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## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### 7 CFR Part 3560

**[Docket No.: RHS–23–MFH–0013]**

**RIN 0575–AD36**

## Updates to the Off-Farm Labor Housing (Off-FLH), Loan and Grant Rates and Terms; Clarification of Grant Agreement Terms

**AGENCY:** Rural Housing Service, U.S. Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** The Rural Housing Service (RHS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is amending the current regulation for the Off-Farm Labor Housing (Off-FLH) program to clarify the grant agreement term and adopt the period of performance as required by Federal award information requirements. The Agency expects the changes to clarify for applicants and grantees their obligations and requirements as Federal award recipients.

**DATES:** *Effective date:* October 25, 2024.

**FOR FURTHER INFORMATION CONTACT:** Christa Lindsey, Finance and Loan Analyst, United States Department of Agriculture Rural Housing Service, Multifamily Housing Production and Preservation Division; telephone number: (352) 538–5747; email address: *mfh.programsupport@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The RHS, an agency of the USDA, offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multi-family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, and housing for farm laborers. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, State and Federal Government agencies, and local communities.

Title V of the Housing Act of 1949 (Act) authorized the USDA to make housing loans to farmers to enable them to provide habitable dwellings for themselves or their tenants, lessees, sharecroppers, and laborers. The USDA then expanded opportunities in rural areas, making housing loans and grants to rural residents through the Single-Family Housing (SFH) and Multi-Family Housing (MFH) Programs.

The RHS also operates the MFH Farm Labor Housing direct loan and grant programs under sections 514 and 516 which provide low interest loans and grants to provide housing for year-round and migrant or seasonal domestic farm laborers. These eligible farm laborers may work either at the borrower's farm (''on-farm'') or at any other farm (''off-farm''). Housing under these programs may be built in any area with a need and demand for housing for farm laborers.

### II. Summary of Comments and Responses

Stakeholder input is vital to ensure that proposed changes to current regulations will support the Agency's mission, while ensuring that new regulations and policies are reasonable and do not overly burden the Agency's lenders and their customers. The Rural Housing Service (RHS) published a proposed rule in the **Federal Register** on September 12, 2023 (88 FR 62475) and a 60-day comment period was provided for the public to submit comments, which closed on November 13, 2023. The Agency did not receive any comments therefore, the final rule will publish with no changes from the published proposed rule.

### III. Discussion of the Final Rule

This final rule is necessary to bring the current regulation at 7 CFR 3560.566 into compliance with the Federal award information requirements outlined in 2 CFR 200.211. Pursuant to 2 CFR 200.1, the ''period of performance'' is defined as: ''. . . the time interval between the start and end date of a Federal award, which may include one or more budget periods. Identification of the period of performance in the Federal award consistent with 7 CFR 200.211(b)(5) does not commit the Federal agency to fund the award beyond the currently approved budget period.''

Identification of the period of performance in the Federal award per 2 CFR 200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period. Furthermore, a Federal award is defined under 2 CFR 200.1 as the instrument setting forth the terms and conditions of the grant agreement, cooperative agreement or other agreement for assistance as specified in 2 CFR 200.1. The changes in this final rulemaking will clarify the term of the grant agreement in 7 CFR 3560.566(c) and define a five-year fixed period of performance in 7 CFR 3560.566(d) so that applicants and grantees will have a better understanding of their obligations and requirements as Federal award recipients.

### IV. Summary of Rule Changes

No comments were received from the public on the proposed rule that published in the **Federal Register** on September 12, 2023 (88 FR 62475). The following are the changes being made to 7 CFR part 3560:

(1) In 7 CFR 3560.566(c), the term of grant agreement will remain in effect for as long as there is a need for the housing, as determined by the Agency.

(2) In 7 CFR 3560.566, a new paragraph will be added to define the grant period of performance as *five (5) years,* which starts on the date the grant agreement is executed by both the Agency and the grantee and *ends five (5) years* from the date the grant agreement was executed by both the Agency and the grantee.

### V. Regulatory Information

#### Statutory Authority

The Off-FLH Loan and Grant program is authorized by title V of the Housing Act of 1949 (Pub. L. 81–171), as amended; 42 U.S.C. 1484; 42 U.S.C. 1486(h); and 42 U.S.C. 1480; and implemented under 7 CFR part 3560, subpart L.

