USCIS for a determination, whereas from May 12, 2023 to March 31, 2024, 29 percent of all Mexican nationals processed for expedited removal at the SWB made fear claims, including 39 percent in February 2024). Given this demonstrated increase in encounters of, and fear claims made by, Mexican nationals, the Departments believe that applying this rule to Mexican nationals will result in faster processing of a significant number of Mexican noncitizens and thereby significantly advance this rule's overarching goal of alleviating the strain on the border security and immigration systems during emergency border circumstances. Without broad application, the practical result would be that those with meritorious claims would wait years for their claims to be granted, while noncitizens who are ultimately denied protection potentially would spend years in the United States before being issued a final order of removal.

Comment: Commenters stated that not creating an exception for Mexican nationals is especially concerning for vulnerable Mexican nationals, including people fleeing gang and cartel violence or other severe forms of violence, women, members of the LGBTQI+ community, those escaping sexual and gender-based violence, children, families, Indigenous people, journalists, and activists, among others. Commenters explained that violence against these vulnerable populations is endemic in Mexico and has been recognized by the Departments, including through individual asylum adjudications. Therefore, the commenters stated that it is concerning that the IFR does not except these vulnerable populations despite the clear need to prevent further harm and mitigate past harms suffered.

Response: Regarding concerns about specific vulnerable populations of Mexican nationals, the Departments emphasize that agents and officers frequently encounter noncitizens who may be vulnerable and are trained on appropriate action. *See* 89 FR at 48744–

³⁴⁰ *See* OHSS analysis of July 2024 Persist Dataset (USPB Encounters by Citizenship tab).

³⁴¹ *See id.*

45. Moreover, the rule contains an explicit exception for exceptionally compelling circumstances that is intended to limit potential adverse effects of the rule's limitation on asylum eligibility, including on uniquely vulnerable populations. *See* 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i). For example, a noncitizen may qualify for the exception if the noncitizen faces an imminent and extreme threat to the noncitizen's life or safety immediately prior to entry into the United States. *See id.*

b. Adequacy of Statutory Withholding of Removal and CAT Protection

Comment: Commenters stated that statutory withholding of removal and CAT protection are insufficient alternative forms of protection for noncitizens who would be ineligible for asylum under the rule, asserting that these forms of protection are more difficult to obtain and provide fewer benefits than asylum.

First, commenters explained that statutory withholding of removal and CAT protection require noncitizens to meet a higher burden of proof than asylum and that, ultimately, these higher burdens will result in more noncitizens being denied protection under the rule.

Second, commenters stated that, even if noncitizens were able to meet the higher burden of proof for statutory withholding of removal or CAT protection, the noncitizen would not be accorded the same benefits as asylees. For example, commenters stated that recipients of statutory withholding of removal and CAT protection are subject to the continued risk of removal; cannot petition for derivative beneficiaries; are unable to apply for permanent residency or citizenship; are unable to travel abroad; and must apply annually for work authorization, which commenters claimed is subject to frequent adjudicatory delays. As a result, commenters argued that recipients of statutory withholding of removal and CAT protection are left in an uncertain status incongruent with the United States' obligations to protect refugees; that such status would lead to community instability in the United States, as it prevents noncitizens from investing in their communities and fully recovering from harm; and that such status would fail to ensure family unity—and even promote family separation—due to an inability to petition for derivative beneficiaries.

Further, commenters argued that the Departments cannot meet their non-refoulement obligations with statutory withholding of removal or CAT

protections alone, stating that neither statutory withholding of removal nor CAT protections are equivalent to asylum because those protections do not convey rights guaranteed by the Refugee Protocol or meet the goals of the Refugee Convention. Those commenters said that the United States must comply with the Refugee Convention in its entirety, not only with Article 33. For example, commenters said that the United States is obligated to comply with Article 34 of the Refugee Convention and facilitate the integration and naturalization of refugees.

Lastly, commenters claimed that noncitizens who attempt to pursue statutory withholding of removal or CAT protection under the rule would increase confusion in their interactions with DHS, particularly due to the rule's interactions with other rulemakings.

Response: As an initial matter, the Departments reiterate that this rule fully complies with the United States' non-refoulement obligations under Article 33 of the Refugee Convention (via the Refugee Protocol), which the United States implements through the statutory withholding of removal provision in section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3). *See* Section III.A.1.d of this preamble. This rule's limitation on asylum eligibility does not affect a noncitizen's ultimate eligibility for statutory withholding of removal. *See* 8 CFR 208.35(b)(2)(i), 1208.35(b)(2)(i) (requiring an AO to assess a noncitizen's eligibility for statutory withholding of removal and CAT protection when applicable). Similarly, this rule's implementation of the "reasonable probability" screening standard is well within the Departments' broad discretion to determine which screening standard should apply in implementing the United States' non-refoulement obligations. *See* 89 FR at 48740–41.

The rule is similarly compliant with Article 34 of the Refugee Convention, which is precatory and encourages the assimilation and naturalization of refugees. Importantly, although the rule limits asylum eligibility for noncitizens who enter the United States during emergency border circumstances, Article 34 "does not require the implementing authority actually to grant asylum to all those who are eligible." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 441 (1987). Indeed, under U.S. law, asylum is a discretionary form of relief. *Id.*; *see also* INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A); 8 CFR 1208.14(a)–(b). Consistent with that authority, the Departments have determined that this rule's limitation on asylum eligibility is necessary to address the emergency border circumstances described in the

IFR. *See* 89 FR at 48726–31. Further, the rule does not preclude the availability of asylum for those to whom the rule does not apply or who demonstrate that exceptionally compelling circumstances exist. For example, noncitizens may utilize the CBP One app to schedule an appointment to present themselves at a POE. *See* June 3 Proclamation Sec. 3(b)(v)(D) (excepting "noncitizens who arrive in the United States at a southwest land border port of entry pursuant to a process the Secretary of Homeland Security determines is appropriate to allow for the safe and orderly entry of noncitizens into the United States"); 89 FR at 48737 ("One of the mechanisms by which a noncitizen may arrive at a POE with a pre-scheduled time to appear is through the CBP One app. Use of the CBP One app creates efficiencies that enable CBP to safely and humanely expand its ability to process noncitizens at POEs, including those who may be seeking asylum."). Additionally, noncitizens may overcome the limitation on asylum eligibility if they, or a family member as described in 8 CFR 208.30(c) with whom they are traveling, are able to demonstrate exceptionally compelling circumstances by a preponderance of the evidence, such as if they face an acute medical emergency or an imminent and extreme threat to life or safety, among other circumstances. *See* 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i).

Next, the Departments recognize that the burdens of proof for statutory withholding of removal and CAT protection are higher than that for asylum, as they require a demonstration that it is more likely than not that noncitizens will be persecuted or tortured in another country, while asylum requires that noncitizens demonstrate a lesser burden of proof: a well-founded fear of persecution. *See Cardoza-Fonseca*, 480 U.S. at 423. These higher burdens of proof for those to whom the limitation applies align with the overall purpose of the rule: to disincentivize irregular migration during periods of emergency border circumstances, so as to mitigate the risk that border enforcement operations and the larger immigration system become overwhelmed and unable to issue timely decisions or consequences. *See* 89 FR at 48718 (explaining that the rule is intended to "address historic levels of migration and efficiently process migrants arriving at the southern border during emergency border circumstances"). These differences in burdens of proof also correspond with the distinct, but related, objectives of the Circumvention of Lawful Pathways

rule: to encourage noncitizens to avail themselves of lawful, safe, and orderly pathways, where possible, as well as to discourage irregular migration, promote orderly processing at POEs, and ensure that protection is still available for those who satisfy the applicable standards for statutory withholding of removal or CAT protection. *See* 88 FR at 31428. Therefore, if a noncitizen is subject to the rule's limitation on asylum eligibility, being required to meet comparatively higher existing standards for statutory withholding of removal or CAT protection is intended to further disincentivize irregular migration when encounters are above a certain benchmark and to "substantially improve the Departments' ability to deliver timely decisions and consequences to noncitizens who lack a lawful basis to remain." 89 FR at 48715; *see also id.* at 48754.

Separately, and as explained in response to similar comments on the Circumvention of Lawful Pathways rule, the Departments also recognize the comparatively fewer benefits of statutory withholding of removal and CAT protection as compared to asylum, including: (1) no permanent right to remain in the United States; (2) the inability to adjust status to become a lawful permanent resident and, relatedly, later naturalize as a U.S. citizen; (3) the inability to travel abroad; and (4) the need to affirmatively apply for, and annually renew, employment authorization documents. *See* 88 FR at 31428. However, the Departments again emphasize that the rule's limitation on asylum eligibility, along with the comparatively fewer benefits of statutory withholding of removal and CAT protection, align with the overall purposes of the June 3 Proclamation and this rule: to address historic levels of migration at the southern border and efficiently process migrants arriving at the southern border during emergency border circumstances. *See* 89 FR at 48718; *id.* at 48726–31.

Moreover, with regard to concerns about the inability of statutory withholding of removal or CAT protection recipients to petition for beneficiary derivatives,³⁴² this rule contains a family unity provision to help prevent family separation for

noncitizens who can establish eligibility for statutory withholding of removal or CAT withholding. *See* 8 CFR 208.35(c), 1208.35(c). As discussed in further detail in Section III.C.1.e of this preamble, the family unity provision treats the following noncitizens as having established exceptionally compelling circumstances sufficient to avoid application of the limitation on asylum eligibility: those (1) who are found eligible for statutory withholding of removal or CAT withholding; (2) who would be eligible for asylum, but for the limitation on asylum eligibility set forth in the rule, the condition set forth in the Circumvention of Lawful Pathways rule, or both; and (3) who have a qualifying spouse or child. *See id.*

Lastly, the Departments do not believe that the ability of a noncitizen to apply for statutory withholding of removal or CAT protection when subject to the rule's limitation on asylum eligibility will cause confusion. Noncitizens have long maintained the ability to pursue such protection, and DHS and EOIR personnel are well-trained in screening for, and adjudicating, such forms of protection. *See* 89 FR at 48748 (explaining that "AOs, supervisory AOs, and IJs receive training and have experience applying asylum, statutory withholding of removal, and CAT protection screening standards and in applying and reviewing decisions related to the ultimate asylum (for USCIS and EOIR) and statutory withholding of removal and CAT protection (for EOIR) merits standards").

c. Requests for Reconsideration

Comment: Several commenters opposed eliminating noncitizens' ability to request reconsideration of a negative credible fear determination by USCIS. Commenters stated that the opportunity to request reconsideration of a negative credible fear determination after IJ concurrence is an important safeguard against non-refoulement. One commenter noted that in the Asylum Processing IFR, the Departments counted at least 569 negative credible fear determinations that were changed to positive credible fear determinations after a request for reconsideration between FY 2019 and 2021. Commenters stated that USCIS should continue the practice of allowing requests for reconsideration, as it may be the only opportunity for noncitizens to present additional evidence that was not presented during the credible fear interview or to correct procedural defects in the credible fear interview, alleging that the IJ review process generally does not provide meaningful review and routinely affirms erroneous

negative credible fear determinations. A commenter also claimed that even with the regulatory language acknowledging that USCIS maintains the discretion to reconsider its own negative credible fear determinations following IJ concurrence, it is unclear under the rule when or how USCIS would exercise its *sua sponte* authority to reconsider a negative credible fear finding.

Response: The Departments disagree with comments urging USCIS to allow noncitizens to request reconsideration of negative credible fear determinations under the present rule. This rule does not eliminate the discretionary authority of USCIS to reconsider negative credible fear determinations concurred upon by an IJ, but instead only prohibits noncitizens from submitting a request to reconsider a negative credible fear determination in cases subject to the rule. 8 CFR 208.35(b)(2)(v)(B). The Departments deem it appropriate to include this prohibition against requests for reconsideration in the rule to further its purpose of effectuating efficient yet fair credible fear case processing where emergency border circumstances are present. As noted in prior rulemakings, allowing requests for reconsideration of negative credible fear determinations diverts limited USCIS resources away from initial screenings, and relatively few such requests ultimately result in a reversal of the determination.³⁴³

The Departments acknowledge that they previously provided information in the Asylum Processing IFR that USCIS counted at least 569 negative credible fear determinations that were reversed after a request for reconsideration was submitted between FY 2019 through FY 2021. The Departments note, however, that that number was out of a total of at least 5,408 requests for reconsideration that were submitted during those years. *See* 87 FR at 18132. Under the present rule, where emergency border circumstances are present and a credible fear determination is made pursuant to the rule's limitation on asylum eligibility, the Departments assess that, in light of the safeguards in place, efficiency interests outweigh the interest in providing an opportunity to request reconsideration.

To the extent commenters argue that this provision of the rule implicates statutory or due process rights of noncitizens, the Departments note that noncitizens have no statutory right to request reconsideration of a negative credible fear determination. The Supreme Court has held that the due process rights of noncitizens applying

³⁴² The Departments note that, although there is no derivative protection under statutory withholding of removal or CAT protection, certain U.S.-based qualifying parents or legal guardians, including those granted withholding of removal, may petition for qualifying children and eligible family members to be considered for refugee status and possible resettlement in the United States. *See* USCIS, *Central American Minors (CAM) Program*, <https://www.uscis.gov/CAM> (last updated Mar. 7, 2024).

³⁴³ *See* Asylum Processing IFR, 87 FR at 18132; *see also* 88 FR at 31419.

for admission at the border are limited to “only those rights regarding admission that Congress has provided by statute.” *Thuraissigiam*, 591 U.S. at 140. In establishing the streamlined procedures governing credible fear screening, Congress explicitly mandated that review of any negative credible fear determination made by an AO be conducted by an IJ and provided no mechanism for noncitizens to request reconsideration of the IJ’s determination. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III).

With respect to commenters’ concerns about fairness, the Departments note that all credible fear determinations, including determinations made under the processes set forth in this rule, will continue to be reviewed by a supervisory AO. See 8 CFR 208.30(e)(8); see also 89 FR at 48748. And the rule does not impact a noncitizen’s right to request IJ review of a negative credible fear determination. Where requested, the IJ will evaluate the case de novo, including making a de novo determination as to whether there is a significant possibility the noncitizen could demonstrate they are not subject to the rule’s limitation on asylum eligibility or are eligible for the exception. 8 CFR 208.35(b)(2)(iii)–(v), 1208.35(b). Accordingly, this rule ensures IJ review of the entirety of the negative credible fear determination, including application of the rule’s limitation on asylum eligibility. To the extent commenters raise general concerns about IJ review of negative credible fear determinations, those concerns are outside the scope of this rulemaking.

In response to the comment noting that it is unclear when USCIS would exercise its discretion to reconsider a negative credible fear determination *sua sponte*, the Departments note that the regulatory framework makes clear that USCIS possesses the inherent discretion to reconsider its own negative credible fear determination that has been concurred upon by an IJ, and that such discretion may be exercised on a case-by-case basis dependent on the facts and circumstances in an individual case. See, e.g., 8 CFR 1208.30(g)(2)(iv)(A) (2018) (noting that “[t]he Service, however, may reconsider a negative credible fear finding that has been concurred upon by an immigration judge”); 208.35(b)(2)(v)(B). As noted above, the Departments contend that the existing safeguards under the present rule comport with all statutory requirements and believe that these safeguards sufficiently address any concerns related to adequate review of

negative credible fear determinations under the present rule.

D. Other Issues Relating to the Rule

1. Scope of the Rule and Implementation

a. Concerns That the Encounter Thresholds Are Too Low or Arbitrary

Comment: Some commenters expressed concern with the 2,500-encounter threshold that would trigger the limitation on asylum eligibility for certain individuals who enter during emergency border circumstances. Some commenters characterized the threshold as “arbitrary.” Another commenter claimed that encounter rates have historically never fallen below the 2,500-encounter threshold due to the urgent humanitarian need and expressed concern that, contrary to the realities of forced displacement, the IFR limiting entries to 2,500 encounters effectively serves as a policy to close the border and end access to asylum.

Several commenters remarked that the low threshold required for the limitation on asylum eligibility to be discontinued is unrealistic and would virtually guarantee the limitation would always be in place. One commenter expressed concern that 1,500 daily encounters is well below historical averages. Another commenter stated that in the past 6 FYs, monthly average border apprehensions consistently surpassed 1,500 individuals. Similarly, another commenter stated that the “emergency border circumstances” would apply during 58 percent of all months this century. Another commenter stated that the 1,500-encounter threshold is unreasonable given the number of encounters at the SWB in 2024, which, according to the commenter, has lately hovered between 170,000 to 190,000 per month, or around 6,000 people per day on average.

While referencing the thresholds, a commenter remarked that the preamble acknowledges that the Departments cannot swiftly change from one means of processing to another. Citing high levels of border crossings since May 2023 (after the implementation of the Circumvention of Lawful Pathways rule), the commenter stated that the Departments’ intent is to keep this rule in place indefinitely, punishing migrants in an attempt to deter them from seeking protection in the United States. A commenter warned that “the mechanism for lifting the restrictions in the IFR is insufficient to meet the humanitarian needs at the U.S. border, jeopardizing the asylum system for many years to come.”

Response: The Departments disagree that the numerical thresholds are arbitrary or too low. As explained in the IFR, the emergency border circumstances described in the June 3 Proclamation and this rule necessitate this rule’s limitation on asylum eligibility and changes to the referral process and screening standard for statutory withholding of removal and CAT protection. See 89 FR at 48726–31. This is because, in such circumstances, DHS lacks the capacity to deliver timely consequences and must resort to large-scale releases of noncitizens pending section 240 removal proceedings. *Id.* at 48749. Such large-scale releases in the absence of this rule would lead to significant harms and incentivize human smuggling organizations to recruit more potential migrants based on the limitations on the Departments’ ability to deliver timely decisions and consequences. *Id.* at 48749–50. The 1,500-encounter threshold, as adopted in this rule, is a reasonable proxy for when the border security and immigration systems, as currently resourced, are no longer over capacity and the measures adopted in this rule are not necessary. *Id.* at 48750. And the 2,500-encounter threshold, as adopted in this rule, is a reasonable proxy for when there has been a significant degradation of DHS’s ability to impose consequences at the border for individuals who do not establish a legal basis to remain in the United States. *Id.* at 48752. Were the resourcing of border security and immigration systems to change, this change (if sufficiently substantial) could trigger reassessment of these thresholds, in order to ensure that they reflect the Departments’ ability to deliver timely decisions and consequences.

In the IFR, the Departments demonstrated the reasonableness of the thresholds in two ways. First, the Departments explained that during the FY 2013 to FY 2019 pre-pandemic period, USBP total encounters (including all UCs) only exceeded 1,500 per day for a sustained period from October 2018 to August 2019. *Id.* at 48753. During that 7-year period, months in which daily encounters were between 1,500 and 2,500 resulted in an average of 210 noncitizens released each day,³⁴⁴ while months in which daily

³⁴⁴ Although the demographic composition of current encounters (e.g., a higher percentage of noncitizens encountered who assert fear claims) means that such a low release rate is likely unachievable in the near term, releases remain much lower when daily encounters are below the 2,500-encounter threshold. See 89 FR at 48731; see also OHSS analysis of July 2024 Persist Dataset and

encounters exceeded 2,500 resulted in approximately 1,300 noncitizens released each day with CBP releasing as many as 46 percent of the individuals it processed pending section 240 removal proceedings. *Id.*

Second, the Departments demonstrated that at the 1,500-encounter level and assuming a similar level of voluntary returns and reinstatements to those seen during implementation of the Circumvention of Lawful Pathways rule, DHS would be able to refer for expedited removal more than 70 percent of the single adults and family unit individuals who are not quickly repatriated (through voluntary return or reinstatement), and would be able to repatriate a total of about 830 noncitizens (*i.e.*, 56 percent of the 1,500 encounters counted towards the threshold). *Id.* at 48752 & nn.274, 276. By contrast, at above 2,500 encounters—the level at which the June 3 Proclamation and the IFR would again apply—DHS’s ability to impose such consequences is significantly lower and decreases rapidly as encounters increase beyond that level; for instance, at that level DHS would be able to refer for expedited removal 43 percent of the single adults and family unit individuals who are not quickly repatriated, and would be able to repatriate a total of about 1,010 noncitizens (*i.e.*, 40 percent of the 2,500 encounters counted towards the threshold). *Id.* at 48752 nn.277–278.

In this second analysis as presented in the IFR, consistent with the June 3 Proclamation, DHS excluded encounters of UCs from non-contiguous countries from the threshold counts. But as noted in the IFR, “the demographics and nationalities encountered at the border significantly impact DHS’s ability to impose timely consequences and the number of people who are ultimately released by CBP pending section 240 removal proceedings. This is especially true for periods when CBP has encountered more UCs, family units, or individuals from countries to which it is difficult to effectuate removals.” *Id.* at 48753. Consistent with this reality, the September 27 Proclamation and this rule include, in both thresholds, consideration of encounters of all UCs, including those from non-contiguous countries. As discussed in Section II.C.1 of this preamble and later in this Section III.D.1, most UCs are from non-contiguous countries, and the processing of all UCs requires the use of significant CBP resources.

Including non-contiguous UCs in the 7-consecutive-calendar-day average calculation recognizes this impact. Depending on the levels of such UCs encountered at any given time, failing to include such UCs in the 1,500 and 2,500 encounter limits may result in an overestimate of resources available to the Departments to efficiently process noncitizens encountered at the SWB while delivering timely decisions and consequences to noncitizens who enter without a lawful basis to remain. This is because the number of UCs from non-contiguous countries encountered by USBP can fluctuate—something that models that assume stable demographics cannot fully account for. And if encounters of such UCs rise but are not included in the rule’s thresholds, then those thresholds become much less useful predictors of overall capacity. Although encounters of UCs from non-contiguous countries have generally declined since the IFR took effect,³⁴⁵ their proportion of USBP encounters has increased,³⁴⁶ and the population of UCs from non-contiguous countries at the border has surged on several occasions in the past.³⁴⁷

As part of this final rule, DHS updated the second analysis discussed above to reflect more recent data and to demonstrate the impact on that analysis of counting all UCs—at current encounter levels—towards the encounter thresholds. The Office of Homeland Security Statistics (“OHSS”) updated the IFR’s methodology by (1) applying fear claim rates for the entirety of the immediate post-pandemic period (*i.e.*, not ending in April 2024, as the prior analysis did), (2) assuming a demographic makeup (including with respect to UCs) similar to that observed between June 5, 2024, and July 30, 2024 for that entire period, and (3) including all UCs in the 1,500 and 2,500 encounter figures.³⁴⁸

³⁴⁵ See OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (USBP Encounters by Fam Status tab).

³⁴⁶ See *id.*

³⁴⁷ See OHSS, *Immigration Enforcement and Legal Processes Monthly Tables*, <https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables> (last updated Sept. 10, 2024) (SWB encounters by family status from FY 2014 through May 2024).

³⁴⁸ OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (CLP v pre-CLP Proj Outcomes tab). The figures presented in the IFR were based on fear claim rates, demographics, and average expedited removal capacity under the Circumvention of Lawful Pathways rule; these rates were pulled in early April 2024. See 89 FR at 48752 nn.274, 276. For instance, based on data pulled in early April 2024, the figures in the IFR assumed that CBP could process approximately 900 USBP encounters for expedited removal per day and that 17 percent of encounters would result in rapid returns via

Under these parameters, at 1,500 encounters between the POEs (including all UCs) and assuming USBP is able to process 900 cases for expedited removal per day (as was approximately the case during the immediate post-pandemic period between May 12, 2023 and June 4, 2024), DHS would be able to refer for expedited removal 77 percent of the noncitizen single adults and individuals in family units who are not quickly repatriated, and would be able to repatriate a total of about 880 noncitizens per day (*i.e.*, under 60 percent of the 1,500 encounters counted towards the threshold).³⁴⁹

Similarly, at 2,500 encounters between the POEs (including all UCs) and assuming USBP can process 900 people for expedited removal per day, DHS would be able to refer for expedited removal 46 percent of the single adults and individuals in family units who are not quickly repatriated, and would be able to repatriate a total of about 1,040 noncitizens per day (*i.e.*, over 40 percent of the 2,500 encounters counted towards the threshold).³⁵⁰

The Departments caution that this type of analysis depends on a range of assumptions regarding capacity, fear claim rates, screen-in rates, and geographic and demographic distribution of encounters, among other variables. A change in these variables—for instance, a spike in UC encounters—could place a strain on custody resources that would further reduce the Departments’ overall capacity to deliver timely decisions and consequences, such as by processing noncitizens for expedited removal. The analysis does show, however, that the change to the thresholds to include counting of all UCs is incremental in nature and consistent with the rule’s overall purpose.