#### Executive Order 12372, Intergovernmental Review of Federal Programs

This program is subject to the provisions of Executive Order 12372,

which requires intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

**Executive Order 12866, Regulatory Planning and Review**

This final rule has been determined to be non-significant and, therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

**Executive Order 12988, Civil Justice Reform**

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

**Executive Order 13132, Federalism**

The policies contained in this final rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. This Final rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with States is not required.

**Executive Order 13175, Consultation and Coordination With Indian Tribal Governments**

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Consultation is also required for any regulation that preempts Tribal law or that imposes substantial direct compliance costs on Indian Tribal governments and that is not required by statute.

The Agency has determined that this final rule does not, to our knowledge, have Tribal implications that require formal Tribal consultation under Executive Order 13175. If a Tribe requests consultation, the RHS will work with the Office of Tribal Relations and USDA Rural Development's Tribal Relations Team to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

**National Environmental Policy Act**

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (''Environmental Policies and Procedures''). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action'' and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

**Congressional Review Act**

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

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (''APA'') or any other statute. The Administrative Procedures Act exempts from notice and comment requirements rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts'' (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this rule.

**Unfunded Mandates Reform Act (UMRA)**

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

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

**Paperwork Reduction Act**

This final rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0189 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

**E-Government Act Compliance**

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

**Civil Rights Impact Analysis**

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

rights impact is likely to result from this final rule.

**Assistance Listing**

The programs affected by this regulation is listed in the Assistance Listing Catalog (formerly Catalog of Federal Domestic Assistance) under number 10.405—Farm Labor Housing Loans and Grants. The Assistance Listings are available at *https://sam.gov/*.

**Non-Discrimination Statement Policy**

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, staff office, or the 711 Federal Relay Service.

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

The completed AD–3027 form or letter must be submitted to USDA by:

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

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

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

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**Severability**

It is USDA's intention that the provisions of this final rule shall operate independently of each other. In the event that this final rule or any portion of this final rule is ultimately declared invalid or stayed as to a particular provision, it is USDA's intent that the final rule nonetheless be severable and remain valid with respect to those provisions not affected by a declaration of invalidity or stayed. USDA concludes it would separately adopt all of the provisions contained in this final rule.

**List of Subjects in 7 CFR Part 3560**

Accounting, Administrative practice and procedure, Aged, Conflict of interest, Government property management, Grant programs—housing and community development, Insurance, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate-income housing, Migrant labor, Mortgages, Nonprofit organizations, Public-housing, Rent-subsidies, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, the Rural Housing Service is amending 7 CFR part 3560 as follows:

## PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3560 continues to read as follows:

**Authority:** 42 U.S.C. 1480.

### Subpart L—Off-Farm Labor Housing

■ 2. Amend § 3560.566 by revising paragraph (c) and adding paragraph (d) to read as follows:

**§ 3560.566 Loan and grant rates and terms.**

* * * * *

(c) *Term of grant agreement.* The grant agreement will remain in effect for as long as there is a need for the housing, as determined by the Agency.

(d) *Grant period of performance.* The grant period of performance is five (5) years, which starts on the date the grant agreement is executed by both the Agency and the grantee and ends five (5) years from the date the grant agreement was executed by both the Agency and the grantee.

**Yvonne Hsu,**

*Acting Administrator, Rural Housing Service.*

[FR Doc. 2024–24742 Filed 10–24–24; 8:45 am]

**BILLING CODE 3410–XV–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2024–1696; Project Identifier MCAI–2023–01234–A; Amendment 39–22850; AD 2024–19–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Diamond Aircraft Industries Inc. (Type Certificate Previously Held by Diamond Aircraft Industries GmbH) Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2009–10–04 for certain Diamond Aircraft Industries GmbH (type certificate now held by Diamond Aircraft Industries Inc.) Model DA 40 and DA 40 F airplanes. AD 2009–10–04 required repetitively inspecting the nose landing gear (NLG) leg for cracks and replacing the NLG leg if cracks are found. Since the FAA issued AD 2009–10–04, Transport Canada updated mandatory continuing airworthiness information (MCAI) to correct this unsafe condition on these products. This AD results from changes made to the part replacement options and the repetitive inspections. This AD requires doing repetitive detailed inspections of the NLG leg pivot axle for cracking and if cracking is found replacing that part with a serviceable part. This AD also requires eventually replacing all NLG legs having certain part numbers with serviceable parts, if not already done, and prohibits installing affected parts. Replacing affected parts with serviceable parts is terminating action for the repetitive inspections specified in this AD. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective November 29, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 29, 2024.

**ADDRESSES:**

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–1696; 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 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 Diamond Aircraft Industries Inc. material identified in this AD, contact Diamond Aircraft Industries Inc., 1560 Crumlin Sideroad, London, ON, Canada, N5V 1S2; phone: (519) 457–4041; email: *support-canada@diamondaircraft.com;* website: *diamondaircraft.com.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2024–1696.

**FOR FURTHER INFORMATION CONTACT:** Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7300; email: *9-avs-nyaco-cos@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2009–10–04, Amendment 39–15899 (74 FR 22435, May 13, 2009) (AD 2009–10–04). AD 2009–10–04 applied to certain Diamond Aircraft Industries GmbH (type certificate now held by Diamond Aircraft Industries Inc.) Model DA 40 and DA 40 F airplanes. AD 2009–10–04 was prompted by MCAI originated by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD 2009–0016, dated January 22, 2009 (EASA AD 2009–0016), to address fatigue cracking of the NLG leg part number (P/N) D41–3223–10–00 at the pivot axle.

AD 2009–10–04 superseded and maintained the requirements of AD 2007–17–06, Amendment 39–15164 (72 FR 46549, August 21, 2007), which required repetitively inspecting the NLG leg for cracks and replacing the NLG leg if cracks were found. The FAA issued AD 2009–10–04 to exclude from the applicability any airplanes that had the improved NLG leg installed.

Effective November 15, 2017, the design and oversight responsibilities for the Model DA 40, DA 40 F, and DA 40 D airplanes were transferred from Diamond Aircraft Industries GmbH of Austria as the design approval holder, and EASA as the civil aviation authority, to Diamond Aircraft Industries Inc. (Diamond), of Canada as the new design approval holder, and Transport Canada as the civil aviation authority. After that transition, Transport Canada received several in-service reports of P/N D41–3223–10–00_1 cracking at the pivot axle and in some cases, fracture of the NLG leg. Investigation revealed that the failures were the result of fatigue cracking.

Since the FAA issued AD 2009–10–04, Transport Canada superseded EASA AD 2009–0016 and issued Transport Canada AD CF–2023–50, dated July 10, 2023 (Transport Canada AD CF–2023–50), to address failure of the NLG leg at the pivot axle by requiring initial and repetitive detailed inspections of NLG leg P/N D41–3223–10–00 and P/N D41–3223–10–00_1 to detect cracking, replacing a NLG leg, as required, with a serviceable part, and prohibiting the installation of NLG leg P/N D41–3223–10–00 or P/N D41–3223–10–00_1 as a replacement part.

Transport Canada AD CF–2023–50 differed from the Diamond material because Transport Canada AD CF–2023–50 required a detailed inspection of the pivot axle of the NLG leg P/N D41–3223–10–00 and P/N D41–3223–10–00_1 using a bright light and 10X magnifying glass instead of Type II visible dye for the inspection of the pivot axle. After Transport Canada AD CF–2023–50 was issued, the repetitive inspection interval was increased from 100 hours air time to 110 hours air time to align with the scheduled 100-hour inspection in chapter 5 of the DA 40 series Airplane Maintenance Manual. To require the change to Transport Canada AD CF–2023–50, Transport Canada issued AD CF–2023–50R1, dated November 29, 2023 (also referred to as the MCAI). The MCAI was published to address the time interval change of the repetitive inspection from 100-hour intervals to 110-hour intervals.

The NPRM published in the **Federal Register** on July 5, 2024 (89 FR 55525). The NPRM was prompted by failure of a NLG in the area of the pivot axle and changes made to the part replacement options and the repetitive inspections as detailed in the MCAI. The MCAI was published to address the time interval change of the repetitive inspection from 100-hour intervals to 110-hour intervals to align with the scheduled 100-hour inspection in chapter 5 of the DA 40 series Airplane Maintenance Manual.