Finally, with respect to claims that either threshold effectively serves as a policy to “close the border” and end access to asylum, the Departments

voluntary return to Mexico, reinstatement of a removal order, or administrative removal. *Id.* Accounting for all of the immediate post-pandemic period (*i.e.*, also, including April, May, and early June 2024), USBP averaged about 860 people processed for expedited removal per day during that time period. OHSS analysis of July 2024 Persist Dataset (Imm Pos Pandemic ERF tab). CBP processed for expedited removal about 920 people on average during that time. *Id.* From June 5, 2024 through August 31, 2024, CBP processed over 1,100 people for expedited removal per day and about 16 percent of encounters resulted in such rapid returns. OHSS analysis of data downloaded from UIP on September 3, 2024 (IFR Details tab, IFR ERF tab, and CLP v pre-CLP Projection Tool tab).

³⁴⁹ OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (CLP v pre-CLP Proj Outcomes tab).

³⁵⁰ *Id.*

disagree. The Departments also disagree with commenters' specific claims about historical encounter rates and numbers. Commenters are incorrect that daily encounters rates have never fallen below 2,500.³⁵¹ Commenters are also wrong that an average of 1,500 daily encounters is far below historical averages. From FY 2013 through FY 2019, the 7-consecutive-calendar-day average of encounters was below 1,500 nearly 80 percent of the time, and above 2,500 approximately 5 percent of the time.³⁵² And for over 70 percent of days during that time frame, the 7-consecutive-calendar-day average had been below 1,500 encounters for 28 consecutive days.³⁵³ Over a longer time period, from FY 2009 through FY 2020, there were a total of only four months (all during the spring 2019 family unit surge) that encounters averaged more than 2,500 per day.³⁵⁴ One commenter argued that in the past six fiscal years, monthly average apprehensions have consistently surpassed 1,500 noncitizens. But this only shows that the past six fiscal years have generally been times of historically high migrations, and the Departments established the 1,500-encounter daily threshold not by selecting an arbitrary figure but by estimating capacity to deliver timely consequences at current resource levels.

Even since the IFR took effect, encounters have dropped to levels indicating that it is possible the 1,500-encounter threshold will be met in the future. If, consistent with the June 3 Proclamation and IFR, one excludes UCs from non-contiguous countries, the 7-consecutive-calendar-day average has been below 2,000 encounters since June 27.³⁵⁵ And if, consistent with the September 27 Proclamation and this rule, one includes such UCs, the 7-

consecutive-calendar-day average has been below 2,000 encounters since June 29.³⁵⁶

b. Concerns Regarding Exceptions From the Encounter Thresholds

Comment: A commenter remarked that there are too many exceptions to the types of encounters that are counted daily. The commenter stated that it is "hard to count up to 1,500" when there are so many exceptions. The commenter used the exception for non-contiguous country UCs, who are not counted under the June 3 Proclamation, as an example. The commenter stated that this exception encourages the trafficking of children and prevents reporting these as encounters. The commenter also objected to the exception for noncitizens who are determined to be inadmissible at a SWB POE, which the commenter asserted significantly limits the number of encounters considered.

Another commenter expressed similar concerns regarding the exclusion of UCs from the 2,500-encounter threshold. The commenter stated that the current UC policies, influenced by the Flores Settlement Agreement and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, are susceptible to exploitation. The commenter further noted that during the current Administration, UC encounters have exponentially increased, with more than 480,000 UCs encountered at the southern border between POEs. The commenter cautioned that without counting all UC encounters towards the 1,500-encounter threshold, existing policies may be further abused by criminal elements, leading to increased risks for UCs, such as human trafficking and other forms of exploitation. The commenter remarked that in addition to excluding non-contiguous country UCs, the encounter thresholds in the IFR also exclude 1,650 encounters every day at POEs, plus 30,000 noncitizens processed every month through the CHNV parole processes.

Response: Regarding UCs from non-contiguous countries, as discussed in Section II.C.1 of this preamble, the September 27 Proclamation amends the June 3 Proclamation to remove section 2(c), which provided that UCs from non-contiguous countries shall not be included in calculating the number of encounters, and this rule makes a parallel change. As discussed in Section II.C.1 of this preamble, the Departments' experience implementing the IFR has shown that excluding encounters of UCs from non-contiguous countries results in an incomplete assessment of the

Departments' resources and capabilities. UCs, regardless of their country of origin or nationality, require considerable resources to process and safely hold in CBP facilities and the Departments have in the past experienced surges of encounters of such UCs.³⁵⁷ One of the primary purposes of this rule is to alleviate undue strain on the limited resources of border security and immigration systems, and through their experience with the IFR the Departments have recognized the need to consider the full operational burden that results from all UC encounters at the southern border. The resource burden posed by UCs from non-contiguous countries, along with recent increases in the proportion of such UCs relative to types of encounters, support the Departments' determination that UCs from all countries, not just from contiguous countries, are relevant to the thresholds contained in the rule.

The Departments disagree that the encounter thresholds should include daily encounters at the SWB POEs or CHNV parolees. The IFR applies only when encounters strain the border security and immigration systems' capacity. To date, this strain has been caused primarily by increased encounters between POEs. CBP can more efficiently process those at SWB POEs, particularly those who have used the CBP One app to make an appointment. In the past several years, processing capacity at POEs has been significantly expanded, enabling CBP to manage processing of noncitizens in a safe and efficient manner. However, despite the efforts to increase capacity within the limits of available resources and funding, processing between POEs continues to tax DHS resources and remains very resource intensive.

The CHNV processes do not adversely affect the Departments' resources at the southern border because noncitizens arriving under the CHNV processes travel by air to an interior POE.³⁵⁸ The Departments do not believe it necessary or appropriate to include noncitizens who use the CHNV processes as part of encounter calculations under this rule for that reason.

³⁵⁷ See OHSS, *Immigration Enforcement and Legal Processes Monthly Tables*, <https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables> (last updated Sept. 10, 2024) (SWB encounters by family status from FY 2014 through May 2024).

³⁵⁸ See, e.g., Implementation of a Parole Process for Nicaraguans, 88 FR 1255, 1256, 1263 (Jan. 9, 2023); USCIS, *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans* (last updated Aug. 29, 2024), <https://www.uscis.gov/CHNV>.

³⁵¹ Average daily encounters averaged 1,310 between FYs 2011 and 2018. In FY 2009, average daily encounters were approximately 1,200. See OHSS analysis of July 2024 Persist Dataset (Daily Encounters FY2000–2024 tab).

³⁵² Consistent with the September 27 Proclamation, this calculation includes encounters of UCs from non-contiguous countries. If, consistent with the June 3 Proclamation, one excludes such UCs from non-contiguous countries, the 7-consecutive-calendar-day average was below 1,500 nearly 85 percent of the time and above 2,500 only 4 percent of the time. See OHSS analysis of July 2024 Persist Dataset (Trigger Analysis tab).

³⁵³ Consistent with the September 27 Proclamation, this calculation includes encounters of UCs from non-contiguous countries. If, consistent with the June 3 Proclamation, one excludes such UCs from non-contiguous countries, the resulting figure is just below 80 percent. See OHSS analysis of July 2024 Persist Dataset (Trigger Analysis tab).

³⁵⁴ OHSS analysis of July 2024 Persist Dataset (Encounters FY 2000–2024 tab).

³⁵⁵ OHSS analysis of data downloaded from UIP on September 3, 2024 (Section 2c Encounters Tab).

³⁵⁶ *Id.*

c. Other Concerns About the Encounter Thresholds

Comment: A commenter wrote that it is reasonable to assume the threshold for suspending the rule will not be met in the foreseeable future, because even if the number of encounters dropped to the level where the 1,500-encounter threshold might be met, the Departments could issue a new IFR to keep the procedure in place. A commenter stated that the IFR provides no end dates and the Departments do not provide an explanation as to why the IFR should be in place indefinitely.

Response: The Departments disagree with the suggestion that they would perpetually take actions to lower the threshold for discontinuation solely to keep these emergency measures in place. If the Departments intended to permanently have these measures in place, they could have made the IFR apply indefinitely without using encounter thresholds. The two changes to the threshold made in this rule and the September 27 Proclamation are incremental in nature and consistent with the underlying purpose of the June 3 Proclamation. The Secretary will monitor encounter levels and make relevant determinations consistent with the September 27 Proclamation. Should further policy changes prove necessary—whether in response to comments submitted in response to this final rule’s request or in another context—the Departments may take appropriate action to implement such changes. Additionally, the rule does not contain specific end dates because its measures are designed to be responsive to patterns in daily encounters. The IFR does not contain an overall expiration date because, due to the unpredictable nature of migration trends and for so long as Congress fails to increase the Departments’ resources and modernize the current U.S. immigration system, such measures will be necessary when the Departments’ operational capacity, as measured by daily encounter thresholds, is greatly overwhelmed.

Comment: A commenter stated that it would be challenging for noncitizens to know when thresholds have been met. The commenter stated that they had surveyed migrants in Mexico and over half of respondents in the first half of 2024 affirmed that they do not understand the requirements and processes for accessing U.S. territory, and that nearly half of respondents in certain areas confirmed that the main channel through which they receive information on policy changes is word of mouth, while around a third receive this information through social media.

The commenter said noncitizens would not be able to discern the application of the IFR without access to official information, particularly given that, according to the commenter, the United States Government does not currently publish statistics on encounters. The commenter wrote that even when some noncitizens might be aware of the dynamics of irregular movements, this awareness is likely to be limited to the specific region of the SWB where they are located and would very likely not cover the overall number of encounters.

The commenter stated that, given the swiftness with which the limitations established under the IFR can be invoked and applied, they are not likely to influence the ability of noncitizens in different parts of the transit route to adapt their decisions to increase their chances of receiving the protection that they need. The commenter stated that those who are already at or around Mexico’s northern border when the rule’s provision apply cannot meaningfully consider any potential alternative pathways. The commenter further stated that a significant proportion of people of concern present in Mexico could be ineligible for certain alternatives. For example, 97.9 percent of respondents to the commenter’s protection monitoring activities during the first semester of 2024 reported having entered Mexico irregularly, which could render them ineligible for certain parole processes. The commenter stated that as a result, persons of concern are unlikely to become aware of when the additional limitations on asylum eligibility would apply with sufficient lead time to be able to adapt their decisions. This will thus undermine their ability to make decisions that increase their chances of receiving the protection that they need.

The commenter further stated that confusion around changing policies and practices governing access to U.S. territory has fueled the widespread belief that there are certain moments when the U.S. border is “open” and others when it is “closed,” and that access to U.S. territory requires individuals to remain close to the border and attentive to any information suggesting that the border is “open.” The commenter stated that the IFR has already contributed to this dynamic, with migrants along the U.S.-Mexico border expressing their understanding that the new limitations effectively “close off” access to U.S. territory. According to the commenter, this has led to desperation and fostered the likelihood that the population resorts to imprecise and misleading information

provided by human traffickers or on social media.

Response: DHS posts statistics on SWB encounters on CBP’s website.³⁵⁹ The website includes data extracted from CBP systems and data sources regarding encounters with single adults, individuals in family units, and UCs. Information about the status of the suspension and limitation on entry, and the related provisions in this rule, is available in English and Spanish at: <https://www.dhs.gov/immigrationlaws>. In addition, regardless of whether the threshold for discontinuing or continuing or reactivating the suspension and limitation on entry under the Proclamation or the limitation on asylum eligibility under this rule has been met, migrants may, for instance, arrive in the United States at a SWB POE pursuant to a process the Secretary determines is appropriate to allow for the safe and orderly entry of noncitizens into the United States.

For similar reasons, the Departments do not believe that it is necessary to adjust the rule to ensure that the potentially “abrupt” nature of its provisions allows sufficient time for those already in Mexico to adjust their behavior in order to access protection. The IFR was not the first time that the Departments encouraged migrants to use lawful, safe, and orderly pathways to come to the United States. The Circumvention of Lawful Pathways rule also incentivized the use of such pathways, *see generally* 8 CFR 208.33, 1208.33, and since their inception, the CHNV parole processes have included an ineligibility for those who crossed into Mexico irregularly, *see, e.g.*, Implementation of a Parole Process for Nicaraguans, 88 FR at 1263; Implementation of a Parole Process for Venezuelans, 87 FR 63507, 63515 (Oct. 19, 2022). And the CBP One app remains available to noncitizens in Mexico.³⁶⁰ The rule also provides an exception for those who are able to demonstrate exceptionally compelling circumstances, *see* 8 CFR 208.35(a)(2)(i)

³⁵⁹ CBP, *Southwest Land Border Encounters* (last modified Sept. 16, 2024), <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

³⁶⁰ *See* CBP, *CBP One™ Mobile Application* (last modified Sept. 23, 2024), <https://www.cbp.gov/about/mobile-apps-directory/cbpone>. On August 23, 2024, CBP expanded the areas from which noncitizens can request appointments through the CBP One app. With this expansion, Mexican nationals will be able to request an appointment from anywhere within Mexico. Additionally, non-Mexican nationals will be able to request and schedule appointments from the Southern Mexico states of Tabasco and Chiapas, in addition to their existing ability to request and schedule an appointment from Northern and Central Mexico—enabling them to make appointments without having to travel all the way north to do so. *See id.*

and (ii), 1208.35(a)(2)(i) and (ii), and the rule's limitation on asylum eligibility does not apply those who are excepted under the Proclamation, *see* 8 CFR 208.35(a)(1), 1208.35(a)(1). And the rule preserves access to statutory withholding of removal, as well as CAT protection. *See* 8 CFR 208.35(b)(2), 1208.35(b). Thus, migrants already in Mexico have the ability under the rule to access available protection.

The Departments acknowledge the potential that some migrants would perceive the possibility of abrupt changes in procedures at the southern border as a reason to remain close to the border and attentive to any information suggesting that the border is or soon will be "open." In the IFR, the Departments explained that "[t]he 14-day waiting period prior to a discontinuation provides time for the Departments to complete processing of noncitizens encountered during emergency border circumstances and to confirm that a downward trend in encounters is sustained." 89 FR at 48749 n.248. This rule makes an additional change that addresses this concern: The rule's provisions will not be discontinued unless there has been a 7 consecutive-calendar-day average of less than 1,500 encounters that is sustained over a period of 28 days. The Departments expect that this change, coupled with the 14-day waiting period after the Secretary makes a factual determination to discontinue the suspension and limitation on asylum eligibility, will reduce any perceived incentive to remain close to the U.S.-Mexico border in anticipation of a rapid change in policy.

Comment: A commenter wrote that while DHS has created a website that states whether the border is currently open or closed, it is unlikely that noncitizens in desperate conditions in Mexico would review the website before deciding to cross the border. Further, the commenter stated that, if the border were to reopen under the rule, it seems inevitable that smugglers would charge higher fees to move noncitizens across the border, and that if noncitizens understand the rule at all, they will flood the border when the suspension and limitation discontinues—leading again to its immediate closure. The commenter stated that the burden of tracking, identifying, and applying different standards over a matter of days is significantly more complex for USCIS personnel as they consider protection claims. The commenter expressed concern that the preamble to the IFR did not consider that this complexity would affect and complicate merits adjudications and lead to longer, more

complex hearings in an already overwhelmed, backlogged system.

Response: As noted in Section II.A.2 of this preamble, encounters between POEs have dropped substantially since implementation of the IFR, suggesting that many migrants have not responded as the commenter predicted. But in any event, if a migrant were to disregard the existence of the rule and other restrictions on crossing between POEs, or if a migrant who is unaware of the existence of the rule were to cross between the POEs, the rule would allow the Departments to swiftly deliver decisions and consequences, while allowing noncitizens who are able to demonstrate the existence of exceptionally compelling circumstances to avoid application of the rule's limitation on asylum eligibility and preserving access to statutory withholding of removal and CAT protection, as discussed in the preceding response.

With respect to the commenter's suggestion that noncitizens could respond to the discontinuation of the rule's provisions by "flood[ing] the border" and "leading again to its immediate closure," to the extent there is a prospect of such actions, this highlights the need for this rule, the overall effect of which will be to combat such actions by alleviating stresses on the border security and immigration systems at the southern border; it is not a reason to withdraw the rule. Moreover, the historical encounter data discussed in Section II.C of this preamble suggest that when regional migration decreases, encounter numbers often remain below 2,500 for very long periods. Those data militate against the commenter's view that encounters will inevitably rise quickly above 2,500.

Further, as discussed in Section II.C of this preamble, the September 27 Proclamation and this rule revise the timeline for the 1,500-encounter threshold to reduce the probability that an ephemeral drop in encounters would result in rapid shifts in applicable policy. With respect to the commenter's concern about complexity for Government personnel, the use of a 7-consecutive-calendar-day average, combined with the new requirement for the average to be below 1,500 encounters for each of 28 consecutive calendar days, also reduces the prospect of undue complexity. Although some section 240 removal proceedings and credible fear interviews may become more complex by virtue of this rule's provisions, many such proceedings may be avoided entirely. *See, e.g.,* 89 FR at 48767 ("[T]he Departments expect the additional time spent by AOs and IJs on

implementation of the rule to be mitigated by a comparatively smaller number of credible fear cases than AOs and IJs would otherwise have been required to handle in the absence of the rule.").

2. Other Comments on Issues Relating to the Rule

Comment: Commenters asked how USCIS' implementation of the IFR would be funded, remarking that the funds to execute the IFR as written have not been allocated.

Response: USCIS applies the IFR's provisions as part of the credible fear determination or the full asylum adjudication. It is not a discrete or separate adjudication that would require its own funding stream separate from that which is used for credible fear determinations or asylum adjudications.

Comment: Commenters expressed concern about their ability to comment on the proposals in DHS's recent Mandatory Bars NPRM, the comment period for which ended four days after the IFR published. For example, a commenter noted that, in the IFR, the Departments expressly asked for comment on the interaction between the two rules, including whether to explicitly apply the heightened "reasonable probability" standard to those who are subject to a mandatory bar but not subject to the Circumvention of Lawful Pathways rule, but the commenter asserted that they could not provide comment on those issues without knowing how and whether DHS plans to finalize the DHS Mandatory Bars NPRM. Commenters also stated that DHS failed to analyze the interaction between the two rulemakings, which they stated will create additional hurdles for noncitizens seeking asylum and will lead to inconsistencies and potential challenges in processing. Commenters expressed the need for a comprehensive examination of how the policies overlap to avoid uncertainty.

Response: The Departments disagree that commenters did not have adequate opportunity to comment on the potential interaction between the DHS Mandatory Bars NPRM and the IFR. Indeed, as the commenters note, the Departments requested comment in the IFR on whether to expand 8 CFR 208.35(b)(3) (directing asylum officers to apply a reasonable probability screening standard in protection screenings in the event that 8 CFR 208.35(a) is held to be invalid or unenforceable) to cover "those who are found not to have a significant possibility of eligibility for asylum because they are barred from asylum due to a mandatory bar to

asylum eligibility if the [DHS Mandatory Bars NPRM] is finalized.” 89 FR at 48756. The DHS Mandatory Bars NPRM provides ample notice of the proposed mandatory bars policy, and the commenters do not explain with any specificity why they must review any final rule associated with the DHS Mandatory Bars NPRM in order to provide relevant comments about its potential impact on the IFR.

Moreover, the Departments have considered the interaction between the two rulemakings and do not believe any corresponding changes to this rule are necessary. While both rules address DHS screening procedures, the DHS Mandatory Bars NPRM relates to a different issue than the issues raised in this rulemaking. The DHS Mandatory Bars NPRM proposes to allow AOs to consider the applicability of certain statutory bars to asylum, statutory withholding of removal, and withholding of removal under the CAT regulations during credible fear screenings, but it does not propose changes to the substantive screening standards by which AOs make their credible fear determinations. *See generally* 89 FR at 41347–61. On the other hand, the IFR established a new “reasonable probability” standard for the statutory withholding and CAT screening of noncitizens determined to be subject to the IFR’s limitation on asylum eligibility. 8 CFR 208.35(b)(2)(i), 1208.35(b)(2)(iii). Except for this changed screening standard, the AO and IJ would otherwise follow the pre-existing standards at 8 CFR 208.30, 208.33, 1208.30, or 1208.33, as applicable. *Id.* Accordingly, as stated in the IFR, if DHS finalizes the DHS Mandatory Bars NPRM as drafted, the “reasonable probability” standard would still apply to determinations involving a noncitizen who is subject to this rule’s limitation on asylum eligibility. 89 FR at 48739 n.186.

Comment: A commenter added that the Departments failed to explain how the IFR will interact with the Circumvention of Lawful Pathways rule.

Response: In the IFR, the Departments explained how the IFR will interact with another recent rule, the Circumvention of Lawful Pathways rule. 89 FR at 48754. The Departments explained that they were adding to 8 CFR 208.13 and 1208.13 a paragraph (g), entitled “Entry during emergency border circumstances,” which “explain[s] when a noncitizen is potentially subject to th[e] IFR’s limitation on asylum eligibility and credible fear screening procedures and how this limitation and its associated procedures interact with the Lawful

Pathways condition referenced in paragraph (f) of 8 CFR 208.13 and 1208.13.” *Id.* These new paragraphs added to 8 CFR 208.13 and 1208.13 provide that, “[f]or an alien who entered the United States across the southern border (as that term is described in section 4(d) of the Presidential Proclamation of June 3, 2024, Securing the Border) between the dates described in section 1 of such Proclamation and section 2(a) of such Proclamation (or the revocation of such Proclamation, whichever is earlier), or between the dates described in section 2(b) of such Proclamation and section 2(a) of such Proclamation (or the revocation of such Proclamation, whichever is earlier), refer to the provisions on asylum eligibility described in § 208.35.” 8 CFR 208.13(g), 1208.13(g).

In short, during emergency border circumstances, those who enter across the southern border are subject to this rule, “[n]otwithstanding” the Circumvention of Lawful Pathways rule or any other regulatory provision. *See* 8 CFR 208.35, 1208.35. A noncitizen who establishes exceptionally compelling circumstances under this rule has established exceptionally compelling circumstances under the Circumvention of Lawful Pathways rule. *See* 8 CFR 208.35(a)(2)(iii), 1208.35(a)(2)(iii). And the credible fear process under this rule uses the same framework as the Circumvention of Lawful Pathways rule, except for the use of a “reasonable probability” screening standard. *See* 8 CFR 208.35(b)(1)(ii), (b)(2)(i), (c), 1208.35(b)(2)(i), (b)(2)(iii), (c). The Departments described the provisions of the regulatory text in detail in the IFR’s preamble. 89 FR at 48754–48759; *id.* at 48762–66.

Comment: A commenter asserted that recent rulemakings have complicated the asylum system and that the Departments have not provided reliable information about those changes to affected noncitizens.

Response: The Departments acknowledge that recent rulemakings have modified the credible fear screening process to better enable the Departments to deliver timely decisions and consequences to noncitizens entering across the southern border who do not have a basis to remain in the United States. Specifically, in the past two and a half years, the Departments have issued the Asylum Processing IFR, the Circumvention of Lawful Pathways rule, and the IFR discussed here. DHS has also issued a proposed rule—the DHS Mandatory Bars NPRM. Each rule has been accompanied by detailed preamble discussion and regulatory text. In addition to the public-facing

materials, although not required to by law, the Departments have executed robust communications plans to notify and inform the public about the consequences of irregular migration while noting the expansion of lawful pathways and the tools that can be used to access those lawful pathways.³⁶¹ The public engagement plans have both domestic and international dimensions.³⁶² Domestically, these plans have included engagement with NGOs, international organizations, legal services organizations, and others.³⁶³ Internationally, the Departments have also executed communications campaigns throughout the Western Hemisphere in coordination with interagency partners and partner governments to educate migrants and would-be migrants about lawful pathways and consequences for not using them.³⁶⁴ This includes media engagements with in-country reporters, graphics and explainer videos, and press releases highlighting removal flights as a direct consequence of

³⁶¹ *See* U.S. Department of State, U.S. Government Response to Migration in the Americas (Nov. 17, 2023), <https://www.state.gov/briefings-foreign-press-centers/us-government-response-to-migration-in-the-americas>; USCG, Press Release: Task Force continues to prevent irregular, unlawful maritime migration to United States (April 12, 2024), <https://www.news.uscg.mil/Press-Releases/Article/3739500/task-force-continues-to-prevent-irregular-unlawful-maritime-migration-to-united/>.

³⁶² *See* U.S. Department of State, U.S. Government Response to Migration in the Americas (Nov. 17, 2023), <https://www.state.gov/briefings-foreign-press-centers/us-government-response-to-migration-in-the-americas>; USCG, Press Release: Task Force continues to prevent irregular, unlawful maritime migration to United States (Apr. 12, 2024), <https://www.news.uscg.mil/Press-Releases/Article/3739500/task-force-continues-to-prevent-irregular-unlawful-maritime-migration-to-united/>; DHS, Fact Sheet: Department of State and Department of Homeland Security Announce Additional Sweeping Measures to Humanely Manage Border through Deterrence, Enforcement, and Diplomacy (May 10, 2023), <https://www.dhs.gov/news/2023/05/10/fact-sheet-additional-sweeping-measures-humanely-manage-border>.

³⁶³ *See* U.S. Department of State, Secretary Antony J. Blinken and Secretary of Homeland Security Alejandro Mayorkas Opening Remarks at the Ministerial Conference on Migration and Protection Reception (Apr. 19, 2022), <https://www.state.gov/secretary-antony-j-blinken-and-secretary-of-homeland-security-alejandro-mayorkas-opening-remarks-at-the-ministerial-conference-on-migration-and-protection-reception/>.