In the NPRM, the FAA proposed to require repetitive detailed inspections of the NLG leg pivot axle for cracking and if cracking was found replacing that part with a serviceable part. In the NPRM, the FAA also proposed to require eventually replacing all NLG legs having certain part numbers with serviceable parts, if not already done, and prohibit installing affected parts. Replacing affected parts with serviceable parts is terminating action for the repetitive inspections required by this AD.

The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–1696.

## 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. This AD is adopted as proposed in the NPRM.

### Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Diamond Mandatory Service Bulletin MSB 40–091, Rev. 0, dated January 18, 2021, published with Diamond Aircraft Industries Work Instruction WI–MSB 40–091, Rev. 0, dated January 18, 2021 (issued as one document). This material specifies procedures for doing repetitive dye penetrant inspections of the NLG leg pivot axle for cracking and replacing the NLG for Model DA 40 airplanes.

The FAA also reviewed Diamond Mandatory Service Bulletin MSB F4–038, Rev. 0, dated January 18, 2021, published with Diamond Aircraft Industries Work Instruction WI–MSB F4–038, Rev. 0, dated January 18, 2021 (issued as one document). This material specifies procedures for doing repetitive dye penetrant detailed inspections of the NLG leg pivot axle for cracking and replacing the NLG for Model DA 40 F airplanes.

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**.

### Differences Between This AD, the MCAI, and the Material

The MCAI applies to Model DA 40 D airplanes, however, this AD does not

because that model does not have an FAA type certificate.

Although the Diamond material specifies to do dye penetrant inspections, the MCAI requires, and this AD requires, using a bright light (minimum of 100 foot-candles) and 10X magnifying glass instead of dye penetrant.

**Costs of Compliance**

The FAA estimates that this AD affects 693 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per airplane | Cost on U.S. operators |
|---|---|---|---|---|
| Inspect NLG leg pivot axle | 1 work-hour × $85 per hour = $85 per inspection cycle. | $50 per inspection cycle | $135 per inspection cycle. | Up to $93,555 per inspection cycle. |
| Replace NLG leg | 2 work-hours × $85 per hour = $170. | $3,900 | $4,070 | Up to $2,820,510. |

The costs of the inspection and replacement of the NLG leg are based on all airplanes having an affected NLG installed. The FAA has no way of determining the number of airplanes that have the affected NLG installed, and those that do not have one installed are only affected by the installation prohibition.

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 2009–10–04, Amendment 39–15899 (74 FR 22435, May 13, 2009); and

■ b. Adding the following new airworthiness directive:

**2024–19–08 Diamond Aircraft Industries Inc. (Type Certificate Previously Held by Diamond Aircraft Industries GmbH):** Amendment 39–22850; Docket No. FAA–2024–1696; Project Identifier MCAI–2023–01234–A.

**(a) Effective Date**

This airworthiness directive (AD) is effective November 29, 2024.

**(b) Affected ADs**

This AD replaces AD 2009–10–04, Amendment 39–15899 (74 FR 22435, May 13, 2009) (AD 2009–10–04).

**(c) Applicability**

This AD applies to Diamond Aircraft Industries Inc. (type certificate previously held by Diamond Aircraft Industries GmbH) Model DA 40 and DA 40F airplanes, all serial numbers, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 3220, Nose/Tail Landing Gear.

**(e) Unsafe Condition**

This AD was prompted by failure of a nose landing gear (NLG) in the area of the pivot axle. The unsafe condition, if not addressed, could lead to damage to the airplane and injury to occupants.

**(f) Compliance**

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

**(g) Definitions**

For the purpose of this AD the definitions in paragraphs (g)(1) through (3) of this AD apply:

(1) An ''affected part'' is an NLG leg having either P/N D41–3223–10–00 or P/N D41–3223–10–00_1.

(2) A ''serviceable part'' is an NLG leg that is not an affected part. NLG legs having P/N D41–3223–10–00_2 or P/N D41–3223–10–00_3 are considered serviceable parts.

(3) The ''applicable mandatory service bulletin (MSB) for your airplane'' is:

(i) For Model DA 40 airplanes: Diamond Aircraft Industries Mandatory Service Bulletin MSB 40–091, Rev. 0, dated January 18, 2021, published with Diamond Aircraft Industries Work Instruction WI–MSB 40–091, Rev. 0, dated January 18, 2021 (issued as one document).

(ii) For Model DA 40 F airplanes: Diamond Aircraft Industries Mandatory Service Bulletin MSB F4–038, Rev. 0, dated January 18, 2021, published with Diamond Aircraft Industries Work Instruction WI–MSB F4–038, Rev. 0, dated January 18, 2021 (issued as one document).

**(h) Required Actions**

For all airplanes with an affected part installed, do the applicable actions specified in paragraphs (h)(1) and (2) of this AD.

(1) Within 25 hours time-in-service (TIS) or 30 days after the effective date of this AD, whichever occurs first, and thereafter at

intervals not to exceed 110 hours TIS, perform the actions required by paragraphs (h)(1)(i) through (v) of this AD:

(i) Prepare the airplane for inspection of the pivot axle of the affected part in accordance with Section III, Paragraphs 1 through 4, of the Work Instruction of the applicable MSB for your airplane.

(ii) Clean the pivot axle of the affected part ensuring that any visible dye inspection residue is removed.

**Note 1 to paragraph (h)(1)(ii):** Paragraph 5–63, Cleaners and Applicators, of Chapter 5, Nondestructive Inspection (NDI), Section 5, Penetrant Inspection, of FAA Advisory Circular 43.13–1B, ''Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair,'' Change 1, dated September 8, 1998, provides guidance regarding an approved cleaning method.

(iii) Perform a detailed inspection of the pivot axle of the affected part using a bright light (minimum of 100 foot-candles) and 10X magnifying glass to detect cracking, paying special attention to the radius at the top of the pivot axle as shown in Figure 1 of the Work Instruction of the applicable MSB for your airplane, except where Figure 1 refers to a ''dye penetrant inspection'' this AD does not require that type of inspection.

(iv) If any cracking is found during any inspection required by paragraph (h)(1)(iii) of this AD, before further flight, replace the affected part with a serviceable part, and reinstall the nose wheel fork in accordance with Section III, Paragraphs 8 through 12 of the Work Instruction of the applicable MSB for your airplane.

(v) If no cracking is found during any inspection required by paragraph (h)(1)(iii) of this AD and the compliance time specified in paragraph (h)(2) of this AD has not been exceeded, the affected part can remain installed until the compliance time specified in paragraph (h)(2) of this AD is reached. Reinstall the nose wheel fork in accordance with Section III, Paragraphs 8 through 12, of the Work Instruction of the applicable MSB for your airplane.

(2) Within 2,500 hours TIS or 24 months after the effective date of this AD, whichever occurs first, replace an affected part with a serviceable part. This part replacement is terminating action for the repetitive inspections required by paragraph (h)(1) of this AD.

**(i) Parts Installation Prohibition**

As of the effective date of this AD, do not install an affected part on any airplane.

**(j) Alternative Methods of Compliance (AMOCs)**

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (k)(1) of this AD or email to: *AMOC@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local Flight Standards District Office/certificate holding district office.

**(k) Additional Information**

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

(2) FAA Advisory Circular 43.13–1B, ''Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair,'' Change 1, dated September 8, 1998, may be found at *drs.faa.gov.*

**(l) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Diamond Aircraft Industries Mandatory Service Bulletin MSB 40–091, Rev. 0, dated January 18, 2021, published with Diamond Aircraft Industries Work Instruction WI–MSB 40–091, Rev. 0, dated January 18, 2021 (issued as one document).

(ii) Diamond Aircraft Industries Mandatory Service Bulletin MSB F4–038, Rev.0, dated January 18, 2021, published with Diamond Aircraft Industries Work Instruction WI–MSB F4–038, Rev. 0, dated January 18, 2021 (issued as one document).

(3) For Diamond Aircraft Industries material identified in this AD, contact Diamond Aircraft Industries Inc., 1560 Crumlin Sideroad, London, ON, Canada, N5V 1S2; phone: (519) 457–4041; email: *support-canada@diamondaircraft.com;* website: *diamondaircraft.com.*

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

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

Issued on October 21, 2024.