³⁶⁴ *See* U.S. Department of State, U.S. Government Response to Migration in the Americas (Nov. 17, 2023), <https://www.state.gov/briefings-foreign-press-centers/us-government-response-to-migration-in-the-americas>; *see also* USCG, Press Release: Task Force continues to prevent irregular, unlawful maritime migration to United States (April 12, 2024), <https://www.news.uscg.mil/Press-Releases/Article/3739500/task-force-continues-to-prevent-irregular-unlawful-maritime-migration-to-united/>.

coming to the United States irregularly.³⁶⁵

The Departments understand concerns about changes to southern border processing. However, as discussed throughout the June 3 Proclamation, the IFR, and this rule, the circumstances at the southern border have changed, and U.S. policy has had to change with them to ensure the effective functioning of the immigration and border management systems. The Departments have consistently encouraged noncitizens seeking to enter the United States to pursue lawful, safe, and orderly pathways to do so, and they continue to provide that encouragement now.

Comment: One commenter expressed concern that the Departments failed to analyze how the IFR interacts with the DHS Policy and Guidelines for the Use of Classified Information in Immigration Proceedings (May 9, 2024).³⁶⁶

Response: The Departments acknowledge that the IFR did not discuss DHS guidelines governing the use of classified or confidential information, but the IFR does not contain any provisions calling for or governing the use of classified information. Regardless, the rule and DHS's policy on the use of classified information in immigration proceedings are harmonious. The INA permits the use of classified information in certain immigration proceedings, and noncitizens have no right to examine classified national security information that DHS may consider or proffer in opposition to the noncitizen's admission to the United States or application for relief from removal. INA 235(c), 8 U.S.C. 1225(c); INA 240(b)(4)(B), 8 U.S.C. 1229a(b)(4)(B); 8 CFR 235.8(b)(3), 1240.33(c)(4). That was the case before DHS issued its updated policy and guidance on the use of classified information in immigration proceedings on May 9, 2024. The updated guidance does not alter those fundamental principles or the type of information that may be used in the immigration proceedings governed by

the IFR,³⁶⁷ and so there was no need for the Departments to address the interaction between the IFR and the new classified information policy.

E. Statutory and Regulatory Requirements

1. Administrative Procedure Act

Comment: Commenters expressed concerns with the Departments' decision to issue an IFR instead of an NPRM, and the Departments' invocation of the "foreign affairs" and "good cause" exceptions. Commenters stated that the Departments have not proved that either exception applies and, therefore, argued the IFR did not comply with the APA.

Response: Under the APA, agencies must generally provide "notice of proposed rule making" in the **Federal Register** and, after such notice, "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments." 5 U.S.C. 553(b) and (c). The APA further provides that the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except in certain circumstances. *Id.* 553(d). However, consistent with the APA, the Departments did not employ these procedures before issuing the IFR because (1) the IFR involved a foreign affairs function of the United States and thus is excepted from such requirements, *id.* 553(a)(1), and (2) the Departments found good cause to proceed with an immediately effective interim final rule, *id.* 553(b)(B), 553(d)(3). *See also* 89 FR at 48759–66 (explaining use of these APA exceptions). Because the Departments have now issued this final rule after soliciting comments, those concerns are moot—but regardless, the Departments address commenters' concerns below.

³⁶⁷ The previous policy and guidelines permitted the use of classified national security information in an individual's immigration proceedings only as a matter of last resort. *See* DHS, *DHS Guidelines for the Use of Classified Information in Immigration Proceedings* (Oct. 4, 2004), <https://www.dhs.gov/publication/dhs-policy-and-guidelines-use-classified-information-immigration-proceedings-october>. The new policy and guidelines now permit the use of classified national security information as the Department deems necessary to protect our national security and public safety interests, subject to procedures outlined in the new guidance. *See* DHS, *DHS Policy and Guidelines for the Use of Classified Information in Immigration Proceedings* (May 9, 2024), <https://www.dhs.gov/publication/dhs-policy-and-guidelines-use-classified-information-immigration-proceedings>. Neither the new or old policies and guidelines provide the individual who is subject to the immigration proceedings any entitlement to review classified national security information. Such classified information would be reviewed either *ex parte* or *in camera*.

a. Foreign Affairs Exception

Comment: A commenter suggested that the Departments' invocation of the foreign affairs exception is inappropriate because this exception has been "selective[ly] applied[ed]," pointing to other rules concerning processing of noncitizens at the border (the Circumvention of Lawful Pathways rule and the DHS Mandatory Bars NPRM) for which the Departments did not invoke this exception. Another commenter remarked that the foreign affairs exception cannot apply because the IFR is a "unilateral action" by the United States, seemingly without any formal agreements with Mexico or other affected countries, and the rule's effects might exacerbate undesirable international consequences. A third commenter stated that the foreign affairs exception does not apply to rulemakings concerning the U.S. border, stating that these are matters of domestic policy. Similarly, another commenter noted that Federal courts have previously informed agencies that these exceptions to the APA's notice-and-comment requirement "do not apply to regulations that alter domestic law around asylum eligibility." A fifth commenter expressing opposition to the Departments' invocation of the foreign affairs exception remarked that the exception's interpretation is "overly broad."

Response: The IFR is excepted from the APA's notice-and-comment and delayed-effective-date requirements because it involves a "foreign affairs function of the United States." 5 U.S.C. 553(a)(1). Courts have held that this exception applies when the rule in question is "clearly and directly involve[d]" in "a foreign affairs function." *E.B. v. U.S. Dep't of State*, 583 F. Supp. 3d 58, 63 (D.D.C. 2022) (cleaned up). In addition, although the text of the APA does not require an agency invoking this exception to show that such procedures may result in "definitely undesirable international consequences," some courts have required such a showing. *See, e.g., Rajah v. Mukasey*, 544 F.3d 427, 437 (2d Cir. 2008) (quotation marks omitted). This rule satisfies both standards. Nevertheless, the Departments provided an opportunity for public comment after issuing the IFR and in this final rule are responding to those comments.

With respect to comments asserting this rule represents "unilateral action" by the United States, the United States' border management strategy, as further developed in this rule, is predicated on the belief that migration is a shared responsibility among all countries in the

³⁶⁵ *See* Ecuador Envivo, *La tragedia detrás de la migración irregular, una desgarradora realidad* (The tragedy behind irregular migration, a heartbreaking reality) (July 31, 2024), <https://ecuadorenvivo.com/blog/2024/07/31/la-tragedia-humana-detras-de-la-migracion-expertos-analizan-crisis-de-migracion-irregular/>; *see also* ICE, *ICE conducts single adult, family unit removal flights* Aug. 9 (Aug. 9, 2024), <https://www.ice.gov/news/releases/ice-conducts-single-adult-family-unit-removal-flights-aug-9-0>.

³⁶⁶ DHS, *DHS Policy and Guidelines for the Use of Classified Information in Immigration Proceedings* (May 9, 2024), <https://www.dhs.gov/publication/dhs-policy-and-guidelines-use-classified-information-immigration-proceedings>.

region—a fact reflected in the intensive and concerted diplomatic outreach on migration issues that DHS and the Department of State have made with partners throughout the Western Hemisphere.³⁶⁸ This strategy takes particular inspiration from the Los Angeles Declaration on Migration and Protection (“L.A. Declaration”), which was joined by world leaders during the Summit of the Americas on June 10, 2022, and has been endorsed by 22 countries.³⁶⁹

Under the umbrella of this framework, the United States has been working closely with its foreign partners to manage the unprecedented levels of migration that countries throughout the region have recently been experiencing. This work includes efforts to expand access to and increase the number of lawful, safe, and orderly pathways, such as the Safe Mobility Initiative;³⁷⁰ conduct joint enforcement efforts, such as the Darién Campaign with Colombia and Panama and the mirrored patrols with the Government of Mexico along our shared border; and share information, technical assistance, and best practices. *See* 89 FR at 48759–60 & nn.300–02. These also include the commitment by the United States and Mexico to strengthen their joint humanitarian plan on migration. *See id.* at 48760 & n.310. The United States and endorsing countries continue to progress and expand upon our shared commitments made under this framework.

Given the particular challenges facing the United States and its regional partners at this moment, the Departments appropriately assessed that it was critical that the United States continue to lead the way in responding to ever-changing and increasing migratory flows, and that the IFR and the Proclamation—and the strong consequences they were intended to impose at the border—would send an important message to the region that the

United States is prepared to put in place appropriate measures to prepare for and, if necessary, respond to ongoing migratory challenges.³⁷¹ *See* 89 FR at 48761.

In response to the comments that the Departments’ invocation of the foreign affairs exception is overly broad and that because the IFR impacts asylum and issues at the southern border of the United States, it implicates only domestic policy and law and thus does not qualify for the foreign affairs exception, the Departments point out that the IFR stems from international cooperation and directly addresses international challenges. As one commenter noted, at least one court has determined that a rule imposing a limitation on asylum eligibility is not subject to the foreign affairs exception when that rule has only an indirect impact on foreign affairs. *See Capital Area Immigrants’ Rights Coalition v. Trump*, 471 F. Supp. 3d 25, 56 (D.D.C. 2020). But recently Mexico and the United States have worked together on a joint humanitarian plan on migration intended “to address the humanitarian situation caused by unprecedented migration flows at our shared border and in the region.”³⁷² In a joint statement following a meeting between President Biden and President López-Obrador on April 28, 2024, the presidents “ordered their national security teams to work together to immediately implement concrete measures to significantly reduce

irregular border crossings while protecting human rights.”³⁷³ The IFR and this rule further this international mission by limiting heightened levels of migration. This contrasts with the “indirect international effects,” including potential “downstream effects in other countries or on international negotiations,” that the court discussed in *Capital Area Immigrants’ Rights Coalition. Capital Area Immigrants’ Rights Coalition*, 471 F. Supp. 3d at 55. Given the IFR’s direct and clear involvement in foreign affairs, the foreign affairs exception applies.

In addition to the IFR’s clear and direct involvement in foreign affairs, the Departments believed that conducting a notice-and-comment process and providing a delayed effective date likely would have led to a surge to the southern border before the Departments could finalize the rule, as occurred in anticipation of the end of the Title 42 public health Order.³⁷⁴ Regional partner countries have repeatedly emphasized the ways in which U.S. policy announcements have a direct and immediate impact on migratory flows through their countries. *See* 88 FR at 31444. For example, one foreign partner opined that the formation of caravans in the spring of 2022 were spurred by rumors of the United States Government terminating the Title 42 public health Order and then the officially announced plans to do so. *Id.* Such effects are precisely the kind of “definitely undesirable international consequences” that the Departments seek to avoid. The Departments appropriately concluded that the emergency measures taken in the IFR would help address this regional challenge, rather than exacerbate it as one commenter suggested, and that any decrease in migration that results would help relieve the strain not just on the U.S.-Mexico border, but also on

³⁶⁸ *See* The White House, *Joint Statement by the President of the United States Joe Biden and the President of Mexico Andrés Manuel López Obrador* (Apr. 29, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/04/29/joint-statement-by-the-president-of-the-united-states-joe-biden-and-the-president-of-mexico-andres-manuel-lopez-obrador/>; *see also* Kathia Martínez, *US, Panama, and Colombia aim to stop Darién Gap migration*, AP News (Apr. 11, 2023), <https://apnews.com/article/darien-gap-panama-colombia-us-migrants-cf0cd1e9de2119208c9af186e53e09b7>.

³⁶⁹ *See* Los Angeles Declaration on Migration and Protection, *Endorsing Countries*, <https://losangelesdeclaration.com/endorsing-countries> (last visited Aug. 2, 2024).

³⁷⁰ *See* U.S. Dep’t of State, *Safe Mobility Initiative: Helping Those in Need and Reducing Irregular Migration in the Americas*, <https://www.state.gov/safe-mobility-initiative/> (last visited Sept. 21, 2024).

³⁷¹ *See* Muzaffar Chishti et al., *At the Breaking Point: Rethinking the U.S. Immigration Court System*, Migration Pol’y Inst., at 11 (2023), https://www.migrationpolicy.org/sites/default/files/publications/mpi-courts-report-2023_final.pdf (“In the case of noncitizens crossing or arriving at the U.S.-Mexico border without authorization to enter, years-long delays create incentives to file frivolous asylum claims that further perpetuate delays for those eligible for protection, undermining the integrity of the asylum system and border enforcement.”); Doris Meissner, Faye Hipsman, & T. Alexander Aleinikoff, *The U.S. Asylum System in Crisis: Charting a Way Forward*, Migration Pol’y Inst., at 9 (2018), <https://www.migrationpolicy.org/sites/default/files/publications/MPI-AsylumSystemInCrisis-Final.pdf> (“Incentives to misuse the asylum system may also be reemerging. For example, over the past five years, the number of employment authorization documents (EADs) approved for individuals with pending asylum cases that have passed the 180-day mark increased from 55,000 in FY 2012 to 270,000 in FY 2016, and further to 278,000 in just the first six months of FY 2017. This high and growing level of EAD grants may suggest that, as processing times have grown, so too have incentives to file claims as a means of obtaining work authorization and protection from deportation, without a sound underlying claim to humanitarian protection.”).

³⁷² The White House, *Mexico and United States Strengthen Joint Humanitarian Plan on Migration* (May 2, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration/>.

³⁷³ The White House, *Joint Statement by the President of the United States Joe Biden and the President of Mexico Andrés Manuel López Obrador* (Apr. 29, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/04/29/joint-statement-by-the-president-of-the-united-states-joe-biden-and-the-president-of-mexico-andres-manuel-lopez-obrador/>.

³⁷⁴ *See* 89 FR at 48761–62. Note that the encounter projections included in the IFR excluded encounters of people who had registered with the CBP One app along with administrative encounters at POEs, but included non-CBP One enforcement encounters at POEs, which at the time averaged about 190 per day since May 2023, based on OHSS analysis of March 2024 OHSS Persist Dataset; *see also* CBP, *CBP One™ Appointments Increased to 1,450 Per Day* (June 30, 2023), <https://www.cbp.gov/newsroom/national-media-release/cbp-one-appointments-increased-1450-day>; Decl. of Blas Nuñez-Neto ¶ 9, *E. Bay Sanctuary Covenant v. Biden*, No. 4:18-cv-06810–JST (N.D. Cal. June 16, 2023) (Dkt. 176–2).

countries throughout the hemisphere.³⁷⁵ The actions the United States took in the IFR thus affected conditions beyond the southern border and demonstrated a commitment to addressing irregular migration in the region, even as foreign partners have been taking actions themselves that are aligned with a shared interest in reducing migration.³⁷⁶ Thus, regardless of whether the foreign affairs exception has been invoked for other rulemakings involving border issues, that exception is applicable here. See 5 U.S.C. 553(a)(1). The Departments note, however, that the Circumvention of Lawful Pathways rule did invoke the foreign affairs exception to the APA's delayed-effective-date requirement on similar grounds to the IFR. See 88 FR at 31444–45.

b. Good Cause Exception

Comment: Commenters stated that the good cause exception did not apply to the IFR because the Departments' claim that proceeding via NPRM would yield a surge in border encounters was misguided, not supported by evidence, and an insufficient reason to invoke the good cause exception. Similarly, commenters stated that the IFR acknowledged that border encounters were lower in 2024 than the year prior, belying the claim of a border emergency. Commenters expressed concern that there is no indication of a new emergency sufficient for the Departments to immediately change their rules without allowing the public an opportunity to engage with or be warned about the coming changes. Commenters further claimed that evidence shows that migration rates rise independently of U.S. efforts to enact consequences, that any change in policy leads to a short-term decrease in encounters and, thus, that the IFR should not have been excepted from the APA. Commenters noted that the increase in encounters in December 2023 was not tied to any policy change. Commenters also criticized the Departments' discounting of the lack of a surge after the Circumvention of Lawful Pathways NPRM, stating that although at that time the Title 42 public health Order remained in effect, "it is disingenuous to compare the current IFR with the lifting of Title 42, which,

as the agencies report, led to increased border entries." Commenters expressed opposition to the Departments' invocation of the good cause exception, remarking that the assumption that "not seeking safety in the United States protects the welfare of people who otherwise would undertake that dangerous journey is unsubstantiated and false."

Commenters compared the IFR to the Circumvention of Lawful Pathways NPRM, which according to the commenters did not invoke the good cause exception. Commenters wrote that the good cause exception should not have applied to the IFR because providing notice would have been both "practicable and in the public interest." Commenters stated that the Departments' good cause exception claim of an emergency is based on "long standing structural challenges," such as backlogged immigration case processing and limited resources.

Response: The Departments' decision to invoke the good cause exceptions to the APA's notice-and-comment and delayed-effective-date procedures at 5 U.S.C. 553(b)(B) and (d)(3) was reasonable and appropriate. Notwithstanding that the Departments had ample basis to forgo advance notice and comment, the Departments nevertheless provided an opportunity for public comment and in this final rule are responding to those comments.

An agency may forgo notice and comment when it is "impracticable, unnecessary, or contrary to the public interest." *Id.* 553(b)(B). Here, the notice-and-comment procedures were impracticable and contrary to the public interest because the delays associated with such procedures would have unduly postponed implementation of a policy that was urgently needed to avert significant public harm. While courts have "narrowly construed" this exception, it can "excuse[] notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare." *Am. Pub. Gas Ass'n v. U.S. DOE*, 72 F.4th 1324, 1339–40 (D.C. Cir. 2023) (internal citations omitted). An advance announcement of the IFR would have seriously undermined a key goal of the policy in disincentivizing substantial levels of irregular migration, see, e.g., 89 FR at 48754, and instead would have incentivized noncitizens to irregularly enter the United States before the IFR took effect.

First, the "impracticable" prong of the good cause exception "excuses notice

and comment in emergency situations . . . or where delay could result in serious harm." ³⁷⁷ Findings of impracticability are "inevitably fact- or context-dependent," ³⁷⁸ and when reviewing such findings, courts generally consider, among other factors, the harms that might have resulted while the agency completed standard rulemaking procedures ³⁷⁹ and the agency's diligence in addressing the problem it seeks to address.³⁸⁰

The critical need to immediately implement more effective border management measures is described at length in the June 3 Proclamation, the IFR, and Section II.A of this preamble. Despite the strengthened consequences in place at the SWB and adjacent coastal borders, including the Circumvention of Lawful Pathways rule and other measures (which led to the highest numbers of returns and removals in more than a decade, 89 FR at 48713), when the IFR was published, the U.S. Government continued to contend with exceptionally high levels of irregular migration along the southern border, including record-high total USBP encounter levels on the SWB as recently as December 2023.³⁸¹ While encounter

³⁷⁷ *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004); see, e.g., *id.* (upholding a claim of good cause to address "a possible imminent hazard to aircraft, persons, and property within the United States" (quotation marks omitted)); *Haw. Helicopter Operators Ass'n v. FAA*, 51 F.3d 212, 214 (9th Cir. 1995) (upholding a claim of good cause to address 20 air tour accidents over a four-year period, including recent incidents indicating that voluntary measures were insufficient to address the threat to public safety).

³⁷⁸ *Mid-Tex Elec. Co-op, Inc. v. FERC*, 822 F.2d 1123, 1132 (D.C. Cir. 1987); see *Petry v. Block*, 737 F.2d 1193, 1203 (D.C. Cir. 1984) (when evaluating agency "good cause" arguments, "it is clear beyond cavil that we are duty bound to analyze the entire set of circumstances"). Courts have explained that notice-and-comment rulemaking may be impracticable, for instance, where air travel security agencies would be unable to address threats, *Jifry*, 370 F.3d at 1179, if "a safety investigation shows that a new safety rule must be put in place immediately," *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 754 (D.C. Cir. 2001) (ultimately finding that not to be the case and rejecting the agency's argument), or if a rule was of "life-saving importance" to mine workers in the event of a mine explosion, *Council of S. Mountains, Inc. v. Donovan*, 653 F.2d 573, 581 (D.C. Cir. 1981).

³⁷⁹ See *Util. Solid Waste Activities Grp.*, 236 F.3d at 754–55 (explaining that "a situation is 'impracticable' when an agency finds that due and timely execution of its functions would be impeded by the notice otherwise required in § 553, as when a safety investigation shows that a new safety rule must be put in place immediately" (cleaned up)).

³⁸⁰ See, e.g., *Tri-City Tel. Ass'n, Inc. v. FCC*, 999 F.3d 714, 720 (D.C. Cir. 2021) ("[T]his is not a case of unjustified agency delay. The Commission *did* act earlier, . . . [and] the agency needed to act again . . .").

³⁸¹ There were approximately 250,000 USBP encounters along the SWB in December 2023, higher than any previous month on record, see

Continued

³⁷⁵ See 88 FR at 11713 (noting that in the 60 days immediately following DHS's resumption of routine repatriation flights to Guatemala and Honduras in 2021, average daily encounters fell by 38 percent for Guatemala and 42 percent for Honduras).

³⁷⁶ See, e.g., The White House, *Mexico and United States Strengthen Joint Humanitarian Plan on Migration* (May 2, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration/>.

levels in calendar year 2024 prior to issuance of the IFR had decreased from these record numbers, there was still a substantial and elevated level of migration. Historically high percentages of migrants were claiming fear. 89 FR at 48713.

DHS was forced to place many of these individuals into the backlogged immigration court system, a process that can take several years to result in a decision or consequence.³⁸² Even then, it can take a substantial period to effectuate the removal of these individuals.³⁸³ This difficulty in predictably delivering timely decisions

OHSS analysis of July 2024 Persist Dataset (Encounters FY 2000–2024 tab).

³⁸² EOIR decisions completed in July 2024 were, on average, initiated in February 2022, during the significant operational disruptions caused by the COVID–19 pandemic (with encounters several months earlier than that), but 60 percent of EOIR cases initiated in February 2022 were still pending as of July 2024, so the final mean processing time (once all such cases are complete) will be longer. OHSS analysis of EOIR data as of July 2024 (Mean EOIR Filed Dates tab); EOIR, *EOIR Strategic Plan 2024, Current Operating Environment*, <https://www.justice.gov/eoir/strategic-plan/strategic-context/current-operating-environment> (last visited Aug. 2, 2024) (“EOIR [] suffered operational setbacks during the COVID–19 pandemic years of FY 2020 through FY 2022, including declining case completions due to health closures and scheduling complications and delays in agency efforts to transition to electronic records and the efficiencies they represent. While the challenges of the pandemic were overcome by adaptive measures taken during those years, the pandemic’s impact on the pending caseload is still being felt.”). While EOIR does not report statistics on pending median completion times for removal proceedings in general, it does report median completion times for certain types of cases, such as detained cases and cases involving UCs. See, e.g., EOIR, *Median Unaccompanied Noncitizen Child (UAC) Case Completion and Case Pending Time* (July 19, 2024), <https://www.justice.gov/eoir/media/1344951/dl?inline> (median completion time of 1,241 days); EOIR, *Median Completion Times for Detained Cases* (July 19, 2024), <https://www.justice.gov/eoir/media/1344866/dl?inline> (median completion time of 46 days in the third quarter of 2024 for removal, deportation, exclusion, asylum-only, and withholding-only cases); EOIR, *Percentage of DHS-Detained Cases Completed within Six Months* (July 19, 2024), <https://www.justice.gov/eoir/media/1344886/dl?inline> (reporting seven percent of detained cases not completed within six months); see also 89 FR at 48749–54 (discussing the limits in the Departments’ ability to quickly repatriate noncitizens when encounters are elevated, which results in the release of many of these noncitizens into the United States); Section III.D.1 of this preamble (describing how the rule’s thresholds target emergency border circumstances exceeding the Departments’ capacity to effectively process, detain, and remove, as appropriate, the noncitizens encountered).