**Steven W. Thompson,**

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

[FR Doc. 2024–24758 Filed 10–24–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2024–2328; Project Identifier AD–2024–00282–Q,R; Amendment 39–22863; AD 2024–20–04]**

**RIN 2120–AA64**

## Airworthiness Directives; Various Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2024–01–11, which applied to all helicopters with certain Pacific Scientific Company rotary buckle assemblies (buckles) installed. AD 2024–01–11 required inspecting the buckle screws and, depending on the results, reidentifying the buckle, replacing the screws and reidentifying the buckle, or replacing the buckle. AD 2024–01–11 also prohibited installing certain buckles. This AD retains the requirements of AD 2024–01–11, expands the applicability, and updates the referenced material. As an option to the actions required by this AD, this AD allows removing the male side from the lap of the restraint system assembly and installing a placard stating that use of the seat is prohibited; use of that crewmember seat or passenger seat is then prohibited until the actions required by the AD are accomplished and the male side from the lap of the restraint system assembly is reinstalled. This AD was prompted by a manufacturing defect in the screws used inside the buckle. 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 certain publications listed in this AD as of November 12, 2024.

The FAA must receive comments on this AD by December 9, 2024.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–2328; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

*Material Incorporated by Reference:*

• For Parker Meggitt material identified in this AD, contact Parker Meggitt Services, 1785 Voyager Avenue, Simi Valley, CA 93063; phone: 877–666–0712; email: *TechSupport@meggitt.com;* website: *meggitt.com/services_and_support/customer_experience/update-on-buckle-assembly-service-bulletins.*

• You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, 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* under Docket No. FAA–2024–2328.

**FOR FURTHER INFORMATION CONTACT:** David Kim, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5274; email: *david.kim@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2024–2328; Project Identifier AD–2024–00282–Q,R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

## Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to David Kim, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5274; email: *david.kim@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

## Background

The FAA issued AD 2024–01–11, Amendment 39–22662 (89 FR 6008, January 31, 2024) (AD 2024–01–11), for all helicopters with a Pacific Scientific Company buckle part number (P/N) 1111475 (all dash numbers) or P/N 1111548–01 installed, if the buckle was manufactured between January 2012 and September 2012 inclusive or has an unknown date of manufacture (DOM). These same part-numbered buckles may also be installed in airplanes; the FAA published a separate notice of proposed rulemaking on February 29, 2024 (89 FR 14783) to address all airplanes with a Pacific Scientific Company buckle P/N 1111475 (all dash numbers) or P/N 1111548–01 installed.

For helicopters with the identified buckles, AD 2024–01–11 required inspecting each buckle screw for cracked, loose, and missing screw heads and, depending on the results, replacing the buckle or inspecting each screw to determine if any screw has a Torx head. Depending on the results of that inspection, AD 2024–01–11 required reassembling the buckle (if necessary) and reidentifying it with ''INS. A'' or replacing each Torx head screw with a hex head screw, reassembling the buckle, and reidentifying the buckle with ''MOD. A.'' If a screw head broke off during disassembly, AD 2024–01–11 required replacing the buckle with an airworthy buckle. Lastly, AD 2024–01–11 prohibited installing an identified buckle unless it was marked with ''MOD. A'' or ''INS. A.''

AD 2024–01–11 resulted from a report of a 2012 manufacturing defect in the screws used inside Pacific Scientific Company buckles P/N 1111475 (all dash numbers) and P/N 1111548–01. The screws used to fasten the load plate to the body of the buckle were found to be susceptible to hydrogen embrittlement due to improper baking during the electroplating process. This condition leads the screwhead to separate from the body of the screw when under load, which could result in the buckle failing to restrain the occupant to the seat. This condition was identified in screw Lots 348601–A and 348994–A, which were manufactured between January 2012 and September 2012, and were the first two lots of screws received by Pacific Scientific Company from a new supplier. The FAA issued AD 2024–01–11 to prevent cracking and missing screw heads when under load, which, if not addressed, could result in a failure of the buckle to restrain the occupant.

## Actions Since AD 2024–01–11 Was Issued

Since the FAA issued AD 2024–01–11, additional review by the manufacturer revealed that an additional lot of screws, Lot 358764–A, is also affected by the same unsafe condition, which expands the DOM to April 2013 inclusive.