³⁸³ Miriam Jordan, *One Big Reason Migrants Are Coming in Droves: They Believe They Can Stay*, N.Y. Times (Jan. 31, 2024), <https://www.nytimes.com/2024/01/31/us/us-immigration-asylum-border.html> (“Most asylum claims are ultimately rejected. But even when that happens, years down the road, applicants are highly unlikely to be [removed]. . . .”); OHSS analysis of July 2024 Persist Dataset (Removal Orders tab); see also 88 FR at 31326, 31381.

and consequences further compounded incentives for migrants to make the dangerous journey to the SWB, regardless of any individual noncitizen’s ultimate likelihood of success on an asylum or protection application. 89 FR at 48714. The emergency border circumstances were not, however, due solely to longstanding structural challenges such as case backlogs in immigration court and the lack of government resources, as one commenter suggested; rather, the heightened level of encounters at the southern border occurred despite recent increases in the number of immigration court judges, immigration court cases completed, individuals processed through expedited removal, and expanded opportunities to use lawful, safe, and orderly processes. *Id.* at 48712–13. The Departments reasonably determined that the heightened levels of migration and forced displacement that resulted in the President’s determination to apply the suspension and limitation on entry and the Departments’ determination to adopt the IFR would further strain resources, risk overcrowding in USBP stations and border POEs in ways that pose significant health and safety concerns, and create a situation in which large numbers of migrants—only a small proportion of whom are likely to be granted asylum or other protection—would be encouraged to put their lives in the hands of dangerous organizations to make the hazardous journey north based on a perceived lack of immediate consequences. See *id.* at 48763. The Departments acted immediately to safeguard their ability to enforce our Nation’s immigration laws in a timely way and at the scale necessary with respect to those who seek to enter without complying with our laws. See *id.*

Second, under the “contrary to the public interest” prong of the good cause exception, it has long been recognized that agencies may use the good cause exception, and need not take public comment in advance, when significant public harm would result from the notice-and-comment process.³⁸⁴ If, for

³⁸⁴ See, e.g., *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 95 (D.C. Cir. 2012) (noting that the “contrary to the public interest” prong of the “good cause” exception “is appropriately invoked when the timing and disclosure requirements of the usual procedures would defeat the purpose of the proposal—if, for example, announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent . . . [or] in order to prevent the amended rule from being evaded” (cleaned up)); *DeRieux v. Five Smiths, Inc.*, 499 F.2d 1321, 1332 (Temp. Emer. Ct. App. 1974) (“[W]e are satisfied that there was in fact ‘good cause’ to find that advance notice of the freeze was

example, advance notice of a coming price increase would immediately produce market dislocations and lead to serious shortages, advance notice need not be given.”³⁸⁵ A number of cases follow this logic in the context of economic regulation.³⁸⁶

With respect to comments stating that migration rates can rise independently of policy changes, commenters are correct that there are increases in migration rates that do not appear to be a result of changes in U.S. policies, such as the increase in encounters in December 2023. But that does not diminish the impact of even short-term surges after announcements of policy changes, which the Departments have experienced time and again, as detailed in the IFR. See 89 FR at 48764–66.

The Departments reasonably assessed that announcing this rule in advance would have likely yielded a surge. As explained in the IFR, the Departments were responding to emergency border circumstances, and advance announcement of the response—a significant change in border policy that increased the Departments’ ability to swiftly process and remove, as appropriate, more noncitizens who enter the United States irregularly—would have significantly incentivized migrants to engage in actions likely to compound those very challenges.³⁸⁷

‘impracticable, unnecessary, or contrary to the public interest’ within the meaning of § 553(b)(B). . . . Had advance notice issued, it is apparent that there would have ensued a massive rush to raise prices and conduct ‘actual transactions’—or avoid them—before the freeze deadline.”).

³⁸⁵ See, e.g., *Nader v. Sawhill*, 514 F.2d 1064, 1068 (Temp. Emer. Ct. App. 1975) (“[W]e think good cause was present in this case based upon [the agency’s] concern that the announcement of a price increase at a future date could have resulted in producers withholding crude oil from the market until such time as they could take advantage of the price increase.” (quotation marks omitted)).

³⁸⁶ See, e.g., *Chamber of Com. of U.S. v. S.E.C.*, 443 F.3d 890, 908 (D.C. Cir. 2006) (“The [‘good cause’] exception excuses notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.” (citations omitted)); *Mobil Oil Corp. v. Dep’t of Energy*, 728 F.2d 1477, 1492 (Temp. Emer. Ct. App. 1983) (“On a number of occasions . . . , this court has held that, in special circumstances, good cause can exist when the very announcement of a proposed rule itself can be expected to precipitate activity by affected parties that would harm the public welfare.”).

³⁸⁷ See Decl. of Robert E. Perez ¶¶ 4–15, *Innovation Law Lab*, No. 19–15716 (9th Cir. Mar. 3, 2020) (Dkt. 95–2) (noting that on February 28, 2020, the Ninth Circuit lifted a stay of a nationwide injunction of the Migrant Protection Protocols, a program implementing the Secretary’s contiguous return authority under section 235(b)(2)(C) of the INA, 8 U.S.C. 1225(b)(2)(C), and almost immediately, hundreds of migrants began massing at POEs across the southern border and attempting

These incentives are exacerbated by smugglers, who routinely emphasize the significance of recent or upcoming policy developments, among other tactics, and do so particularly when there is a change announced in U.S. policy.³⁸⁸ For the same reasons, “the [need] for immediate implementation” outweighed the “principles” underlying the requirement for a 30-day delay in the effective date, justifying the Departments’ finding of good cause to forgo it.³⁸⁹ The stark drop in encounters following implementation of the Proclamation and IFR, as discussed in Section II.A.2 of this preamble, is strong evidence that announcements of such changes in policy can have significant effects on migration patterns; by making the IFR immediately effective, the Departments avoided triggering a surge in migration that might otherwise have occurred during a notice-and-comment period or pending a delayed effective date.

The increase in SWB encounters preceding the end of the Title 42 public health Order and the increase in border encounters that occurred in December 2023 were far-reaching across multiple sectors of the SWB and significantly greater than what DHS resources and operations are designed to handle. Increasing encounters raised detention capacity concerns anew, and, at that point, DHS faced an urgent situation, including a significant risk of overcrowding in its facilities.³⁹⁰ Given the nature of its facilities, increased numbers and custody duration increase the likelihood that USBP facilities will become quickly overcrowded.³⁹¹ In response to the comment noting skepticism over the Departments’ assumption that deterring irregular migration will protect migrants’ welfare, the Departments disagree: crowding, particularly given how USBP facilities are necessarily designed, increases the potential risk of health and safety concerns for noncitizens and Government personnel.³⁹² The Departments thus assessed that there

would be a significant risk of such an urgent situation occurring if they undertook notice-and-comment procedures for the IFR or delayed its effective date.

The Departments’ determination in the IFR was also consistent with the United States’ past practice. For example, and in response to the comment that the Departments did not invoke the good cause exception in promulgating the Circumvention of Lawful Pathways rule, the Departments provided notice and an opportunity to comment on that rule while the Title 42 public health Order remained in effect³⁹³ but invoked the good cause exception (as well as the foreign affairs exception) to bypass a delayed effective date that would have resulted in a gap between the end of the Title 42 public health Order and the implementation of the rule. *See* 88 FR at 31445–47. Contrary to the comment asserting that it was disingenuous for the Departments to compare the potential surge of migrants between the end of Title 42 and the effective date of the Circumvention of Lawful Pathways rule with the potential surge associated with the delayed implementation of this rule, the Departments merely refer to the Title 42 surge to illustrate that a surge would be likely given the significance of the border policy change made by the IFR, not that the surge would have been of precisely the same degree. *See* 89 FR at 48761–62.

Similarly, when implementing the parole process for Venezuelans, DHS implemented the process without prior public procedures, and witnessed a drastic reduction in irregular migration by Venezuelans.³⁹⁴ Had the parole process been announced before a lengthy notice-and-comment period, thousands of Venezuelan nationals would have likely attempted to cross the United States and Mexican borders before the ineligibility criteria went into effect and before the United States could return Venezuelan nationals to Mexico. *See* 89 FR at 48766.

DHS similarly concluded in January 2017 that it was imperative to give immediate effect to a rule designating

Cuban nationals arriving by air as eligible for expedited removal because “[p]re-promulgation notice and comment would . . . endanger[] human life and hav[e] a potential destabilizing effect in the region.”³⁹⁵ The “publication of the rule as a proposed rule . . . would [have] signal[ed] a significant change in policy while permitting continuation of the exception for Cuban nationals, [and] could [have led] to a surge in migration of Cuban nationals seeking to travel to and enter the United States during the period between the publication of a proposed and a final rule.”³⁹⁶ A surge of this kind “would [have] threaten[ed] national security and public safety by diverting valuable Government resources from counterterrorism and homeland security responsibilities” and “could also have [had] a destabilizing effect on the region, thus weakening the security of the United States and threatening its international relations,” and “could [have] result[ed] in significant loss of human life.”³⁹⁷

Given the emergency border circumstances facing the Departments, the delays associated with requiring a notice-and-comment process for the IFR would have been contrary to the public interest because an advance announcement of the rule would have incentivized even more irregular migration by those seeking to enter the United States before the IFR took effect.

c. Length and Sufficiency of Comment Period

Comment: Commenters remarked that the 30-day post-promulgation comment period was not long enough to allow for “meaningful[] comment” on the IFR, including from experts. Multiple commenters recommended that the Departments either rescind the IFR, reissue it with a longer comment period, or both, and suggested the new comment period be at least 60 days or 90 days. A few commenters expressed concern with the IFR’s publication four days before the end of the 30-day comment period for the DHS Mandatory Bars NPRM, stating that the Departments did not give the public an adequate opportunity to analyze or comment on them separately or in conjunction.

³⁹⁵ Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR 4769, 4770 (Jan. 17, 2017).

³⁹⁶ *Id.*

³⁹⁷ *Id.*; accord U.S. Dep’t of State, Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (finding the good cause exception applicable because of short-run incentive concerns).

to immediately enter the United States, creating a severe safety hazard that forced CBP to temporarily close POEs in whole or in part).

³⁸⁸ *See* Nick Miroff & Carolyn Van Houten, *The Border is Tougher to Cross Than Ever. But There’s Still One Way into America*, Wash. Post (Oct. 24, 2018), https://www.washingtonpost.com/world/national-security/theres-still-one-way-into-america/2018/10/24/d9b68842-cafb-11e8-8f4b-ae063e14538_story.html.

³⁸⁹ *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996) (cleaned up).

³⁹⁰ *See* Decl. of Matthew J. Hudak ¶¶ 11, 17, *Florida v. Mayorkas*, Case No. 3:22-cv-9962 (N.D. Fla. May 12, 2023) (Dkt. 13–1).

³⁹¹ *Id.* ¶¶ 6, 14, 17.

³⁹² *Id.* ¶ 17.

³⁹³ The Departments noted, however, that the Circumvention of Lawful Pathways rule was exempt from notice-and-comment requirements pursuant to the good cause exception at 5 U.S.C. 553(b)(B) for the same reasons that the rule was exempt from delayed effective date requirements under 5 U.S.C. 553(d). *See* 88 FR at 31445 n.377.

³⁹⁴ *See* 88 FR at 31317 (“A week before the announcement of the Venezuela parole process on October 12, 2022, Venezuelan encounters between POEs at the SWB averaged over 1,100 a day from October 5–11. About two weeks after the announcement, Venezuelan encounters averaged under 200 per day between October 18 and 24.”).

Response: As explained earlier in this Section III.E of this preamble, the Departments did not provide notice and an opportunity to comment or provide for a delayed effective date because the foreign affairs and good cause exceptions to those procedures applied. See 5 U.S.C. 553(a)(1), (b)(B). Thus, the IFR became effective on June 5, 2024, after the Proclamation was issued and the IFR was placed in public inspection. See 89 FR at 48710. The Departments invited the public to provide post-promulgation comments on the “rulemaking by submitting written data, views, comments, and arguments on all aspects of this IFR by” July 8, 2024. *Id.* It bears noting that the APA does not impose any requirements governing the process for submitting public comments when an agency voluntarily chooses to receive them following the promulgation of a rule that is exempt from notice-and-comment procedures; much less does it establish any set number of days for which the Departments would have to leave such a comment period open.

This post-promulgation comment period spanned 30 days from the date of publication (from June 7, 2024, through July 8, 2024) and 34 days from the date the IFR was filed for public inspection (the afternoon of June 4, 2024). See 89 FR at 48710; *id.* at 48772. The Departments believe this comment period was sufficient to allow for meaningful public input, as evidenced by the 1,067 public comments received, including numerous detailed comments from interested organizations.³⁹⁸

Even where notice and comment is required, the APA does not require that the comment period be any particular length. See 5 U.S.C. 553(b), (c). And although Executive Orders 12866 and 13563 generally recommend a comment period of at least 60 days, they do not impose any binding requirement that a 60-day period be utilized in every case. In fact, courts have found 30 days to be a reasonable comment period length, finding that such a period is generally “sufficient for interested persons to meaningfully review a proposed rule and provide informed comment,” even when “substantial rule changes are proposed.” *Nat’l Lifeline Ass’n v. FCC*, 921 F.3d 1102, 1117 (D.C. Cir. 2019) (citing *Petry v. Block*, 737 F.2d 1193, 1201 (D.C. Cir. 1984)); see also *Connecticut Light & Power Co. v. Nuclear Regul. Comm’n*, 673 F.2d 525, 534 (D.C. Cir. 1982) (noting that a 30-day comment period was not

unreasonable despite complexity of proposed rule). Comment periods shorter than 30 days, often in the face of exigent circumstances, have also been deemed adequate. See, e.g., *Omnipoint Corp.*, 78 F.3d at 629–30 (concluding 15 days for comments was sufficient); *NW Airlines, Inc. v. Goldschmidt*, 645 F.2d 1309, 1321 (8th Cir. 1981) (finding 7-day comment period sufficient).

Regarding commenters’ concerns about the comment period in light of the DHS Mandatory Bars NPRM, the Departments first emphasize that the two rules regard separate aspects of DHS screening procedures, as discussed above in Section III.D.2 of this preamble. Nevertheless, the Departments explained the relationship between the two rules in the IFR by noting that, “[i]f DHS were to finalize that rule as drafted, [the IFR]’s ‘reasonable probability’ standard would still apply when the noncitizen is subject to this rule’s limitation on asylum eligibility.” 89 FR at 48739 n.186; see *id.* at 48756. In addition, because the DHS Mandatory Bars NPRM was published prior to the IFR, commenters were able to use that NPRM to inform their comments on the IFR. Accordingly, the Departments disagree that commenters were provided an inadequate opportunity to comment on the interaction of these two rules.

Here, the 30-day comment period allowed for significant, meaningful public participation. Commenters have provided numerous and detailed comments regarding the IFR, and the Departments appreciate their effort to provide thorough commentary for the Departments’ consideration during the preparation of this final rule. The 30-day comment period also allowed the Departments to swiftly finalize a critical border measure needed to address the emergency border circumstances posed by the Departments’ lack of resources for delivering timely consequences to the heightened number of migrants attempting to enter the southern border without a viable legal basis for doing so. See 89 FR at 48749–54.

2. Impacts, Costs, and Benefits (E.O. 12866 and E.O. 13563)

Comments: One commenter reasoned that the effects of removal on noncitizens should not be disregarded because the costs are not low. The commenter stated that the costs resulting from removal would “encourage refolement for individuals attempting to reach safety.” The commenter stated that correctly identifying meritorious claims of fear is an invaluable process that should not be categorized as costs in “additional time

and resources.” The commenter further stated that the Departments cannot simply dismiss the task of identifying meritorious claims or characterize their failure to do as purported cost savings, as the commenter alleges is done in the IFR.

Response: The commenter misrepresents the IFR’s discussion of costs and impacts, see 89 FR at 48766–67, which acknowledged that a noncitizen who would have received asylum in the absence of the rule would incur costs from the denial of that benefit. The IFR also acknowledged that noncitizens may incur further costs upon removal. The Departments have described these potential costs qualitatively not as a means of dismissing the importance of such costs, but in order to assess the costs and benefits of the rule in accordance with certain executive orders addressing the regulatory process. See *id.*

Furthermore, the Departments disagree with the commenter’s suggestion that the rule does not result in cost savings. The rule does not cause a reduction in overall resources dedicated to immigration processing and enforcement. Rather, it prevents those resources from being spread so thin. As the IFR’s analysis explains, given ongoing strains on limited Federal Government immigration processing and enforcement resources, any reduction in new asylum claims would necessarily increase the availability of those resources and allow for more timely adjudications of existing claims. The benefits of the rule include reductions in strains on limited Federal Government immigration processing and enforcement resources; preservation of the Departments’ continued ability to safely, humanely, and effectively enforce and administer the nation’s immigration laws; and a reduction in the role of exploitative TCOs and smugglers. *Id.* at 48767. Some of these benefits accrue to noncitizens whose ability to receive timely decisions on their claims might otherwise be hampered by the severe strain that further surges in irregular migration would impose on the Departments. *Id.*

3. Alternatives

a. Address Root Causes of Migration

Comment: A few commenters specifically urged the United States Government to address “root causes” of migration. Many commenters blamed United States foreign policy generally for creating conditions in foreign countries that have caused irregular migration. For example, one commenter stated that the United States must

³⁹⁸ Document Comments, Securing the Border, <https://www.regulations.gov/document/USCIS-2024-0006-0002/comment>.

amend its foreign policies “which contribute to poverty and injustice in the countries migrants are trying to escape.” Another commenter called immigration “payback” for the United States’s foreign policies. Some commenters specified foreign policies they would like to see changed, such as those regarding weapons sales, fossil fuels, the environment, humanitarian aid, and sanctions on foreign governments. Other commenters criticized the Government and corporations for contributing to destabilization in other countries leading to immigration. Commenters suggested that the Government should disrupt corporate greed causing destabilization in other countries.

Response: As a preliminary matter, these comments are outside the scope of this rulemaking. Regardless, the Departments disagree with the suggestion that addressing the root causes of migration obviates the necessity of the rule. Rather, the United States’ ongoing efforts, along with those of partner nations, to address the root causes of migration and abate adverse effects from unprecedented levels of global irregular migration will not immediately resolve the urgent border security and immigration systems’ situations. Efforts to address the root causes of irregular migration will take significant time to create impact, and in the meantime the more targeted policies set forth in the IFR and this rule are necessary to alleviate the current acute stress on the border security and immigration systems.

The Departments nonetheless agree with commenters that addressing root causes is a necessary element of regional migration management. For example, the *U.S. Strategy for Addressing the Root Causes of Migration in Central America*, directed by the President in Executive Order 14010, 86 FR 8267 (Feb. 5, 2021), focuses on a coordinated, place-based approach to improve the underlying causes that push Central Americans to migrate, and it takes into account, as appropriate, the views of bilateral, multilateral, and private sector partners, as well as civil society.³⁹⁹ The strategy includes addressing economic, governance, and security challenges through five pillars: (1) addressing economic insecurity and inequality; (2) combating corruption and strengthening democratic governance; (3) promoting human rights and labor rights; (4) countering and preventing violence; and

(5) combating sexual and gender-based violence.⁴⁰⁰ In March 2024, the White House announced that the Administration is on track to meet its commitment in the root causes strategy to provide \$4 billion to the region over four years.⁴⁰¹

The United States has also worked closely with its regional partners to prioritize and implement a strategy that advances safe, orderly, legal, and humane migration, including taking measures to address the root causes of migration, expand access to lawful pathways, improve the U.S. asylum system, and address the pernicious role of smugglers. The IFR provided a detailed account of the United States’ efforts throughout the region to implement such strategies. *See* 89 FR at 48759–62. For instance, the United States, along with 21 other countries in the Western Hemisphere, has endorsed the L.A. Declaration, which proposes a comprehensive approach to managing migration throughout the Western Hemisphere. *See id.* at 48759. Under the L.A. Declaration’s framework, the United States has been working closely with foreign partners to manage the unprecedented levels of migration that countries throughout the region have been experiencing, including efforts to expand access to and increase lawful pathways; conduct joint enforcement efforts; and share information, technical assistance, and best practices. *Id.* at 48759–60.

Additionally, the Government has developed and implemented a number of policy measures, including the Circumvention of Lawful Pathways rule and other measures, which are complemented by a range of actions taken by foreign partners in the region, such as campaigns by Colombia and Panama to counter smuggling networks in the Darién Gap. The Government believes that migration is a shared responsibility among all countries in the region, which is reflected in the intensive and concerted diplomatic outreach on migration issues that DHS and the Department of State have made with partners throughout the Western Hemisphere.

Consistent with these efforts, this rule will further incentivize noncitizens to avoid irregular migration and instead avail themselves of other lawful, safe, and orderly means for seeking

protection in the United States or elsewhere. The Departments agree with commenters that recent surges in irregular migration have been caused by multiple factors, including the growing understanding by smugglers and migrants that DHS’s capacity to impose timely consequences at the border is limited by the lack of resources and tools available and by partner nations’ operational constraints.

Although this rule does not purport to—and a single rule cannot—address all of the root causes and factors driving migration, the Departments assess that this rule has significantly increased their ability to deliver timely decisions and consequences at the southern border with currently available resources, combating perceptions and messaging to the contrary. Given the challenges facing the United States and its regional partners, this regulatory effort—and the strong consequences it imposes at the southern border—have sent and will continue to send an important message throughout the region that the United States has put in place appropriate measures to prepare for and, if necessary, respond to ongoing migratory challenges.

In short, the Departments acknowledge that international migration trends are the product of exceedingly complex factors and are shaped by, among other things, family and community networks, labor markets, environmental and security-related push factors, and rapidly evolving criminal smuggling networks. *See* 88 FR at 31327–28 & n.59. The United States Government is working to address these root causes of migration, including by cooperating closely with partner countries, and to abate adverse effects from unprecedented levels of irregular migration.

b. Prioritize Funding and Other Resources

Comment: Many commenters urged the United States Government to prioritize funding, other resources, or alternative policies to make border processing and asylum adjudications more effective and efficient. Commenters suggested various priorities for funding, including hiring more personnel and staff, such as immigration officers, IJs, and court personnel; allocating more funding to already existing personnel and staff; allocating more funding and other resources to local governments and organizations that assist immigrants; increasing access to legal representation and mental health services; and devoting more resources to asylum processing and adjudications at POEs and the interior.

³⁹⁹ Nat’l Sec. Council, *U.S. Strategy for Addressing the Root Causes of Migration in Central America* at 4 (July 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/07/Root-Causes-Strategy.pdf>.

⁴⁰⁰ The White House, *Fact Sheet: Update on the U.S. Strategy for Addressing the Root Causes of Migration in Central America* (Mar. 25, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/25/fact-sheet-update-on-the-u-s-strategy-for-addressing-the-root-causes-of-migration-in-central-america-3/>.

⁴⁰¹ *Id.*

Other commenters suggested more generally that the Government devote more resources to recent arrivals and the asylum system. A few commenters specified that the Government should provide additional funding for the Shelter and Services Program and the Case Management Pilot Program. One commenter suggested that the Government create a system to require asylum seekers to have their applications vetted in their home countries as a way to reduce costs and migration. Another commenter suggested sending noncitizen arrivals with family members in the United States to their families. One commenter stated that the Government should expand capacity at the border, while another commenter questioned DHS's ability to increase capacity at POEs.

Response: The Departments acknowledge commenters' suggestions for increasing resources, both financial and otherwise, to account for the increased arrivals at the southern border, but those suggestions are outside the scope of this rulemaking, and they would require congressional action. As discussed in the IFR, the circumstances that the Departments faced in June 2024 existed despite the Departments' efforts to address substantial levels of migration and were a direct result of Congress's failure to update outdated immigration laws and provide needed funding and resources for the efficient operation of the border security and immigration systems. *See* 89 FR at 48712–15. The Administration has repeatedly requested additional resources from Congress, only some of which have been provided. *See id.* at 48728. USCIS also implemented a new fee schedule, effective April 1, 2024, that adjusted the fees to fully recover costs and maintain adequate service.⁴⁰² While the new fee rule does provide for increased funding for the Refugee, Asylum, and International Operations Directorate, keeping pace with USCIS' protection screening and affirmative asylum workloads requires additional funding, as reflected in the President's FY 2025 Budget. 89 FR at 48729.

Additional financial support would require additional congressional actions, including significant additional appropriations, which are outside the scope of this rulemaking. The Departments agree with the commenters

that additional resources would provide substantial benefits for managing the border and immigration systems but decline to wait to act pending receipt of additional funding from Congress. DHS notes that despite this lack of additional funding it has taken steps to increase processing at SWB POEs, including through use of the CBP One app.⁴⁰³

Additionally, the Departments note that they are leading ongoing Federal Government efforts to support NGOs, local and state governments, and other migrant support organizations as they work to respond to the unprecedented migration impacting communities across the United States. As noted in the Circumvention of Lawful Pathways rule, FEMA spent \$260 million in FYs 2021 and 2022 on grants to non-governmental and state and local entities through the EFSP–H to assist migrants arriving at the SWB with shelter and transportation. *See* 88 FR at 31327 (citing 88 FR at 11704–05). In December 2022, \$75 million was awarded through the program.⁴⁰⁴ In addition, the Bipartisan Year-End Omnibus, which was enacted on December 29, 2022, directed CBP to transfer \$800 million in funding to FEMA to support sheltering and related activities for noncitizens encountered by DHS. The Omnibus authorized FEMA to utilize this funding to establish a new Shelter and Services Program and to use a portion of the funding for the existing EFSP–H, until the Shelter and Services Program is established.⁴⁰⁵ For FY 2023, there were \$363.8 million in available funds to enable non-federal entities to provide humanitarian services to noncitizen migrants following their release from DHS.⁴⁰⁶ In FY 2024, that figure increased to nearly \$650 million.⁴⁰⁷

The Departments do not agree with commenter's suggestions that alternative policies, including vetting migrants in

their home countries and sending those who arrive the United States who have family members in the United States to those family members, should be pursued in place of this rule. In addition to being far outside the scope of the rule, such policies would lack the demonstrably effective incentive structure of this rule. The Departments nonetheless agree that the United States must consistently engage with partners throughout the Western Hemisphere to address the hardships that cause people to leave their homes and come to our southern border. During the emergency border circumstances underlying the rule, the Departments' limited resources must be focused on processing those who are most likely to be persecuted or tortured if removed and overall border security and immigration systems efficiencies. Swift removal of noncitizens without meritorious claims is critical to deterring noncitizens from seeking entry under the belief that they will be released and able to remain in the United States for a significant period.

Comment: Some commenters stated that the Government “should focus on educating the public about the complexities of immigration” and “provide information to the American people” regarding contributions of immigrants to society.

Response: The Departments maintain publicly accessible information regarding the border security and immigration systems and routinely publicize law enforcement action and efforts against human trafficking, smuggling, and TCOs that profit from irregular migration.⁴⁰⁸ The Departments will continue to make such information publicly available through routine publication. To the extent commenters suggest that the Departments should inform the American public about the contributions migrants have made to the United States, the Departments respectfully note that such action is outside the scope of this rulemaking as it is unrelated to and would have no immediate effect on encounters at the southern border.

c. Further Expand Refugee Processing or Other Lawful Pathways

Comment: Several commenters suggested increasing access to asylum and humanitarian protections. Commenters expressed concern that the United States' annual rates of refugee admissions have not kept pace with

⁴⁰² *See U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*, 89 FR 6194, 6194 (Jan. 31, 2024); *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements; Correction*, 89 FR 20101 (Mar. 21, 2024) (making corrections).

⁴⁰³ *See Memorandum for William A. Ferrara, Exec. Ass't Comm'r, Off. of Field Operations, from Troy A. Miller, Acting Comm'r, CBP, Re: Guidance for Management and Processing of Undocumented Noncitizens at Southwest Border Land Ports of Entry* (Nov. 1, 2021), <https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/CBP-mgmt-processing-non-citizens-swb-lpoes-signed-Memo-11.1.2021-508.pdf>.

⁴⁰⁴ *See FEMA, Release No. HQ–22–232, Emergency Food and Shelter Program National Board Allocates \$75 Million for Humanitarian Assistance* (Dec. 23, 2022), <https://www.fema.gov/press-release/20230103/emergency-food-and-shelter-program-national-board-allocates-75-million>.

⁴⁰⁵ Public Law 117–328, Division F, Title II, Security, Enforcement, and Investigations, U.S. Customs and Border Protection, Operations and Support, 131 Stat. 4459, 4730 (2022).

⁴⁰⁶ FEMA, Shelter and Services Program (June 14, 2024), <https://www.fema.gov/grants/shelter-services-program>.

⁴⁰⁷ *Id.*

⁴⁰⁸ *See DHS, Securing the Border* (last updated Aug. 6, 2024), <https://www.dhs.gov/immigrationlaws>; DHS, Border Security (last updated Nov. 7, 2023), <https://www.dhs.gov/topics/border-security>.

worldwide demand for refugee protections, driving migrants to seek alternative, and oftentimes irregular, migration routes. While many commenters focused on noncitizens arriving at the border, at least one commenter suggested expanding protections for “those who have long called the United States home.” Many commenters stated that the Government “should be creating accessible pathways to citizenship.” Many commenters emphasized the need for expanded lawful pathways and speeding up processing times. One commenter requested that the Government “invest in expanding pathways to lawful status.” Several commenters implored the Government to focus “on a solutions strategy.”

Response: The United States has made and will continue to make extensive efforts to expand refugee processing and lawful pathways generally.⁴⁰⁹ As explained in detail in the IFR, in recent years, the Government has overseen the largest expansion of lawful, safe, and orderly pathways and processes for noncitizens to come to the United States in decades. 89 FR at 48760. Such steps include promulgating the Circumvention of Lawful Pathways rule, refocusing a significant portion of DHS’s southern border workforce to prioritize migration management above other border security missions, implementing the CHNV parole processes, implementing the Safe Mobility Initiative in several countries, expanding country-specific family reunification parole processes, expanding opportunities to enter the United States for seasonal employment, establishing a mechanism for over 1,400 migrants per day to schedule a time and place to arrive at POEs through the CBP One app, increasing proposed refugee admissions from the Western Hemisphere from 5,000 in FY 2021 to up to 50,000 in FY 2024, completing approximately 89 percent more immigration court cases in FY 2023 compared to FY 2019, and increasing the IJ corps by 66 percent from FY 2019 to FY 2023. 89 FR at 48712–13.

⁴⁰⁹ See DHS, *Fact Sheet: DHS Continues to Strengthen Border Security, Reduce Irregular Migration, and Mobilize International Partnerships* (June 4, 2024), <https://www.dhs.gov/news/2024/06/04/fact-sheet-dhs-continues-strengthen-border-security-reduce-irregular-migration-and> (citing continued efforts to expand lawful pathways and processes, including establishing country-specific parole processes for certain nationals, working with interagency partners and the private sector to increase access to H–2 nonimmigration visa programs, expanding capacity at POEs to increase CBP One app processing capabilities, and implementing new family reunification parole processes among other efforts).

Despite these and other efforts to expand lawful pathways and provide border security, and while DHS is processing noncitizens in record numbers and with record efficiency, the border security and immigration systems have not been able to keep pace with the number of noncitizens arriving at the southern border. Simply put, the Departments do not have adequate resources and tools to deliver timely decisions and consequences to individuals who cross irregularly and cannot establish a legal basis to remain in the United States, or to provide timely protection to those ultimately found eligible for protection, when noncitizens are arriving at such elevated volumes.

Further, existing levels of migration make clear that the efforts described above, on their own, are insufficient to change the incentives of migrants, reduce the risks associated with current levels of irregular migration and the current surges of migrants to the border, and protect migrants from human smugglers that profit from their vulnerability. The Departments note that, while they continue to explore the possibility of providing additional lawful pathways, this rule does not create, expand, or otherwise constitute the basis for any lawful pathway. The Departments further note that requests that the United States create a path to citizenship is outside the scope of this rulemaking.

d. Expand Asylum Merits Process

Comment: One commenter stated that instead of finalizing the IFR, the Departments should consider expanding the use of the AMI process outlined in the Asylum Processing IFR. The commenter stated that the rule has the same stated purpose of increasing efficiency and fairness of asylum adjudications for those in expedited removal, but that DHS had reduced its use of the AMI process in the last quarter of 2022 and has not explained why finalizing the IFR is preferable.

Response: The Departments do not view the present rulemaking and the Asylum Processing IFR as mutually exclusive. Rather, the Departments view these rulemakings as complementary efforts. The AMI process promulgated in the Asylum Processing IFR is predicated on a noncitizen receiving a positive credible fear determination and seeks to make the process following a positive credible fear determination more efficient and streamlined, while maintaining fairness; meanwhile, the present rulemaking establishes a limitation on asylum eligibility and addresses the credible fear process

itself. While both rulemakings seek to increase efficiency and maintain fairness, they do so by focusing on separate parts of the process—one primarily prior to and during a credible fear determination (the present rulemaking) and one following service of a positive credible fear determination (the Asylum Processing IFR). Additionally, the Asylum Processing IFR was written with the express intent of being implemented in a discretionary manner. As the Departments explained, the discretion of USCIS to place an individual with a positive credible fear determination into the AMI process under the rule or to issue an NTA for removal proceedings under section 240 of the INA was a necessary part of the rule in order for it to function, as the rule would have to be implemented in a reality in which USCIS did not have all of the resources necessary to place every case with a positive credible fear determination into the AMI process. See 87 FR at 18185. Accordingly, the Asylum Processing IFR provided USCIS complete discretion to place a case with a positive credible fear determination into the AMI process or to issue an NTA. 8 CFR 208.30(f).

As explained in the preamble to the IFR, there are simply not enough AOs available to conduct fear screenings to keep pace with current sustained high encounter rates. See 89 FR at 48714. USCIS has a finite number of AOs to conduct all of its casework, including fear screenings, and does not plan on placing cases into the AMI process in circumstances in which the noncitizen did not establish a significant possibility that they would ultimately be able to establish by a preponderance of the evidence that the limitation on asylum eligibility does not apply or that they qualify for the exception; such an approach would not be a prudent use of resources given current operational realities. See 89 FR at 48756. The Departments nonetheless formulated the present rulemaking in a manner that preserves the ability of USCIS to exercise its discretion to place cases with positive credible fear determinations in the AMI process should USCIS have the resources available to do so in the future. See *id.*; see also 8 CFR 208.35(b)(2)(ii). The Departments will continue to implement the Asylum Processing IFR in a manner consistent with the way the rule was envisioned to function, enrolling new cases in the process at the discretion of USCIS, in accordance with available resources.

e. Other Congressional Action

Comment: Many commenters stated that the Administration should work with Congress on comprehensive legislative reforms. Commenters emphasized the need for meaningful legislative reform of the U.S. immigration system. Several commenters demanded that Congress address “the issue of immigration.” Commenters pointed to a variety of reforms that they believed Congress should implement. However, one commenter disagreed with any suggestion that the border crisis was the result of any failure of Congress and felt it was the Administration’s consistent “abdication” of border security and immigration enforcement that has resulted in the sustained, high rate of encounters since 2021.

Response: These are suggestions for Congress and are outside the scope of this rulemaking. Nevertheless, the Departments acknowledge the commenters’ expressed frustration with Congress’s failure to update outdated immigration laws and provide needed funding and resources for the efficient operation of the border security and immigration systems. The Departments observe that this failure, combined with unprecedented levels of irregular migration along the southern border, makes up the causal background of the June 3 Proclamation and this rule, and they therefore disagree with one commenter’s suggestion that the current border circumstances can be ascribed to the Administration’s alleged “abdication” of border security, and in no part to any congressional inaction. As explained in the June 3 Proclamation and the IFR, in the absence of congressional action to provide appropriate resources to DHS and EOIR and to reform the outdated statutory framework, the rule implements new policies to substantially improve the Departments’ ability within that framework to deliver timely decisions and consequences to noncitizens who lack a lawful basis to remain. *See* 89 FR at 48715. Although the Departments are adopting these measures to respond to the emergency situation at the southern border, they are not a substitute for congressional action, which remains the only long-term solution to the challenges the Departments have confronted on the border.

f. Additional Suggested Measures or Revisions

Comment: One commenter suggested that the Departments “engage in meaningful dialogue with legal experts and humanitarian groups to develop

compassionate and effective approaches to migration.”

Response: The Departments appreciate the commenter’s suggestion and welcome the views of legal experts and humanitarian groups. Indeed, the Departments have sought comment on their rules relating to border management—such as the Asylum Processing IFR, Circumvention of Lawful Pathways rule, DHS Mandatory Bars NPRM, and the IFR here—and have either considered and responded to those comments, or, in the case of the DHS Mandatory Bars NPRM, are in the process of doing so. Additionally, such experts and organizations are able to petition the Departments for rulemaking, through which process they may present their proposals for consideration by the Departments. The Departments appreciate the thoughtful comments and feedback they have received from the public, including legal experts and humanitarian groups, and hope that the public’s interest in aiding the Departments in their efforts to manage the border continues. Further, since the June 3 Proclamation and the IFR came into force, DHS has continually engaged advocacy, non-governmental, and international organization partners to seek their feedback and perspectives.

Comment: One commenter made several suggestions for additional, stricter measures instead of or in addition to this rule. Such suggested measures included strictly limiting parole into the United States, reinstating MPP and requiring noncitizens to wait in Mexico pending removal proceedings, rescinding enforcement priorities and enforcing immigration law in the interior of the United States, expanding expedited removal, terminating policies the commenter viewed as hindering immigration enforcement, requiring AOs to apply all mandatory bars to asylum and statutory withholding of removal in credible fear screenings, raising the standard for withholding of removal and deferral of removal to the “reasonable probability” standard for all credible fear proceedings, and terminating USCIS’s policy of accepting requests for reconsideration after an IJ has concurred with an AO’s negative credible fear determination. The commenter, addressing the instant rule, requested that the Departments eliminate “overbroad and easy to exploit loopholes,” specifically stating that the Departments should “strike” the exception for those who establish exceptionally compelling circumstances. One commenter stated

that the rule should also apply to the northern border.

Response: The Departments acknowledge the commenters’ varying viewpoints and concerns but believe that even if some of the alternatives proposed by the commenters are suitable to pursue, they would not obviate the need for this rule. Proposals to broadly limit lawful pathways to enter the United States, such as parole processes, are outside the scope of this rulemaking, as are other comments advocating for immigration policy changes or reforms unrelated to the IFR.

The Departments nonetheless note that this rule does not provide for, prohibit, or otherwise set any policy regarding DHS’s discretionary authority to make parole determinations. Even so, in the Departments’ experience, the various parole processes work in tandem with other lawful pathways in a complementary manner to address surges in migration. Examples of the success of DHS’s discretionary parole processes include the CHNV parole processes and family reunification parole processes resulting in use of lawful pathways for entry into the United States. Importantly, the parole processes themselves are lawful pathways for qualifying individuals seeking to come to the United States, and this rule does not discourage their use. The parole processes are lawful, safe, and orderly pathways that the Departments wish to encourage in light of the urgent circumstances.

The Departments disagree with commenters’ suggestion to reinstate MPP for the reasons stated in the IFR and the Circumvention of Lawful Pathways rule. *See* 89 FR at 48752 n.271; 88 FR at 31370.

Regarding commenters’ request for expansion of expedited removal, the Departments observe that, among the series of steps the Government has taken to strengthen consequences for irregular entry at the border, DHS has processed record numbers of individuals through expedited removal. For example, in the months between May 12, 2023, and June 4, 2024, CBP processed more than 359,000 noncitizens encountered at and between POEs along the SWB for expedited removal⁴¹⁰—almost twice as many as any prior full FY.⁴¹¹ Indeed, under the IFR, from June 5 through August 31, 2024:

⁴¹⁰ OHSS analysis of July 2024 Persist Dataset (Imm Post Pandemic ERCF tab).

⁴¹¹ OHSS analysis of June 2024 Enforcement Lifecycle and July 2024 OHSS Persist Dataset. Prior to FY 2024, the single-year FY record for Southwest Border cases processed for expedited removal was 202,000 in FY 2013 (Historic CFIs tab).

- DHS removed or returned more than 119,000 individuals encountered at the SWB⁴¹² to more than 140 countries, including by operating more than 400 international repatriation flights;⁴¹³

- DHS has doubled the percentage of noncitizens encountered at the SWB who are removed or returned directly from CBP custody compared to the immediate post-pandemic period (32 percent compared to 16 percent);⁴¹⁴

- DHS has more than tripled the percentage of noncitizens encountered by USBP at the SWB who are processed through expedited removal (up from 18 percent to 59 percent; expedited removal processing was already at record levels, as noted above);⁴¹⁵ and
- DHS has decreased the percentage of noncitizens encountered at the SWB who are released by USBP pending their section 240 removal proceedings by more than half (from 64 percent to 31 percent).⁴¹⁶

However, as explained at length in the IFR, DHS's ability to apply expedited removal is subject to resource constraints. *See, e.g.*, 89 FR at 48752. At high levels of encounters, DHS simply lacks sufficient resources, such as AOs to conduct fear screenings and temporary processing facilities, to refer noncitizens for expedited removal processing. The mismatch in resources and encounters has created stress on the border security and immigration systems, forcing DHS to rely on processing pathways outside of expedited removal.

With respect to the suggestion that mandatory bars be considered at the screening stage under a reasonable possibility standard, DHS is considering that issue in a separate rulemaking. *See* Mandatory Bars NPRM.

The Departments decline to apply the "reasonable probability" standard to screen all statutory withholding of removal and CAT protection claims during all credible fear interviews at this time. Although the Departments acknowledge the commenters' concerns, the Departments emphasize that the primary focus of this rule is to substantially improve the Departments' ability, during periods of high encounters, to deliver timely decisions and consequences to noncitizens who lack a lawful basis to remain. Application of a the "reasonable

probability" standard under emergency border circumstances as defined in the rule satisfies these goals.

The suggestion to generally disallow USCIS from accepting requests for reconsideration of negative credible fear determinations exceeds the scope of this rulemaking, which regards the procedures applied during emergency border circumstances. The Departments note that during such circumstances, if it was determined at the credible fear interview that there is not a significant possibility a noncitizen could ultimately demonstrate by a preponderance of the evidence that they are not subject to the IFR's limitation on asylum eligibility or are eligible for the exception to the limitation, the noncitizen would not be permitted to submit requests for reconsideration with USCIS. *See* 8 CFR 208.35(b)(2)(v)(B). In such circumstances, USCIS may, in its sole discretion, reconsider a negative determination. *See id.*; *see also* 89 FR at 48756.

The Departments disagree with the concern one commenter raised about what it characterized as "loopholes." The exceptions to the limitation on eligibility for asylum are necessary to prevent undue hardship. The Departments have limited the means of avoiding the limitation on asylum eligibility to those identified in the June 3 Proclamation and to exceptionally compelling circumstances in an effort to maximize the rule's applicability.

With respect to a commenter's suggestion that the rule apply to the northern border, the Departments do not currently assess that application of the rule is necessary at the U.S.-Canada land border. Instead, the United States is implementing other measures to address irregular migration at that border, such as the Additional Protocol of 2022 to the Safe Third Country Agreement between the United States and Canada, which expands the Agreement to apply to noncitizens who claim asylum or other protection within 14 days of crossing the U.S.-Canada land border between POEs, including certain mutually designated bodies of water. *See* Implementation of the 2022 Additional Protocol to the 2002 U.S.-Canada Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries, 88 FR 18227 (Mar. 28, 2023). Under the Safe Third Country Agreement, with limited exceptions, noncitizens who cross from Canada to the United States cannot pursue an asylum or other protection claim in the United States and are instead returned to Canada to pursue their claim.

Comment: A commenter suggested exempting persons who manifest a credible fear from penalties arising from expedited removal, including restrictions on subsequent admission to the United States, and conditioning the implementation of restrictions on eligibility for protection at the border "on the actual availability of an alternative pathway[]."

Response: The Departments acknowledge the commenters' suggestions but do not believe the alternatives proposed by the commenters are suitable to address operational concerns or meet the Departments' policy objectives.

With regard to comments recommending that all noncitizens who manifest a fear be exempted from facing "penalties" arising from expedited removal, including restrictions on future admission to the United States, the Departments note that such a change would require a change to the INA, and thus is not within the Department's authority. *See* INA 212(a)(9)(A), 8 U.S.C. 1182(a)(9)(A) (providing that noncitizens removed pursuant to an order of expedited removal are inadmissible for a period of five or ten years following the date of such removal).

With regard to the commenter's suggestion to condition the limitation on asylum eligibility on whether each individual had a lawful, safe, and orderly pathway available to them, the Departments note that the current framework already effectively does so. Any noncitizen without documents sufficient for lawful admission to the United States may pre-schedule a time and place to present at a POE through the CBP One app.⁴¹⁷ Those who cannot wait for such an appointment may present at a POE and seek an exception to the Proclamation's suspension and limitation on entry or establish exceptionally compelling circumstances before an AO or IJ, both of which except them from the limitation on asylum eligibility. *See* 8 CFR 208.35(a), 1208.35(a). To the extent commenters think these mechanisms are insufficient, the Departments have considered those arguments but believe that the rule strikes an appropriate balance between managing emergency border circumstances and protecting noncitizens' access to asylum, as discussed in Section III.C.1.b of this preamble.

⁴¹² OHSS analysis of data downloaded from UIP on September 3, 2024 (IFR details tab).

⁴¹³ OHSS analysis of data downloaded from UIP on September 3, 2024 (Flights and Removals tab).

⁴¹⁴ OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

⁴¹⁷ *See* CBP, *CBP One™ Mobile Application* (last modified Sept. 23, 2024), <https://www.cbp.gov/about/mobile-apps-directory/cbpone>.

F. Out of Scope

Comment: In addition to the comments discussed above, commenters also discussed a range of topics that are outside the scope of this rule. For example, some commenters shared a general concern relating to overpopulation; a recommendation that the United States accept a certain number of noncitizens each year to compensate for labor shortages; a suggestion that the Government provide legal counsel at no expense to noncitizens or otherwise fund court-appointed counsel; a suggestion to issue “general rules or guidelines in lieu of case by case assessments that would allow asylum officers to quickly approve certain cases”; a suggested amendment to the DHS Mandatory Bars NPRM to require AOs to apply all mandatory bars to asylum and statutory withholding of removal at the credible fear stage; a recommendation to preclude USCIS from considering requests for reconsideration of negative credible fear or reasonable fear determinations that have been reviewed by an IJ; concern with and strong opposition to the United States’ military support for Israel; a request for open borders; a request for the Government to focus its efforts on providing asylum seekers access to mental health services; requests related to custody and detention of noncitizens and asylum seekers, such as investing in “non-custodial processing centers”; concerns about family separation and reunification policies; a recommendation to provide “relief for undocumented caregivers by modernizing existing rules”; suggestions relating to work authorization for migrants and asylum seekers; sentiments that the Government should provide funding to support migrant communities with public services and respite; a recommendation that the Government grow “federal support for case management support”; claims that the President does not have authority under sections 212(f) and 215(a) of the INA, 8 U.S.C. 1182(f) and 1185(a), for the policies and objectives of the Proclamation; a claim that the President’s use of his authority under section 212(f) of the INA, 8 U.S.C. 1182(f), to issue the Proclamation is a departure from how other presidents have used the authority in the past, relying on statements from the Ninth Circuit’s decision in *Hawaii v. Trump*, 878 F.3d 662, 689 (9th Cir. 2017), *rev’d and remanded*, 585 U.S. 667 (2018); challenges to DHS’s parole authority and use of parole; and a recommendation to give second chances

to noncitizens involved in unlawful activities and to shut down operations such as the Western Hemisphere Institute for Security Cooperation because they further perpetuate drug-related violence.

Response: These comments address matters beyond the scope of the rule and do not require further response. To the extent that commenters’ concerns raised in relation to actions taken under sections 212(f) and 215(a) of the INA, 8 U.S.C. 1182(f), 1185(a), apply also to the legality of actions taken by the Departments, and not only to the President’s June 3 Proclamation or DHS’s implementation of it, those concerns are addressed in Section III.A.1 of this preamble.

IV. Requests for Comments

A. Aligning the Geographic Reach of the Circumvention of Lawful Pathways Rule With That of the Proclamation and This Rule

The Departments request comment on whether to expand the geographic reach of the Circumvention of Lawful Pathways rebuttable presumption to include those who enter at southern coastal borders, irrespective of whether they traveled through a third country. See 8 CFR 208.33(a)(1), 1208.33(a)(1). The Circumvention of Lawful Pathways rule’s rebuttable presumption of asylum ineligibility applies to a noncitizen who “enters the United States from Mexico at the southwest land border or adjacent coastal borders.” See 8 CFR 208.33(a)(1), 1208.33(a)(1). In addition, among other requirements, the rebuttable presumption only applies if the noncitizen traveled through a country other than the noncitizen’s country of citizenship, nationality, or, if stateless, last habitual residence, that is a party to the Refugee Convention or the Refugee Protocol. See 8 CFR 208.33(a)(1)(iii), 1208.33(a)(1)(iii).

The Departments specifically welcome comment on two proposals: first, whether, in 8 CFR 208.33(a)(1) and 1208.33(a)(1), the Departments should remove the words “from Mexico at the southwest land border or adjacent coastal borders” and replace them with the words “across the southern border (as that term is described in section 4(d) of Presidential Proclamation 10773).” Second, the Departments welcome comment on whether to add to the beginning of 8 CFR 208.33(a)(1)(iii) and 1208.33(a)(1)(iii) a clause that reads, “After the alien entered the United States by sea, or”—so that paragraph (a)(1)(iii) would state in full, “After the alien entered the United States by sea, or after the alien traveled through a

country other than the alien’s country of citizenship, nationality, or, if stateless, last habitual residence, that is a party to the 1951 United Nations Convention relating to the Status of Refugees or the 1967 Protocol relating to the Status of Refugees.” In a future final rule, the Departments may adopt the first proposal, the second proposal, or both.

Although this request for comment is similar to the Departments’ request for comment in the Circumvention of Lawful Pathways rule, see 88 FR at 31440–44, the Departments are now seeking comments on the geographic scope in the broader context of this Securing the Border⁴¹⁸ rulemaking. Given the intervening Securing the Border rulemaking, the comments that will be most useful are those that are informed by the full range of actions taken to address migration since the end of the Title 42 public health Order. Accordingly, although the Departments intend to incorporate any comments received on the 2023 Circumvention of Lawful Pathways rule’s request for comment into the docket for this request for comment, those who submitted comments in response to that request for comment are encouraged to update their comments in light of the intervening Securing the Border rulemaking and resubmit their comments here.

Unlike the Circumvention of Lawful Pathways rule, the Proclamation and the Securing the Border rule apply to certain noncitizens entering the United States across the “southern border,” which includes “southern coastal borders.” 89 FR at 48491; see also 8 CFR 208.13(g), 1208.13(g). Section 4(b) of the Proclamation defines “southern coastal borders” to mean “all maritime borders in Texas, Louisiana, Mississippi, Alabama, and Florida; all maritime borders proximate to the southwest land border, the Gulf of Mexico, and the southern Pacific coast in California; and all maritime borders of the United States Virgin Islands and Puerto Rico.” 89 FR at 48491. The term “southern border” adopted by the Proclamation and the Securing the Border rule is categorically broader than the term “adjacent coastal borders” adopted in the Circumvention of Lawful Pathways rule, which the Departments defined as “any coastal border at or near the U.S.-Mexico border.” 88 FR at 31320. In contrast to this definition, the term “southern coastal borders” encompasses certain specified coastlines that are not at or

⁴¹⁸ Although the Departments have not referred to the present rule as the “Securing the Border rule” throughout this preamble, the Departments do so in this request for comment to distinguish the present rule from the Circumvention of Lawful Pathways rule in an effort to avoid confusion.

near the U.S.-Mexico border, such as the maritime borders of Puerto Rico and the United States Virgin Islands. 89 FR at 48711 n.4.

The Departments believe it is best to align the geographic reach of the Circumvention of Lawful Pathways rule to that in the Proclamation, which was adopted by the Securing the Border rule, for three reasons: (1) to make clear to noncitizens intending to migrate to the United States that timely consequences will result if they resort to crossing irregularly no matter where along the southern border they cross; (2) to deter smugglers and noncitizens from using dangerous maritime migration to avoid the rebuttable presumption of asylum ineligibility if the noncitizen did not travel through a country other than the noncitizen's country of citizenship, nationality, or, if stateless, last habitual residence, that is a party to the 1951 United Nations Convention relating to the Status of Refugees or the 1967 Protocol relating to the Status of Refugees, *see* 8 CFR 208.33(a)(1)(iii), 1208.33(a)(1)(iii); and (3) to ensure consistency in implementation. This modification to the geographic reach of the Circumvention of Lawful Pathways rule would encourage noncitizens to avoid dangerous maritime migration and further persuade them to utilize lawful, safe, and orderly pathways. As discussed in more detail below, maritime migration results in life-threatening risks for both migrants and DHS personnel.

When the Departments initially proposed the Circumvention of Lawful Pathways rule, the rule would have covered migrants who entered the United States from Mexico “at the southwest land border”—that is, “along the entirety of the U.S. land border with Mexico.” 88 FR at 11704 n.1; *see also id.* at 11750, 11751. However, the Departments received comment from the public expressing concern that limiting the rebuttable presumption to only those who entered the United States from Mexico by land would incentivize noncitizens without documents sufficient for lawful admission to circumvent the land border by making the hazardous attempt to reach the United States by sea. 88 FR at 31320. Concurring with this concern, the Departments modified the geographic reach of the rebuttable presumption to include “adjacent coastal borders” so that it applied to noncitizens who crossed into the United States from Mexico via adjacent coastal borders. Further, this definition mirrored the geographic reach of the Centers for Disease Control and Prevention’s (“CDC”) Title 42 public

health Order and, as implemented by CBP, the Amended CDC Order issued in May 2020. *Id.* Because CBP had been interpreting the term in this way for three years before the Circumvention of Lawful Pathways rule’s finalization, the Departments believed this consistency with the Title 42 public health Order in geographic application would help prevent smugglers from exploiting what could be perceived as a loophole by persuading migrants to take the perilous journey of trying to reach the United States by sea upon the termination of the Order. *Id.*

The Departments now believe that further expanding the geographic scope of the Circumvention of Lawful Pathways rule beyond “adjacent coastal borders,” and, with respect to those who arrive by sea, removing the restriction that the rule only applies to noncitizens who enter the United States from Mexico, could be supported by the same justification for the Securing the Border rule’s inclusion of southern coastal borders: these changes would “help avoid any incentive for maritime migration to such locations” that are currently covered by the Securing the Border rule but not by the Circumvention of Lawful Pathways rule. 89 FR at 48711 n.4. For example, expanding the scope of the Circumvention of Lawful Pathways rule in this manner would mean that a noncitizen who enters the United States at a border via the Gulf of Mexico would be subject to the Circumvention of Lawful Pathways rule regardless of whether they transited through Mexico. Further, as an operational matter, this would ensure consistency in processing. Aligning the geographic scope of the Circumvention of Lawful Pathways rule with that of the Securing the Border rule would eliminate one operational switch that DHS personnel would have to make when the provisions of the Securing the Border rule discontinue in the absence of emergency border circumstances. This would allow DHS personnel to operate consistently with respect to noncitizens encountered utilizing maritime migration to cross the southern coastal borders, all of whom would be presumptively ineligible for asylum.

Maritime migration poses unique hazards to life and safety to both migrants and DHS personnel.⁴¹⁹ Human smugglers and noncitizens migrating to the United States continue to use unseaworthy, overly crowded vessels,

piloted by inexperienced mariners, without any safety equipment—including, but not limited to, personal flotation devices, radios, maritime global positioning systems, or vessel locator beacons.⁴²⁰ The USCG regularly interdicts noncitizens employing maritime migration in the Gulf of Mexico and Atlantic Ocean in makeshift, overcrowded vessels.⁴²¹ In FY 2022, over 12,500 noncitizens were interdicted by the USCG and in FY 2023, that figure was nearly 13,500.⁴²² This is a dramatic increase from previous years. For example, between FY 2017 and FY 2020, annual maritime interdictions never exceeded 3,600.⁴²³ Between October 1, 2023 and April 30, 2024, the USCG carried out 35 maritime migration interdictions in the Mona Passage and waters near Puerto Rico, with nearly 1,200 noncitizens interdicted at sea from various countries such as the Dominican Republic, Haiti, and Venezuela.⁴²⁴ Between October 1, 2022 and August 5, 2023, the USCG interdicted over 6,900 migrants from Cuba alone.⁴²⁵ In August 2024, the

⁴²⁰ *See* David C. Adams, James Wagner, *At Least 40 Migrants Die in Boat Fire Off Haitian Coast*, U.N. says, N.Y. Times (July 19, 2024), <https://nytimes.com/2024/07/19/world/americas/boat-fire-haiti-migrants.html>; Samantha Schmidt, Paulina Villegas, Hannah Dormido, *Dreams and Deadly Seas: Bahamas Human Smuggling by Boat*, The Wash. Post (July 27, 2023), <https://www.washingtonpost.com/nation/interactive/2023/bahamas-human-smuggling-by-boat/> (“The United States . . . Coast Guard cutters have been rescuing migrants from foundering or overcrowded boats every few days.”); Adriana Gomez Licon, *Situation ‘dire’ as Coast Guard seeks 38 missing off Florida*, Associated Press (Jan. 26, 2022), <https://apnews.com/article/florida-capsized-boat-live-updates-f251d7d279b6c1fe064304740c3a3019>; Gina Martinez, *Coast Guard rescues more than 180 people from overloaded sailboat in Florida Keys*, CBS News, CW44 Tampa (Nov. 22, 2022), <https://www.cbsnews.com/news/coast-guard-rescues-more-than-180-people-overloaded-sailboat-florida-keys/>.

⁴²¹ USCG, *Press Release: Coast Guard repatriates 136 migrants to Dominican Republic, following 3 separate interdictions near Puerto Rico* (May 28, 2024), <https://www.news.uscg.mil/Press-Releases/Article/3789058/coast-guard-repatriates-136-migrants-to-dominican-republic-following-3-separate>; *see also* USCG, *Press Release: Coast Guard repatriates 119 migrants to Dominican Republic following 2 interdictions near Puerto Rico* (Apr. 29, 2024), <https://www.news.uscg.mil/Press-Releases/Article/3758973/coast-guard-repatriates-119-migrants-to-dominican-republic-following-2-interdic/>.

⁴²² OHSS analysis of July 2024 Persist Dataset (Maritime Interdictions tab).

⁴²³ *Id.*

⁴²⁴ USCG, *Press Release: Coast Guard repatriates 136 migrants to Dominican Republic, following 3 separate interdictions near Puerto Rico* (May 28, 2024), <https://www.news.uscg.mil/Press-Releases/Article/3789058/coast-guard-repatriates-136-migrants-to-dominican-republic-following-3-separate>.

⁴²⁵ USCG, *Press Release: Coast Guard repatriates 27 people to Cuba* (Aug. 5, 2023), <https://www.news.uscg.mil/Press-Releases/Article/>

⁴¹⁹ The Departments also reiterate the explanation of the dangers of maritime migration in the Circumvention of Lawful Pathways rule. *See* 88 FR at 31441–42.

USCG interdicted a disabled migrant vessel and repatriated 182 migrants back to Haiti.⁴²⁶ In May 2024, the USCG located and intercepted a 30-foot makeshift vessel with over 60 migrants crammed into it traveling nearly 63 miles north of Punta Cana, Dominican Republic.⁴²⁷ During a second interdiction occurring on May 20, 2024, CBP's Air and Marine Operations interdicted a "grossly overloaded makeshift vessel" carrying 68 migrants located two miles from Puerto Rico's coastline.⁴²⁸

In FY 2023, the USCG recorded 112 noncitizen deaths, including those presumed dead, as a result of irregular maritime migration. IOM's Missing Migrants Project found that from 2014 to 2024, in the Americas, the maritime route from the Caribbean to the United States resulted in the second-highest number of dead and missing migrants, after the U.S.-Mexico border crossing.⁴²⁹ The intention behind the Circumvention of Lawful Pathways rule is to discourage individuals from resorting to irregular migration, including markedly more dangerous maritime migration, and to instead incentivize noncitizens to utilize lawful, safe, and orderly pathways and processes to come to the United States. Expanding the geographic scope of the Circumvention of Lawful Pathways rule's rebuttable presumption would expand that incentive structure to cover the entire southern border, rather than just a portion of it.

The United States has taken significant steps to expand safe and orderly options for migrants, including migrants from the Caribbean region, to

lawfully enter the United States.⁴³⁰ The United States has increased and will continue to increase refugee processing in the Western Hemisphere; country-specific and other available processes for individuals seeking parole for urgent humanitarian reasons or significant public benefit, including the Cuba and Haiti parole processes; and opportunities to lawfully enter the United States for the purpose of seasonal employment.⁴³¹ In addition, the United States has resumed the Cuban Family Reunification Program and resumed and increased participation in the Haitian Family Reunification Program.⁴³² The availability of these pathways serves as important background for the proposal to expand the geographic reach of the Circumvention of Lawful Pathways rebuttable presumption to include those who enter at southern coastal borders, irrespective of whether they traveled through a third country. Such pathways for migrants from this region provide meaningful opportunities for these individuals to use a lawful, safe, and orderly pathway to enter the United States, even if they did not first travel through a third country where they could request such protection. Accordingly, the Departments are considering and seeking comment on applying the Circumvention of Lawful Pathways rebuttable presumption to those who enter the United States via the southern coastal border, irrespective of whether they traveled through a third country, to discourage noncitizens from using dangerous maritime migration routes.

B. Extending the Applicability of the Circumvention of Lawful Pathways Rebuttable Presumption

Currently, the Circumvention of Lawful Pathways rule applies to a noncitizen who, *inter alia*, entered the United States from Mexico "between May 11, 2023 and May 11, 2025" and "[s]ubsequent to the end of implementation of the Title 42 public health Order." 8 CFR 208.33(a)(1)(i)–(ii),

1208.33(a)(1)(i)–(ii). When issuing that rule, the Departments acknowledged that "aspects of the present situation at the border are likely to continue for some time and are unlikely to be significantly changed in a short period," but the Departments opted for a two-year "entry period" to, *inter alia*, address the surge in migration that, in the absence of the Circumvention of Lawful Pathways rule, was anticipated to follow the lifting of the Title 42 public health Order and to provide sufficient time to implement and assess the effects of the policy contained in that rule. See 88 FR at 11727; 88 FR at 31421. The Departments are now considering, and request comment on, whether to extend the entry period indefinitely so that the rebuttable presumption will apply to noncitizens who entered the United States without documents sufficient for lawful admission any time on or after May 11, 2023, and, if the applicability is extended, other appropriate changes. See 8 CFR 208.33(a)(1)(i), 1208.33(a)(1)(i); see also, e.g., *id.* 208.33(c), 1208.33(d) (providing the ongoing applicability of the Circumvention of Lawful Pathways rebuttable presumption to any future asylum applications filed by noncitizens who enter during the entry period regardless of when the application was filed, except in the case of certain children who entered as part of a family unit if they later apply for asylum as principal applicants).

In the Circumvention of Lawful Pathways NPRM, the Departments specifically welcomed comment on whether the proposed two-year duration of the rule's applicability "should be modified, including whether it should be shorter, longer, or of indefinite duration." See 88 FR at 11708. In response to comments received on the NPRM, the Departments maintained the proposed two-year period in the Circumvention of Lawful Pathways final rule because that rule's focus was to respond to the anticipated surge in migration upon the termination of the Title 42 public health Order. See 8 CFR 208.33(a)(1)(i), 1208.33(a)(1)(i); 88 FR at 31421–22. The Departments stated that a 24-month period would provide "sufficient time to implement and assess the effects of the policy contained in this rule" and that "a 24-month period is sufficiently long to impact the decision-making process for noncitizens who might otherwise pursue irregular migration and make the dangerous journey to the United States, while a shorter duration, or one based on specified conditions, would likely not

3484466/coast-guard-repatriates-27-people-to-cuba/.

⁴²⁶ USCG, *Press Release: Coast Guard repatriates 182 migrants to Haiti* (Aug. 21, 2024), <https://www.news.uscg.mil/Press-Releases/Article/3878831/coast-guard-repatriates-182-migrants-to-haiti/>.

⁴²⁷ USCG, *Press Release: Coast Guard repatriates 136 migrants to Dominican Republic, following 3 separate interdictions near Puerto Rico* (May 28, 2024), <https://www.news.uscg.mil/Press-Releases/Article/3789058/coast-guard-repatriates-136-migrants-to-dominican-republic-following-3-separate/>.

⁴²⁸ *Id.*

⁴²⁹ IOM, *Missing Migrants Project: Migration Within the Americas*, <https://missingmigrants.iom.int/region/americas> (last visited Aug. 15, 2024). IOM cautions that "[c]ollecting information about migrants who die or disappear on maritime routes while attempting to migrate by boat in the Caribbean is also very challenging. The remote nature of maritime routes, the secrecy in which boats set out, and the lack of information on trajectories means that many shipwrecks carrying migrants are never identified. It is rarely known exactly how many people were on board boats that ran into trouble at sea, making it difficult to verify how many people went missing, or to know any information about their identities." *Id.*

⁴³⁰ See DHS, *DHS Continues to Prepare for End of Title 42: Announces New Border Enforcement Measures and Additional Safe and Orderly Processes* (Jan. 5, 2023), <https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and>.

⁴³¹ See DHS, *Fact Sheet: DHS Continues to Strengthen Border Security, Reduce Irregular Migration, and Mobilize International Partnerships* (June 4, 2024), <https://www.dhs.gov/news/2024/06/04/fact-sheet-dhs-continues-strengthen-border-security-reduce-irregular-migration-and>.

⁴³² See DHS, *DHS Modernizes Cuban and Haitian Family Reunification Parole Processes* (Aug. 10, 2023), <https://www.dhs.gov/news/2023/08/10/dhs-modernizes-cuban-and-haitian-family-reunification-parole-processes>.

have such an effect.” 88 FR at 31421. The Departments further stated that the United States would continue to build on the multi-pronged, long-term strategy with our foreign partners throughout the region to support conditions that would decrease irregular migration, work to improve refugee processing and other immigration pathways in the region, and implement other measures as appropriate, including continued efforts to increase immigration enforcement capacity and streamline processing of asylum seekers and other migrants. *Id.*

The Departments recognized, however, “that there is not a specific event or demarcation that would occur at the 24-month mark,” and stated that they would “closely monitor conditions during this period in order to review and make a decision, consistent with the requirements of the APA, whether additional rulemaking is appropriate to modify, terminate, or extend the rebuttable presumption and the other provisions of th[e] rule.” *Id.* The Departments explained that such review and decision would consider all relevant factors, such as resource limitations and the Departments’ capacity to safely, humanely, and efficiently administer the immigration system; the availability of lawful pathways to seek protection in the United States and partner nations; and foreign policy considerations. *Id.* The Departments also expected to consider their experience under the Circumvention of Lawful Pathways rule at the 24-month mark, including the effects of the rebuttable presumption on those pursuing asylum claims. *Id.* In addition, the Departments expected to consider changes in policy views and imperatives, including foreign policy objectives, in making any decision regarding the future of the rule. *Id.* The Departments did not identify specific metrics for extending the rule *ex ante*, given the dynamic nature of the circumstances at the SWB and the multifaceted domestic and foreign policy challenges facing the Departments. *Id.*

The Departments have considered these factors and propose and seek comment on an indefinite extension of the applicability of the Circumvention of Lawful Pathways rule’s rebuttable presumption and credible fear provisions. The Departments also seek comment on whether other changes to the Circumvention of Lawful Pathways rule’s provisions would be appropriate if its applicability becomes indefinite. First, as detailed in the IFR, although the Circumvention of Lawful Pathways rule did not fully mitigate the very high levels of irregular migration during the

immediate post-pandemic period, it yielded tangible results that ameliorated a situation that otherwise would have been more challenging. *See* 89 FR at 48723–31.⁴³³ Extending the entry period for the Circumvention of Lawful Pathways rule would ensure that DHS can continue to deliver timely consequences, where appropriate, to more noncitizens encountered, even at levels of migration below the threshold at which the suspension and limitation on entry under this rule would be active. As the Departments explained in the IFR, “at 1,500 daily encounters between POEs . . . DHS would be able to quickly remove the majority of the people it processes at the border on any given day who have no legal basis to remain in the United States.” *Id.* at 48752. This estimate was expressly based on the Departments’ demonstrated performance under the Circumvention of Lawful Pathways rule, *see id.*, and therefore accounted for the effects of that policy as well as the most recent data on capacity limitations, demographics, fear claim rates, and other variables. *See id.* Even with the Proclamation and Securing the Border rule in place, the absence of the Circumvention of Lawful Pathways rebuttable presumption would mean that when encounters between POEs begin to exceed 1,500 encounters and the threshold for continuing or reactivating the measures in this rule is not yet met, the Departments’ ability to deliver timely decisions and consequences would likely be impaired.⁴³⁴

Second, the Departments continue to be subject to significant resource

⁴³³ Between May 12, 2023, and June 4, 2024, CBP placed into expedited removal approximately 920 individuals encountered at and between POEs each day on average. OHSS analysis of July 2024 Persist Dataset (Imm Post Pandemic ERCF tab). While encounters at the SWB and in coastal sectors averaged over 5,000 per day for the period from May 12, 2023, to June 4, 2024, border encounters remained below the levels projected to occur in the absence of the Circumvention of Lawful Pathways rule. *Id.*; 89 FR at 48724 & n.99.

⁴³⁴ Assuming similar processing capacity as during the immediate post-pandemic period and the same mix of encounter demographics as observed during the first two months of enforcement under the IFR, OHSS estimates that at 1,500 encounters (including all UCs) approximately 58 percent of single adult and family unit encounters would be quickly repatriated (including voluntary returns, reinstatements, and expedited removals) with the rebuttable presumption in effect, versus 46 percent in the absence of the rebuttable presumption. OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (CLP v pre-CLP Proj Outcomes tab). At 2,500 encounters per day, OHSS estimates that 41 percent of single adult and family unit encounters would be quickly repatriated with the rebuttable presumption in effect, versus 34 percent in the absence of the rebuttable presumption. *Id.*

limitations, *see* 89 FR at 48728–31, such that—as explained earlier in this section—even at levels of encounters below the 2,500-encounter threshold contained in section 2(b) of the Proclamation, DHS would not be able to quickly remove the majority of those encountered who do not have a basis to remain.⁴³⁵ In such circumstances, DHS will need policy interventions like the Circumvention of Lawful Pathways rule to continue delivering timely consequences. Although there were months during the FY 2013–FY 2019 period “in which daily encounters . . . between 1,500 and 2,500 resulted in an average of 210 individuals released each day,” *see* 89 FR at 48753, such a low release rate would be unrealistic given today’s demographic mix of encounters, even at 1,500 daily encounters, particularly in the absence of policy interventions such as the Circumvention of Lawful Pathways rule. For instance, even under the Circumvention of Lawful Pathways rule, assuming that USBP processes 900 noncitizens per day for expedited removal at 1,500 daily encounters between POEs, and assuming a similar level of voluntary returns and reinstatements as observed during the immediate pre-pandemic period, DHS would be able to refer into expedited removal 77 percent of single adults and individuals in family units to expedited removal, and would likely release over 530 single adults and individuals in family units.⁴³⁶ This is due to current resource limits for expedited removal, current demographics, and fear-claim and screen-in rates under the Circumvention of Lawful Pathways rule.⁴³⁷ If one adjusts the calculation to use the fear-claim and comprehensive screen-in rates that existed during the pre-pandemic period, over 700 single adults and family members would be released.⁴³⁸ In short, unless the Departments extend the entry period of the Circumvention of Lawful Pathways rule, DHS’s ability to deliver timely consequences would be further degraded because releases pending

⁴³⁵ After the conditions for discontinuing the suspension and limitation on entry under section 2(a) of the Proclamation are met, the suspension and limitation on entry in this rule will continue or reactivate when the 2,500-encounter threshold in section 2(b) of the Proclamation is reached. This numerical gap between discontinuation and continuation or reactivation is important for operational reasons, *see* 89 FR at 48753, but also potentially results in periods of relatively high encounter numbers that the Circumvention of Lawful Pathways rule is needed to manage.

⁴³⁶ OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (CLP v pre-CLP Proj Outcomes tab).

⁴³⁷ *Id.*

⁴³⁸ *Id.*

section 240 removal proceeding would be significantly higher. If the demographics were to shift such that the Circumvention of Lawful Pathways rule was no longer necessary to manage steady-state levels of migration, the Departments could at that time revise policy as appropriate.

Third, even as the United States has continued to coordinate extensively with its regional partners to expand the availability of lawful, safe, and orderly pathways, the Departments have found that these efforts are strengthened by the imposition of appropriate measures to prepare for and respond to ongoing migration challenges as needed. A key component of the Departments' engagement with foreign counterparts has been their ability to demonstrate a willingness to impose, and as appropriate expand, meaningful policy and operational measures in direct response to the pressures caused by migratory flows. *See* 89 FR at 48759. The Departments believe that "leading by example" has been an important part of our overall regional engagement and helped encourage regional partners to continue to adopt new and creative policy and operational migration responses. *Id.* By extending the applicability of the Circumvention of Lawful Pathways rule, the Departments believe it would not only demonstrate to our regional partners that we are committed to disincentivizing irregular migration, but it would also encourage our international partners to maintain their mutual efforts to address the unprecedented migration of people in the Western Hemisphere.

Fourth, with respect to the effects of the rule in general and on those who migrate irregularly in particular, experience has proven that the ability to deliver swift consequences for those who do not use lawful, safe, and orderly pathways or processes for entering the United States is critical; the expiration of the Circumvention of Lawful Pathways rule would limit the Departments' abilities to deliver consequences where appropriate, likely changing the perception and decision-making calculus of would-be migrants and thus could be a pull-factor and serve to increase border encounters. Extending the entry period indefinitely would avoid creating the impression among those contemplating crossing irregularly that no timely consequences will apply to them if they wait until the suspension and limitation on asylum eligibility provided for in the Securing the Border rule is lifted and then cross irregularly.

The indefinite applicability of the entry period would also ensure that the

Circumvention of Lawful Pathways rule's incentive for migrants to utilize lawful, safe, and orderly pathways will continue should the enhanced measures in the Securing the Border rule not be in effect in the future. Although initially designed as a temporary measure, the Circumvention of Lawful Pathways rule is also a critical component of DHS's broader efforts to incentivize migrants to use the lawful, safe, and orderly pathways and processes that the United States Government has made available to them, thereby reducing irregular migration and allowing more efficient and timely processing at the southern border. *See* 88 FR at 31318. Since 2021, the Departments have steadily expanded such pathways, including by increasing refugee processing in the Western Hemisphere; providing country-specific and other available processes for individuals seeking parole for urgent humanitarian reasons or significant public benefit; and expanding the availability of the CBP One app to allow noncitizens to schedule appointments to present at a POE rather than risking their lives by crossing the border unlawfully.⁴³⁹ To encourage noncitizens to continue to pursue such pathways, rather than putting their lives in the hands of dangerous smugglers and resorting to irregular migration that strains the border security and immigration system, the Departments are considering extending the Circumvention of Lawful Pathways rule indefinitely.

Fifth, there are a variety of factors outside of DHS's control that an indefinite extension could help mitigate. Political unrest abroad, natural disasters and climate change, perceptions about U.S. elections or changes in domestic policy, implications of elections in the region, large-scale economic fluctuations, and the migration management practices of regional partners (*e.g.*, their enforcement practices or visa policies)—all have the potential to serve as push or pull factors and dramatically impact encounters at the southern border. *See* 88 FR 31327. An indefinite extension would ensure consistency in U.S. border management practices and maintain a basic tool necessary to address potential migration surges.

Sixth, the Departments believe this approach would complement recent policy initiatives, including this Securing the Border rule, by allowing

DHS to continue to deliver timely consequences to more noncitizens encountered who do not have a legal basis to remain, even at levels of migration below the threshold at which the suspension and limitation on entry would be continued or reactivated.

Finally, extending the applicability of the rebuttable presumption would guard against a circumstance where an adverse litigation outcome against any aspect of this rule or its limitation on asylum eligibility would leave the Departments without sufficient tools in place to address high volumes of migration. Litigation against the IFR remains ongoing,⁴⁴⁰ as does litigation against the Circumvention of Lawful Pathways Rule.⁴⁴¹ Maintaining the rebuttable presumption as a fallback measure is a commonsense way to address the possibility of a judicial decision that temporarily or permanently impairs the Departments' ability to implement this rule.

In considering whether to extend the temporal applicability of the Circumvention of Lawful Pathways rule's rebuttable presumption and credible fear provisions and, if so, how to implement such a change, the Departments expect to consider other changes to the rule's provisions warranted by an extension, and as necessary to achieve the goals of the rule. The Departments request comment regarding any such changes and particularly welcome comments addressing whether and how extending the Circumvention of Lawful Pathways rule's temporal applicability—especially an indefinite extension—would warrant:

- Amendments to the continuing applicability provisions at 8 CFR 208.33(c)(1) and 1208.33(d)(1) regarding future applicability of the rebuttable presumption of asylum ineligibility to those who enter and are subject to the Circumvention of Lawful Pathways rule's provisions;
- Amendments to the exception to continuing applicability at 8 CFR 208.33(c)(2) and 1208.33(d)(2) for certain asylum applications filed after May 11, 2025, by noncitizens who entered as children in a family unit and who later apply for asylum as principal applicants;

⁴⁴⁰ *See Las Americas Immigrant Advocacy Ctr. v. DHS*, No. 1:24-cv-1702-RC (D.D.C. filed June 12, 2024).

⁴⁴¹ *See East Bay Sanctuary Covenant v. Biden*, No. 18-cv-06810, 2023 WL 4729278 (N.D. Cal. July 25, 2023), vacatur stayed pending appeal *East Bay Sanctuary Covenant v. Biden*, No. 23-16032 (9th Cir. Aug. 3, 2023); *M.A. v. Mayorkas*, No. 23-cv-01843 (D.D.C. June 6, 2023); *Texas v. Mayorkas*, No. 23-cv-00024 (W.D. Tex. May 23, 2023); and *Indiana v. Mayorkas*, 23-cv-00106 (D.N.D. May 31, 2023).

⁴³⁹ *See DHS, Fact Sheet: DHS Continues to Strengthen Border Security, Reduce Irregular Migration, and Mobilize International Partnerships* (June 4, 2024), <https://www.dhs.gov/news/2024/06/04/fact-sheet-dhs-continues-strengthen-border-security-reduce-irregular-migration-and>.

- Amendments to the grounds for necessarily rebutting the rebuttable presumption;
- Amendments to the exceptions to the rebuttable presumption; and
- The addition or amendment of any other specific regulatory provisions related to the Circumvention of Lawful Pathways rule in light of the proposal to extend the temporal application of the rebuttable presumption and related credible fear provisions.

V. Regulatory Requirements

A. Administrative Procedure Act

The Departments have forgone the Administrative Procedure Act's ("APA") delayed-effective-date procedure in implementing this rule because the Departments have found good cause to do so and because this rule relates to a foreign affairs function of the United States. See 5 U.S.C. 553(d)(3), (a)(1).⁴⁴² This rule generally adopts the provisions of the IFR with a few technical amendments and changes to the calculation of thresholds to ensure those provisions can remain in force until there has been a sustained decrease in daily encounters. None of the amendments, crucially, implicate the justifications for the 30-day waiting period. The purpose of the waiting period is "to give affected parties time to adjust their behavior before the final rule takes effect." *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1485 (9th Cir. 1992). Here, however, that purpose would not be served by delaying the effective date of the rule: The IFR has been in effect since June 5, and the limited changes adopted in this rule do not require anyone other than the Departments themselves to change their conduct or to take any particular steps in advance of the effective date. See *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (noting that the "legislative history of the APA" indicates that the waiting period "was not intended to unduly hamper agencies from making a rule effective immediately," but intended "to afford persons affected a reasonable time to prepare for the effective date of a rule . . . or to take other action which the issuance may prompt" (citing S. Rep.

No. 752, 79th Cong., 1st Sess. 15 (1946); H.R. Rep. No. 1980, 79th Cong., 2d Sess. 25 (1946))). Instead, the changes made by this rule address the encounter thresholds that the Departments will use to determine the applicability of the rule's suspension and limitation on entry and better ensure that the measures devised to deal with emergency border circumstances will remain in place until there has been a sustained easing of those circumstances.

In finding good cause to bypass the 30-day waiting period, the Departments have taken care to "balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable [amount of] time to prepare for the effective date of [the] rule." *Gavrilovic*, 551 F.2d at 1105. Here, that balance tips considerably in favor of immediate implementation, where the limited changes introduced by this rule preserve the status quo and do not interfere with the operative provisions of the IFR. At most, the amendments in this rule are designed to buttress the IFR's effectiveness in dealing with the emergency border circumstances by better ensuring that its limitation on asylum eligibility and other measures will stay in place until there has been a sustained improvement in encounter patterns across the southern border. For instance, the September 27

Proclamation and this rule provide that UCs from non-contiguous countries should be included in calculating the number of encounters to determine whether the suspension and limitation on entry remain in effect or are discontinued. They additionally provide that the suspension and limitation on entry are not to be discontinued unless there has been a 7-consecutive-calendar-day average of less than 1,500 encounters that is sustained over a period of 28 days. The changes to the threshold represent an incremental improvement upon the prior thresholds. These changes fine-tune the statistical parameters for tracking daily encounters so as to immunize the emergency measures from transitory blips in the data, but do not disturb or add to requirements imposed by the IFR.

Even in the narrow circumstances where the changes made in this final rule might have an effect on whether the rule's provisions apply, a waiting period would provide little benefit. The amendments do not impose new requirements or obligations on migrants contemplating a border crossing, nor on other entities that might claim an interest in the rulemaking, such as legal service organizations looking to help

noncitizens navigate the immigration system (or, to the extent such interests should be considered, smugglers and TCOs angling to learn about legal developments ahead of time so as to exploit perceived gaps in the border processing regime). All of those parties have long been on notice of the substantive provisions of the June 3 Proclamation and the IFR, none of which this rule purports to invalidate. The Proclamation and the IFR went into effect months ago and have since been the subject of regular public updates from DHS, as well as detailed coverage from the national news press.⁴⁴³

To the extent the threshold adjustments might have any effect in the next 30 days—i.e., by preventing the IFR's emergency measures from being discontinued, when they otherwise would have turned off under the old parameters—this would only heighten the impetus for human smugglers and other criminals to inflate or distort the significance of the policy development to manufacture a sense of urgency among migrants and induce them to attempt to enter the country without delay.⁴⁴⁴ As the Departments explained in the IFR, individuals contemplating entry into the United States may respond to both real and perceived incentives that stem from changes to border management and immigration

⁴⁴³ See DHS, *Fact Sheet: President Biden's Presidential Proclamation and Joint DHS-DOJ Interim Final Rule Cut Encounters at Southwest Border by 55 Percent* (July 24, 2024), <https://www.dhs.gov/news/2024/07/24/fact-sheet-president-bidens-presidential-proclamation-and-joint-dhs-doj-interim>; CBP, *Statistics Show Lowest Southwest Border Encounters in Nearly Four Years* (Aug. 16, 2024), <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-july-2024-monthly-update>; Miriam Jordan & J. David Goodman, *Amid Talk of Border Chaos, Crossings Have Sharply Declined*, N.Y. Times (July 20, 2024), <https://www.nytimes.com/2024/07/20/us/border-immigration-current-situation.html>; Rebecca Santana & Elliot Spagat, *Border arrests fall more than 40% after Biden's halt to asylum processing, Homeland Security says*, AP News (June 26, 2024), <https://apnews.com/article/border-arrests-biden-asylum-mexico-immigration-6e302f06f567b96d88cc1333aa6d10fe>.

⁴⁴⁴ See Nick Miroff & Carolyn Van Houten, *The Border is Tougher to Cross Than Ever. But There's Still One Way into America*, Wash. Post (Oct. 24, 2018), https://www.washingtonpost.com/world/national-security/theres-still-one-way-into-america/2018/10/24/d9b68842-aaf6-11e8-8f4b-ae063e14538_story.html; Valerie Gonzalez, *Migrants rush across US border in final hours before Title 42 expires*, AP News (May 11, 2023), <https://apnews.com/article/immigration-border-title-42-mexico-asylum-8c239766c2cb6e257c0220413b8e9cf9> ("Even as migrants were racing to reach U.S. soil before the rules expire, Mexican President Andrés Manuel López Obrador said smugglers were sending a different message. He noted an uptick in smugglers at his country's southern border offering to take migrants to the United States and telling them the border was open starting Thursday.").

⁴⁴² There is also good cause to forgo notice and comment on the rule's updates to the cross-reference to the definition of "victim of a severe form of trafficking in persons" in 8 CFR 208.33(a)(3)(i)(C) and 1208.33(a)(3)(i)(C) from "§ 214.11" to "§ 214.201." Notice and an opportunity to comment on that technical change to the cross-reference is unnecessary as it does not change the substance of the provision and merely updates a cross-reference that has been rendered imprecise by a subsequent rulemaking. See 89 FR at 34931–32 (moving the definitions from 8 CFR 214.11 to the newly created 8 CFR 214.201).

policies. 89 FR at 48764. In such circumstances, it may be easier for smugglers to “prey on migrants by spreading rumors, misrepresenting facts, or creating a sense of urgency to induce migrants to make the journey by overemphasizing the significance of recent or upcoming policy developments, among other tactics, and do so particularly when there is a change announced in U.S. policy.” *Id.*

Immediate implementation is warranted not only in the absence of any benefit that advance notice would provide, but also to avoid the significant costs that would accrue to the Department if they had to toggle between applying and discontinuing the emergency border measures while waiting for this rule to go into effect. That is especially true for the amendment expanding the timeline over which a decline in encounters must be observed before the agencies will lift the suspension and limitation on entry consistent with the June 3 Proclamation. Prior to this rule, a one-day drop in the 7-consecutive-day average to a number below 1,500 encounters would have triggered the process by which the agencies must discontinue the emergency border measures—even if that drop turned out to be a mere one-off event amidst a longer pattern of daily encounters far exceeding 1,500. The amendments contained in this rule guard against such situations where the agencies’ ability to consistently apply the rule’s important measures might be disrupted by short-lived and intermittent fluctuations in the longitudinal tracking data.⁴⁴⁵ That rationale extends to the decision to bypass the 30-day waiting period for this rule. Unless the amendments are implemented immediately, the agencies could face a predicament where they would have to abruptly suspend the emergency measures if the 7-consecutive-calendar-day-average dipped below 1,500 for a single day, only to then reverse course and reimpose the same measures as soon as encounters rose again to an average of 2,500 or more. Such sudden shifts in the

implementation of the June 3 Proclamation and IFR would be operationally burdensome to the agencies and would require the development and issuance of starkly differing instructions and internal guidance based on whether the measures had been discontinued, continued, or reactivated. The possibility of such shifts is arguably an inevitable consequence of the decision to limit the applicability of the rule’s provisions to the existence of a temporary circumstance; at the same time, the Departments have sought to temper the frequency and severity of such shifts through two means: (1) in the IFR, providing for a gap between the 1,500-encounter threshold and the 2,500-encounter threshold, *see* 89 FR at 48753; and (2) in this rule, making modest changes to the provisions governing encounter calculations and discontinuation mechanics.

Finally, for similar reasons, immediate implementation is justified in light of the United States’ foreign policy priorities. Because this rule involves a foreign affairs function of the United States, it is exempt from the APA’s delayed-effective-date requirement. *See* 5 U.S.C. 553(a)(1); *see also* 89 FR at 48759–62. It is conceivable that had a 30-day waiting period been imposed, a very substantial one-day drop in the encounters average would have led to a discontinuation of the emergency provisions of the Proclamation and IFR. That in turn could have had a direct and immediate impact on migratory flows through other countries in the region, as those countries have articulated before. *See* 89 FR at 48761. Past experience has shown that even a *perceived* policy development can touch off a surge in irregular migration throughout the region. One regional partner, for example, concluded that the formation of caravans in the spring of 2022 was attributable to rumors of the termination of the Title 42 public health Order, which were followed by an official announcement. *Id.* Such effects are precisely the kind of “definitely undesirable international consequences” that the Departments seek to avoid by forgoing a waiting period. *Rajah*, 544 F.3d at 437 (quotation marks omitted). Immediate implementation also allows the United States to demonstrate its continued and shared commitment to addressing

irregular migration in the region, an objective that directly involves a foreign affairs function of the United States. *See* 89 FR at 48761–62.

In sum, the amendments introduced in this final rule do not fundamentally change the way in which the IFR addresses the emergency circumstances at the border and instead ensure that the system created in response to those circumstances remains in force until a decrease in encounters proves to be sustained. As a result, the purpose of the delayed-effective-date requirement—providing affected parties time to adjust to changes in the status quo—would not be served by delaying effectiveness here, where the changes preserve the status quo. Moreover, even in the narrow circumstances in which this rule’s changes to the thresholds would have an effect (by avoiding a discontinuation of the rule’s emergency procedures due to a short-term change in encounter numbers), the Departments are unable to identify sufficient particular hardships to affected persons that would contravene fairness and potentially outweigh the Departments’ considered assessment of the need for immediate implementation, including the need to avoid disruptive changes to the continuation of the rule’s emergency provisions. There is good cause to forgo the 30-day waiting period for this rule and to instead implement it without delay.

B. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14094 (Modernizing Regulatory Review)

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

⁴⁴⁵ For similar reasons, the June 3 Proclamation provides that the suspension and limitation on entry remain in place for 14 days after the agencies have determined there has been an average of less than 1,500 encounters. This allows “the Departments to complete processing of noncitizens encountered during emergency border circumstances and to confirm that a downward trend in encounters is sustained.” 89 FR at 48749.

The Office of Management and Budget has designated this rule a “significant regulatory action” as defined under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, the Office of Management and Budget has reviewed this rule.

1. Effects Under a Without-IFR Baseline

The primary effect of the final rule, as compared to a without-IFR baseline,⁴⁴⁶ is to reduce incentives for irregular migration and illegal smuggling activity. As a result, the primary effects of this rule will be felt by noncitizens outside of the United States. In addition, for those who are present in the United States and described in the Proclamation, the rule will likely decrease the number of asylum grants and likely reduce the amount of time that noncitizens who are determined to be ineligible for asylum and who are determined to lack a reasonable probability of establishing eligibility for protection from persecution or torture would remain in the United States. Noncitizens, however, can avoid the limitation on asylum eligibility under this rule if they meet an exception to the rule’s limitation or to the Proclamation, including by presenting at a POE pursuant to a pre-scheduled time and place or by showing exceptionally compelling circumstances. Moreover, noncitizens who in credible fear screenings establish a reasonable probability of persecution or torture would still be able to seek statutory withholding of removal or CAT protection in proceedings before IJs.

The benefits of the rule are expected to include reductions in strains on limited Federal Government immigration processing and enforcement resources; preservation of the Departments’ continued ability to safely, humanely, and effectively enforce and administer the immigration laws; and a reduction in the role of exploitative TCOs and smugglers. Some of these benefits accrue to noncitizens whose ability to receive timely decisions on their claims might otherwise be hampered by the severe strain that further surges in irregular

migration would impose on the Departments.

The direct costs of the rule are borne by noncitizens and the Departments. To the extent that any noncitizens are denied or do not seek asylum by virtue of the rule but would have received asylum in the absence of this rule, such an outcome would entail not only the loss of asylum but also its attendant benefits, although such persons may be granted statutory withholding of removal and withholding or deferral of removal under the CAT. Unlike asylees, noncitizens granted these more limited forms of protection do not have a path to citizenship and cannot petition for certain family members to join them in the United States. Such noncitizens may also be required to apply for employment authorization more frequently than an asylee would. As discussed in this preamble, the rule’s manifestation of fear and reasonable probability standards may also engender a risk that some noncitizens with meritorious claims may not be referred for credible fear interviews or to removal proceedings to seek asylum and protection. In these cases, there would likely be costs to noncitizens that result from their removal.

The rule may also require additional time for AOs and IJs, during credible fear screenings and reviews, respectively, to inquire into the applicability of the rule and the noncitizen’s fear claim. Similarly, where its provisions apply to a given case, applying the rule will require additional time during asylum adjudications before USCIS and before IJs during section 240 removal proceedings. On the other hand, in the absence of this rule’s provisions, AOs and IJs would have to make other inquiries into potential fear claims under steady-state regulations and into asylum eligibility under the Circumvention of Lawful Pathways rule. In addition, as discussed throughout this preamble, the rule is expected to result in significantly reduced irregular migration and to filter out a greater portion of cases that are unlikely to ultimately be successful on the merits. Accordingly, the Departments expect the additional time spent by AOs and IJs on implementation of the rule to be mitigated by a comparatively smaller number of credible fear cases and full adjudications on the merits than AOs and IJs would otherwise have been required to handle in the absence of the rule.

Other entities may also incur some indirect, downstream costs as a result of the rule. The effects should be considered relative to the baseline condition that would exist in the

absence of this rule, which as noted above is the continued application of the Circumvention of Lawful Pathways rule. As compared to the baseline condition, this rule is expected to reduce irregular migration. DHS has recently described the impact of noncitizens on the U.S. labor market. *See, e.g.*, 89 FR 67459, 67486–88.

2. Effects Under a With-IFR Baseline

The only expected effects of this rule relative to a with-IFR baseline would involve the changes to the thresholds discussed above. As explained in Section II.C.1 of this preamble, the amendments marginally reduce the probability that the suspension and limitation on entry will be discontinued prematurely or remain discontinued during periods in which high levels of migration place significant strain on the Departments’ resources and capabilities. The amendments do so by (1) requiring the 7-consecutive-calendar-day average below 1,500 encounters to persist for 28 consecutive calendar days before the 14-day waiting period is triggered, and by (2) including encounters of UCs from non-contiguous countries when calculating encounters for the purpose of the thresholds under sections 2(a) and 2(b) of the Proclamation.

It is challenging to predict with certainty the effects of the Departments’ decision to adopt these changes. Although in some circumstances the Departments’ decision could reduce the likelihood that the rule’s limitation on asylum eligibility and changes to the credible fear process would be discontinued or remain discontinued, the Departments have not assigned a specific probability to such circumstances occurring. Encounter levels are driven by a variety of factors, many of which are external to the United States and difficult to predict, such as family and community networks, labor markets, environmental and security-related push factors, and rapidly evolving criminal smuggling networks. *See* 88 FR at 31327–28 & n.59.

If the changes to the thresholds were to result in this rule’s emergency provisions remaining activated for a longer period of time than they would have been under the IFR, those changes would amplify this rule’s effects relative to a with-IFR baseline. In such a circumstance, the same analysis presented with respect to the without-IFR baseline above would apply here as well, but the marginal impacts of this final rule (compared to the with-IFR baseline) are expected to be smaller than the marginal impacts of the IFR (compared to the without-IFR baseline). For instance, the primary effects of this

⁴⁴⁶ The benefits and costs of a regulation under Executive Order 12866 are generally measured against a no-action baseline: an analytically reasonable forecast of the way the world would look absent the regulatory action being assessed, including any expected changes to current conditions over time. *See* OMB Circular No. A–4 11 (Nov. 9, 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf>. For purposes of this analysis, the Departments use the without-IFR baseline as the primary baseline, and a with-IFR baseline as a secondary baseline. The primary baseline also serves as the baseline for the significance determination under section 3(f)(1) of Executive Order 12866.

rule would still be felt by noncitizens outside of the United States. And for those who are present in the United States, the rule would still likely decrease the number of asylum grants and likely reduce the amount of time that noncitizens who are ineligible for asylum and who lack a reasonable probability of persecution or torture would remain in the United States. The changes made in this rule may decrease the administrative burdens associated with discontinuing and continuing or reactivating the measures contained in the rule.

3. Discontinuation Analysis Under a Without-IFR Baseline

For purposes of this assessment, the Departments have also analyzed the potential effects of the 7-consecutive-calendar-day average of encounters falling below 1,500. If that average remains below 1,500 encounters for 28 consecutive calendar days, and the 2,500-encounter threshold is not reached during the 14-day waiting period, the rule's provisions will be discontinued 14 days after the Secretary's determination and remain so until one day after the Secretary determines that the 7-consecutive-calendar-day average of encounters has reached 2,500.

The effects of discontinuation would depend on a wide range of factors that are difficult to predict and may involve factors arising from events occurring outside the United States, or entirely outside the Departments' control. Some such factors would include:

- Whether the Circumvention of Lawful Pathways rule would apply at the time of the discontinuation;⁴⁴⁷
- Whether metrics such as fear-claim rates and screen-in rates during the discontinuation period would resemble rates previously observed under the Circumvention of Lawful Pathways rule;⁴⁴⁸

⁴⁴⁷ In Section IV.B of this preamble, the Departments seek comment on whether to extend the applicability of that rule to certain noncitizens who enter the United States after May 11, 2025.

⁴⁴⁸ As noted in Section II.A.2 of this preamble, under this rule, from June 5, 2024, through August 31, 2024, 27 percent of those encounters between POEs at the SWB and processed for expedited removal claimed fear, compared to a 57 percent fear-claim rate under the Circumvention of Lawful Pathways rule and a 37 percent fear-claim rate during the pre-pandemic period. OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (Summary Statistics tab). Similarly, with this rule's "reasonable probability" standard in place, the comprehensive screen-in rate for those USBP encounters manifesting fear has decreased to approximately 57 percent, compared to approximately 62 percent for those screened under the Circumvention of Lawful Pathway rule with its lower "reasonable possibility" standard in place, and 83 percent in the pre-pandemic period.

- Whether, in the absence of a discontinuation, such rates would continue to resemble those observed from June 5, 2024, through August 31, 2024;

- Encounter levels and related demographics during the discontinuation period, which, in turn, are influenced by factors such as family and community networks, economic conditions, environmental and security-related push factors, responses to policy changes such as the discontinuation itself, and rapidly evolving criminal smuggling networks;

- Available processing resources;
- Tactical changes by smugglers and migrants;

- Misinformation, disinformation, or malinformation generated by smugglers and circulating online among migrant communities; and

- Whether and how soon the 2,500-encounter threshold for continuing or reactivating the rule's provisions would be reached.

Assuming the Circumvention of Lawful Pathways rule remains in effect at the time of a discontinuation, in the immediate aftermath of a discontinuation, the Departments would begin the processing of noncitizens under the Circumvention of Lawful Pathways rule's provisions: the Departments would apply the rebuttable presumption of asylum ineligibility during covered credible fear screenings and section 240 removal proceedings and employ a "reasonable possibility of persecution or torture" standard to screen for potential eligibility for statutory withholding of removal and CAT protection for those noncitizens who are unable to establish a significant possibility that the rebuttable presumption does not apply or that they can rebut it. Although it is impossible to reliably address these uncertainties quantitatively, the Departments offer a number of observations about the potential outcomes of a discontinuation while the Circumvention of Lawful Pathways rule applies.

Although the Circumvention of Lawful Pathways rule meaningfully improved the Departments' capacity to deliver timely decisions and consequences and is a critical tool for the Departments to incentivize the use of lawful, safe, and orderly pathways, see Section IV of this preamble, it did not yield efficiency benefits comparable to those delivered by the IFR.⁴⁴⁹ Under

OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

⁴⁴⁹ As discussed elsewhere in this preamble and in the Circumvention of Lawful Pathways rule, high

the Circumvention of Lawful Pathways rule, the average processing time for USBP encounters, from encounter to removal, was 44 days—down from 75 days in the pre-pandemic period; under the IFR, the average processing time decreased more than 25 percent as compared to the time period under the Circumvention of Lawful Pathways rule, to 32 days.⁴⁵⁰ A comparison of the number of expedited removals processed per day is also instructive. Under the Circumvention of Lawful Pathways rule, USBP referred, on average, about 860 people for expedited removal per day,⁴⁵¹ while under the IFR, USBP referrals for expedited removal increased approximately 28 percent, to an average of nearly 1,100 persons per day.⁴⁵²

In particular, the elimination of lengthy and suggestive advisals and the shift to a manifestation standard under the Securing the Border rule contributes to a substantially lower proportion of noncitizens encountered between POEs at the SWB being referred for credible fear interviews. Fear-claim rates dropped from 57 percent under the Circumvention of Lawful Pathways rule to a 27 percent fear-claim rate under the IFR.⁴⁵³

The reduction in fear-claim rates allows USCIS to focus its resources more effectively and efficiently on those noncitizens who may have a fear of return to their native country or their country of removal or indicate an intention to seek fear-based relief or protection and enables DHS to more swiftly process and remove those who do not manifest a fear or express an intent to apply for asylum.⁴⁵⁴ Congress has not provided the resources necessary to timely and effectively process and interview all those who

encounter rates at the southern border, combined with inadequate resources and tools to keep pace, have limited DHS's ability to impose timely consequences through expedited removal, the main consequence available at the border under title 8 authorities. See 89 FR at 48714. This mismatch between the resources made available by Congress and large numbers of encounters creates significant stress on the border and immigration systems that forces DHS to rely on slower processing pathways—limiting the Departments' ability to more quickly deliver consequences to individuals who do not have a legal basis to remain in the United States.

⁴⁵⁰ OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

⁴⁵¹ OHSS analysis of July 2024 Persist Dataset (Imm Post Pandemic ERCF tab).

⁴⁵² OHSS analysis of data downloaded from UIP on September 3, 2024 (IFR ERCF tab).

⁴⁵³ OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (Summary Statistics tab).

⁴⁵⁴ *Id.* (showing both reduced rates of fear claims/fear manifestation and reduced time from encounter to negative fear removals).

invoke credible fear procedures through the expedited removal process at the southern border, including under the Circumvention of Lawful Pathways rule. *See* 89 FR at 48732. When the Departments' ability to timely process, detain, and remove, as appropriate, noncitizens who do not establish a legal basis to remain in the United States is limited, it exacerbates the risk of severe overcrowding in USBP facilities and POEs and creates a situation in which large numbers of migrants—only a small proportion of whom are likely to be granted asylum—are not able to be expeditiously removed but are instead referred to backlogged immigration courts. *Id.* This situation is self-reinforcing: the expectation of a lengthy stay in the United States and the lack of timely consequences for irregular migration encourage more migrants to make the dangerous journey to the southern border to invoke credible fear procedures and take their chances on being allowed to remain in the country for a lengthy period. *Id.*

The Securing the Border rule expressly guards against the resource strains posed by very high levels of encounters; the day after the Secretary makes a factual determination that there have been 2,500 daily encounters, the Departments will again implement the Securing the Border rule, thereby reestablishing stronger incentives against irregular migration. But as discussed in Section II.C.1 of this preamble, the Departments may not be able to fully realize the benefits of the Securing the Border rule in the first few days of reactivation, because encounters made prior to reactivation must still be processed under the Circumvention of Lawful Pathways rule. Unnecessary discontinuations and reactivations also impose unnecessary costs on the Departments. And frequent discontinuations—which the changes made in this rule seek to avoid—risk signaling to migrants that emergency border circumstances are so temporal and episodic that the rule's measures can be avoided entirely by simply waiting in Mexico for a short period of time—which could lead to a cycle of surges that significantly disrupt border processing.

Finally, there are of course other differences between the two frameworks as well. For instance, the Circumvention of Lawful Pathways rule affects the asylum eligibility of a smaller number of migrants, because that rule generally does not affect the asylum eligibility of Mexican nationals. For such persons, the application of the Circumvention of Lawful Pathways rule instead of the Securing the Border rule could result in

greater access to asylum and its attendant benefits, and even those determined to be subject to the Circumvention of Lawful Pathways rule's rebuttable presumption of asylum ineligibility will be screened for statutory withholding of removal and CAT protection at the "reasonable possibility" standard, rather than the "reasonable probability" standard applied during statutory withholding of removal and CAT protection screenings under the Securing the Border rule.

4. Effects of Expansion and Extension of Circumvention of Lawful Pathways Rebuttable Presumption

In Section IV of this preamble, the Departments also propose to extend and expand the applicability of the Circumvention of Lawful Pathways rebuttable presumption. First, in Section IV.A of this preamble, the Departments request comment on whether to expand the rebuttable presumption (which currently applies to noncitizens who "enter[] the United States from Mexico at the southwest land border or adjacent coastal borders" after traveling through certain third countries) such that the rebuttable presumption would also apply to noncitizens who enter across southern coastal borders by sea and irrespective of whether such noncitizens traveled through a third country before entry across the southern coastal borders. This would expand the geographic reach of the rebuttable presumption. Second, in Section IV.B of this preamble, the Departments request comment on whether to indefinitely extend the entry period (currently scheduled to end on May 12, 2025) so that the rebuttable presumption will apply to noncitizens who enter the United States without documents sufficient for lawful admission any time on or after May 11, 2023. *See* 8 CFR 208.33(a)(1)(i), 1208.33(a)(1)(i).

The potential effects of such an expansion and extension are described in Section IV of this preamble. The expansion would (1) make clear to noncitizens intending to migrate to the United States that timely consequences will result if they resort to irregular migration no matter where along the southern border they cross; (2) deter smugglers and noncitizens from using dangerous maritime migration to avoid the rebuttable presumption of asylum ineligibility if the noncitizen did not travel through a country other than the noncitizen's country of citizenship, nationality, or, if stateless, last habitual residence, that is a party to the 1951 United Nations Convention relating to the Status of Refugees or the 1967 Protocol relating to the Status of

Refugees, *see* 8 CFR 208.33(a)(1)(iii), 1208.33(a)(1)(iii); and (3) ensure consistency in implementation between the Circumvention of Lawful Pathways rule's rebuttable presumption and the provisions in the Securing the Border rule.

The proposed extension of the Circumvention of Lawful Pathways rule's entry period would better preserve the Departments' ability to deliver timely decisions and consequences. Even with the Proclamation and Securing the Border rule in place, the absence of the Circumvention of Lawful Pathways rebuttable presumption after May 11, 2025 would mean that when the following three conditions are satisfied—(1) the threshold for discontinuing the Securing the Border rule's provisions has been met, (2) encounters between POEs begin to exceed 1,500 encounters, and (3) the threshold for continuing or reactivating the measures in this rule is not yet met—without the ability to apply the Circumvention of Lawful Pathways rebuttable presumption, the Departments' ability to deliver timely decisions and consequences would likely be impaired. For example, assuming similar processing capacity as during the immediate post-pandemic period and the same mix of encounter demographics as observed during the first two months of enforcement under the IFR, OHSS estimates that at 1,500 encounters (including all UCs), approximately 58 percent of single adult and family unit encounters would be quickly repatriated (including voluntary returns, reinstatements, and expedited removals) with the rebuttable presumption in effect, versus 46 percent in the absence of the rebuttable presumption.⁴⁵⁵ At 2,500 encounters per day, OHSS estimates that 41 percent of single adult and family unit encounters would be quickly repatriated with the rebuttable presumption in effect, versus 34 percent in the absence of the rebuttable presumption.⁴⁵⁶ These differences are driven by differences in fear-claim and screen-in rates.⁴⁵⁷

The primary effect of the Departments' proposed expansion and extension of the Circumvention of Lawful Pathways rebuttable presumption would be to reduce incentives for irregular migration and illegal smuggling activity during periods when the threshold for discontinuing

⁴⁵⁵ OHSS analysis of July 2024 Persist Dataset and data downloaded from UIP on September 3, 2024 (CLP v pre-CLP Proj Outcomes tab).

⁴⁵⁶ *Id.*

⁴⁵⁷ *Id.*

the measures in the Securing the Border rule has been met or where that rule is otherwise not in effect due to an adverse litigation outcome against its asylum limitation or any aspect of that rule. The primary effects of such an expansion and extension would be felt by noncitizens outside of the United States. In addition, for those who are present in the United States and subject to the rebuttable presumption, such an action would likely decrease the number of asylum grants and likely reduce the amount of time that noncitizens who are determined to be ineligible for asylum and who are determined to lack a reasonable possibility of establishing eligibility for protection from persecution or torture would remain in the United States. Noncitizens, however, can avoid the rebuttable presumption if they meet certain exceptions, including by presenting at a POE pursuant to a pre-scheduled time and place or by showing exceptionally compelling circumstances. Moreover, noncitizens who in credible fear screenings establish a reasonable possibility of persecution or torture would still be able to seek statutory withholding of removal or CAT protection in proceedings before IJs.

The benefits of such an expansion or extension would include reductions in strains on limited Federal Government immigration processing and enforcement resources; preservation of the Departments' continued ability to safely, humanely, and effectively enforce and administer the immigration laws; and a reduction in the role of exploitative TCOs and smugglers. Some of these benefits accrue to noncitizens whose ability to receive timely decisions on their claims might otherwise be hampered by the strain that further surges in irregular migration would impose on the Departments.

The direct costs of the expansion or extension would be borne by noncitizens and the Departments. To the extent that any noncitizens are made ineligible for asylum by virtue of the rebuttable presumption but would otherwise have received asylum, such an outcome would entail the denial of asylum and its attendant benefits, although such persons may continue to be eligible for statutory withholding of removal and withholding or deferral of removal under the CAT. Unlike asylees, noncitizens granted these more limited forms of protection do not have a path to citizenship and cannot petition for certain family members to join them in the United States—although such noncitizens may in the end be granted asylum despite the rebuttable presumption by operation of the family

unity provision that applies in section 240 removal proceedings. Such noncitizens may also be required to apply for employment authorization more frequently than an asylee would.

The expansion and extension of the rebuttable presumption may also require additional time for AOs and IJs, during credible fear screenings and reviews, respectively, to inquire into the applicability of the rebuttable presumption to the noncitizen's fear claim. Similarly, where its provisions apply to a given case, applying the rebuttable presumption would require additional time during asylum adjudications before USCIS and before IJs during section 240 removal proceedings. However, such an expansion or extension may reduce perceived incentives for irregular migration. Accordingly, the Departments expect the additional time spent by AOs and IJs on implementation of the rebuttable presumption to be mitigated by a comparatively smaller number of credible fear cases than AOs and IJs would otherwise have been required to handle in the absence of the rebuttable presumption.

Other entities may also incur some indirect, downstream costs as a result of an expansion or extension. The nature and scale of such effects will vary by entity and should be considered relative to the baseline condition that would exist in the absence of such an action, which would be the application of steady-state regulations that have not been the primary mode of the processing of noncitizens at the southern border since before the Title 42 public health Order. As compared to the baseline condition, an expansion and extension would be expected to reduce irregular migration. DHS has recently described the impact of noncitizens on the U.S. labor market. *See* 89 FR at 67486–88.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act ("RFA"), "[w]henver an agency is required by section 553 of [the APA], or any other law, to publish general notice of proposed rulemaking for any proposed rule, . . . the agency shall prepare and make available for public comment an initial regulatory flexibility analysis." 5 U.S.C. 603(a); *see also id.* 604(a) (final regulatory flexibility analysis). Such analysis requires agencies to consider the direct impact of the proposed rule on "small entities." *Id.* 603(a); *see also id.* 604(a) (final regulatory flexibility analysis). This rule does not directly regulate small entities and is not expected to have a direct effect on small entities. It does not

mandate any actions or requirements for small entities. Rather, this rule regulates individuals, and individuals are not defined as "small entities" by the RFA. *See* 5 U.S.C. 601(6). Based on the evidence presented in this analysis and throughout this preamble, the Departments certify that this final rule would not have a significant economic impact on a substantial number of small entities. And for the same reason, the Departments certify that the Circumvention of Lawful Pathways rule, if extended or expanded, would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 ("UMRA") is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may directly result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. 2 U.S.C. 1532(a). The inflation-adjusted value of \$100 million in 1995 is approximately \$200 million in 2023 based on the Consumer Price Index for All Urban Consumers (CPI-U).⁴⁵⁸

The term "Federal mandate" means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6). A "Federal intergovernmental mandate," in turn, is a provision that would impose an enforceable duty upon State, local, or Tribal governments (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). *See id.* 658(5). And the term "Federal private sector mandate" refers to a provision that would impose an enforceable duty upon the private sector (except as a condition

⁴⁵⁸ *See* BLS, Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month, <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202406.pdf> (last visited Sept. 21, 2024). Steps in calculation of inflation: (1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2023); (2) Subtract reference year CPI-U from current year CPI-U; (3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; (4) Multiply by 100 = [(Average monthly CPI-U for 2023 – Average monthly CPI-U for 1995) ÷ (Average monthly CPI-U for 1995)] × 100 = [(304.702 – 152.383) ÷ 152.383] = (152.319/152.383) = 0.99958001 × 100 = 99.96 percent = 100 percent (rounded). Calculation of inflation-adjusted value: \$100 million in 1995 dollars × 2.00 = \$200 million in 2023 dollars.

of Federal assistance or a duty arising from participation in a voluntary Federal program). *See id.* 658(7).

This rule does not contain a Federal mandate because it does not impose any enforceable duty upon any other level of government or private sector entity. Any downstream effects on such entities would arise solely due to the entity's voluntary choices, and the voluntary choices of others, and would not be a consequence of an enforceable duty imposed by this proposed rule. Similarly, any costs or transfer effects on State and local governments would not result from a Federal mandate as that term is defined under UMRA. The requirements of title II of UMRA, therefore, do not apply, and the Departments have not prepared a statement under UMRA.

E. Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs has determined that this rule does not meet the criteria set forth in 5 U.S.C. 804(2). When compared to the with-IFR baseline, the changes made in this final rule⁴⁵⁹ have not resulted in, and are not likely to result in, an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The rule will be submitted to Congress and the Government Accountability Office consistent with the Congressional Review Act's requirements no later than its effective date.

F. Executive Order 13132 (Federalism)

This rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

H. Family Assessment

The Departments have reviewed this rule in line with the requirements of section 654 of the Treasury and General Government Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. The Departments have reviewed the criteria specified in section 654(c)(1), by evaluating whether this regulatory action (1) impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by State or local governments or by the family; or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the agency determines a regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

The Departments have determined that the implementation of this rule will not impose a negative impact on family well-being or the autonomy or integrity of the family as an institution.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule would 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.

J. National Environmental Policy Act

DHS and its components analyze actions to determine whether the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. 4321 *et seq.*, applies to these actions and, if so, what level of NEPA review is required. 42 U.S.C. 4336. DHS's Directive 023-01, Revision 01 and Instruction Manual

023-01-001-01, Revision 01 ("Instruction Manual 023-01-001-01") establish the procedures that DHS uses to comply with NEPA and the Council on Environmental Quality ("CEQ") regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

Federal agencies may establish categorical exclusions for categories of actions they determine normally do not significantly affect the quality of the human environment and, therefore, do not require the preparation of an Environmental Assessment or Environmental Impact Statement. 42 U.S.C. 4336e(1); 40 CFR 1501.4, 1507.3(c)(8), 1508.1(e). DHS has established categorical exclusions, which are listed in Appendix A of its Instruction Manual 023-01-001-01. Under DHS's NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.

The rule adopts as final the following three changes to the process for those seeking asylum, statutory withholding of removal, or CAT protection during emergency border circumstances:

- For those who enter the United States across the southern border during emergency border circumstances and are not described in section 3(b) of the June 3 Proclamation, rather than asking specific questions of every noncitizen encountered and processed for expedited removal to elicit whether the noncitizen may have a fear of persecution or an intent to apply for asylum, DHS will continue to provide general notice regarding the processes for seeking asylum, statutory withholding of removal, and CAT protection, and will only refer a noncitizen for credible fear screenings if the noncitizen manifests a fear of return, or expresses an intention to apply for asylum or protection, expresses a fear of persecution or torture, or expresses a fear of return to their country or the country of removal.

- During emergency border circumstances, those who enter the United States across the southern border and who are not described in paragraph 3(b) of the June 3 Proclamation will continue to be ineligible for asylum unless they demonstrate by a preponderance of the evidence that exceptionally compelling circumstances exist, including if the noncitizen demonstrates that they or a member of

⁴⁵⁹ The Administrator of the Office of Information and Regulatory Affairs has measured the effects of this final rule with a with-IFR baseline. *See* 5 U.S.C. 804(2); compare Section V.B of this preamble.

their family as described in 8 CFR 208.30(c) with whom they are traveling: (1) faced an acute medical emergency; (2) faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or (3) satisfied the definition of “victim of a severe form of trafficking in persons” provided in 8 CFR 214.201.

- The limitation on asylum eligibility will continue to be applied during credible fear interviews and reviews, and those who enter across the southern border during emergency border circumstances and who are not described in section 3(b) of the June 3 Proclamation and do not establish exceptionally compelling circumstances under the credible fear screening standard will receive a negative credible fear determination with respect to asylum and will thereafter be screened for a reasonable probability of persecution because of a protected ground or torture, a higher standard than that applied to noncitizens in a similar posture under the Circumvention of Lawful Pathways rule.

This rule also makes a small number of changes consistent with the overall purpose and structure of the IFR, as discussed in Section II.C of this preamble, and requests comment on the potential expansion and extension of the applicability of the Circumvention of Lawful Pathways rebuttable presumption.

Given the nature of the final rule with request for comment, DHS has determined that it is categorically excluded under its NEPA implementing procedures, as it satisfies all three relevant conditions. First, the final rule with request for comment clearly fits within categorical exclusions A3(a) and A3(d) of DHS’s Instruction Manual 023–01–001–01, Appendix A, for the promulgation of rules of a “strictly administrative or procedural nature” and rules that “interpret or amend an existing regulation without changing its environmental effect,” respectively. The IFR changed certain procedures relating to the processing of certain noncitizens during emergency border circumstances, and does not result in a change in environmental effect. This final rule makes only modest changes to the IFR and seeks comment on the expansion and extension of the Circumvention of Lawful Pathways rebuttable presumption. Second, this final rule with request for comment is a standalone rule and is not part of any larger action.⁴⁶⁰ Third, in accordance

with its NEPA implementing procedures, DHS has determined no extraordinary circumstances exist that would cause a significant environmental impact. Therefore, this final rule is categorically excluded, and no further NEPA analysis or documentation is required. DOJ is adopting the DHS determination that this final rule is categorically excluded under A3(a) and A3(d) of DHS’s Instruction Manual 023–01–001–01, Appendix A, because the final rule’s limitation on asylum eligibility and the “reasonable probability” standard will be applied by EOIR in substantially the same manner as it will be applied by DHS and DOJ is not aware of any extraordinary circumstances that would require the preparation of an environmental assessment or environmental impact statement. *See* 40 CFR 1506.3(d) (setting forth the ability of an agency to adopt another agency’s categorical exclusion determination).

K. Paperwork Reduction Act

This rule does not adopt new, or revisions to existing, “collection[s] of information” as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

List of Subjects

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Department of Homeland Security

Accordingly, the interim final rule amending 8 CFR parts 208 and 235, which was published at 89 FR 48710 on June 7, 2024, is adopted as final with the following changes:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; 8 CFR part 2; Pub. L. 115–218.

■ 2. Amend § 208.13 by revising paragraph (g) and adding paragraph (h) to read as follows:

§ 208.13 Establishing asylum eligibility.

* * * * *

(g) *Entry during emergency border circumstances.* For an alien who entered the United States across the southern border (as that term is described in section 4(d) of the Presidential Proclamation of June 3, 2024, as defined in paragraph (h) of this section) between the dates described in section 1 and section 2(a) of such Proclamation (or the revocation of such Proclamation, whichever is earlier), or between the dates described in section 2(b) and section 2(a) of such Proclamation (or the revocation of such Proclamation, whichever is earlier), refer to the provisions on asylum eligibility described in § 208.35.

(h) *References to the Presidential Proclamation of June 3, 2024.* For purposes of paragraph (g) of this section and this chapter, the Presidential Proclamation of June 3, 2024, refers to Proclamation 10773 of June 3, 2024, as amended by the Presidential Proclamation of September 27, 2024. The Department intends that in the event the Presidential Proclamation of September 27, 2024, or the portions of this chapter referring to it are rendered inoperative by court order, this chapter shall continue to operate as if the references to that Proclamation have been stricken.

§ 208.33 [Amended]

■ 3. Amend § 208.33 by removing the reference to “§ 214.11(a)” in paragraph (a)(3)(i)(C) and adding in its place “§ 214.201.

■ 4. Amend § 208.35 by:

■ a. Removing the reference to “§ 214.11” in paragraph (a)(2)(i)(C) and adding in its place “§ 214.201”;

■ b. Revising paragraph (b)(2)(i); and

■ c. Removing the words “Presidential Proclamation of June 3, 2024, Securing the Border,” and “Proclamation” wherever they appear and adding, in their place, the words “Presidential Proclamation of June 3, 2024, as defined in 8 CFR 208.13(h).”

The revision reads as follows:

§ 208.35 Limitation on asylum eligibility and credible fear procedures for those who enter the United States during emergency border circumstances.

* * * * *

(b) * * *

(2) * * *

⁴⁶⁰ See Instruction Manual 023–01–001–01, at V–5.

(i) In cases in which the asylum officer enters a negative credible fear determination under paragraph (b)(1)(i) or (b)(3) of this section, the asylum officer will assess the alien under the procedures set forth in § 208.33(b)(2)(i) except that the asylum officer will apply a reasonable probability standard. For purposes of this section, *reasonable probability* means substantially more than a reasonable possibility, but somewhat less than more likely than not.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 5. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; 48 U.S.C. 1806, 1807, and 1808 and 48 U.S.C. 1806 notes (title VII, Pub. L. 110–229, 122 Stat. 754); 8 U.S.C. 1185 note (sec. 7209, Pub. L. 108–458, 118 Stat. 3638, and Pub. L. 112–54, 125 Stat. 550).

§ 235.15 [Amended]

■ 6. Amend § 235.15 by removing the words “Presidential Proclamation of June 3, 2024, Securing the Border,” wherever they appear and adding, in their place, the words “Presidential Proclamation of June 3, 2024, as defined in 8 CFR 208.13(h).”

Department of Justice

Accordingly, the interim final rule amending 8 CFR part 1208, which was published at 89 FR 48710, on June 7, 2024, is adopted as final with the following changes:

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 7. The authority citation for part 1208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; Pub. L. 115–218.

■ 8. Amend § 1208.13 by revising paragraph (g) and adding paragraph (h) to read as follows:

§ 1208.13 Establishing asylum eligibility.

* * * * *

(g) *Entry during emergency border circumstances.* For a noncitizen who entered the United States across the southern border (as that term is described in section 4(d) of the Presidential Proclamation of June 3, 2024, as defined in paragraph (h) of this section) between the dates described in section 1 and section 2(a) of such Proclamation (or the revocation of such Proclamation, whichever is earlier), or between the dates described in section 2(b) and section 2(a) of such Proclamation (or the revocation of such Proclamation, whichever is earlier), refer to the provisions on asylum eligibility described in § 1208.35.

(h) *References to the Presidential Proclamation of June 3, 2024.* For purposes of paragraph (g) of this section and § 1208.35, the Presidential Proclamation of June 3, 2024, refers to Proclamation 10773 of June 3, 2024, as amended by the Presidential Proclamation of September 27, 2024. The Department intends that in the event the Presidential Proclamation of September 27, 2024, or the portions of this chapter referring to it are rendered inoperative by court order, this chapter shall continue to operate as if the references to that Proclamation have been stricken.

§ 1208.33 [Amended]

■ 9. Amend § 1208.33 by removing the reference to “8 CFR 214.11” in paragraph (a)(3)(i)(C) and adding in its place “8 CFR 214.201”.

■ 10. Amend § 1208.35 by:

- a. Removing the reference to “§ 214.11(a)” in paragraph (a)(2)(i)(C) and adding in its place “§ 214.201”;
- b. Revising paragraph (b)(2)(iii);
- c. Removing the words “An alien” and adding in their place the words “A noncitizen”, wherever they appear;

■ d. Removing the words “the alien” and adding in their place the words “the noncitizen”, wherever they appear;

■ e. Removing the words “the alien’s” and adding in their place the words “the noncitizen’s”, wherever they appear;

■ f. Removing the words “an alien” and adding in their place the words “a noncitizen”, wherever they appear;

■ g. Removing the words “The alien” and adding in their place the words “The noncitizen”, wherever they appear; and

■ h. Removing the words “Presidential Proclamation of June 3, 2024, Securing the Border,” and “Proclamation” wherever they appear and adding, in their place, the words “Presidential Proclamation of June 3, 2024, as defined in 8 CFR 1208.13(h).”

The revision reads as follows:

§ 1208.35 Limitation on asylum eligibility and credible fear procedures for those who enter the United States during emergency border circumstances.

* * * * *

(b) * * *

(2) * * *

(iii) Where the immigration judge determines that the noncitizen is subject to the limitation on asylum eligibility under paragraph (a) of this section, the immigration judge shall assess the noncitizen under the procedures set forth in § 1208.33(b)(2)(ii) except that the immigration judge shall apply a reasonable probability standard. For purposes of this section, *reasonable probability* means substantially more than a reasonable possibility, but somewhat less than more likely than not.

* * * * *

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Dated: September 27, 2024.

Merrick B. Garland,

Attorney General, U.S. Department of Justice.

[FR Doc. 2024–22602 Filed 9–30–24; 1:00 pm]

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