Parker Meggitt also revised Service Bulletin (SB) 1111475–25–001–2023 and SB 1111548–25–001–2023, each Revision 001 and dated December 1, 2023 (SB 1111475–25–001–2023 Rev 001 and SB 1111548–25–001–2023 Rev 001), to SB 1111475–25–001–2023 and SB 1111548–25–001–2023, each Revision 002 and dated April 1, 2024 (SB 1111475–25–001–2023 Rev 002 and SB 1111548–25–001–2023 Rev 002). SB 1111475–25–001–2023 Rev 002 and SB 1111548–25–001–2023 Rev 002 specify the same procedures as SB 1111475–25–001–2023 Rev 001 and SB 1111548–25–001–2023 Rev 001, except SB 1111475–25–001–2023 Rev 002 and SB 1111548–25–001–2023 Rev 002 expand the applicability, update material and tooling information, add and clarify certain Accomplishment Instructions procedures, and update figures.

The FAA is issuing this AD to address the unsafe condition on these products.

## Comments to AD 2024–01–11

After AD 2024–01–11 was published, the FAA received comments from 26 commenters. The commenters included Airbus, Airbus Atlantic, Airbus Helicopters, Airbus India Private Limited, AS Aerospace, Ltd., ASL

Airlines Australia, Avionord, Castle Air, the Civil Aviation Safety Authority of Australia, Emirates Airlines, Etihad Airways, East West Helicopter-Panterra Heli Support, Elifriulia S.p.A., Elitellina—Pegasus Aero Group, Jordan Aviation, NASA Glenn Research Center Aircraft Operation (NASA), Parker Meggitt, Qatar Airways, Sabena Technics, San Antonio Police Helicopter Unit, SAS Airlines, SkyUP Ukraine, Starlux Airlines, Summit Helicopters, Inc., and two anonymous commenters. The following presents the comments received on AD 2024–01–11 and the FAA's response to each comment.

**Comment Regarding State of Design**

The Civil Aviation Safety Authority of Australia asked if the FAA or Parker Meggitt in the United Kingdom is the state of design for Pacific Scientific Company for the specified buckles.

The United States is the state of design for the restraints and granted the technical standard order authorizations for those restraints; the oversight is the responsibility of the FAA.

**Comments Regarding Buckles Installed in Airplanes**

Airbus India Private Limited, Emirates Airlines, Jordan Aviation, Qatar Airlines, SAS Airlines, SkyUP Ukraine, and Starlux Airlines asked if AD 2024–01–11 applies to airplanes and Airbus, ASL Airlines Australia, Emirates Airlines, Etihad Airways, Jordan Aviation, NASA, Qatar Airlines, and SkyUP Ukraine explained that the affected buckles may be installed in aircraft other than helicopters.

This AD applies to all helicopters with the affected buckles installed. The FAA published a separate notice of proposed rulemaking (89 FR 14783, February 29, 2024) to address all airplanes with an affected buckle installed because the FAA determined that a longer compliance time to accomplish the required actions is allowable for buckles installed in airplanes. The separate AD rulemaking for buckles installed in airplanes is available at *federalregister.gov* and *regulations.gov* under Docket No. FAA–2024–2328.

**Requests for Clarification of the Applicability Product Type**

Airbus India Private Limited requested clarification regarding whether AD 2024–01–11 is a rotorcraft or appliance AD and provided images from the FAA's Dynamic Regulatory System website (DRS), which is the website that stores ADs and other regulatory and guidance material, that show the product type as appliance and the product subtype as rotorcraft. An anonymous commenter suggested the FAA specify in the **SUMMARY** section in the preamble and the Applicability paragraph of the rule portion that the AD is an appliance AD.

AD 2024–01–11 applied to rotorcraft with a specific appliance installed. Regarding the information in DRS listing the product type as appliance and the product subtype as rotorcraft, the FAA has since updated the listing in DRS to show the product type as both aircraft and appliance, and the subtype as rotorcraft. The FAA disagrees with explicitly stating that the AD is an appliance AD in the **SUMMARY** section and the Applicability paragraph because the AD is, in fact, a rotorcraft AD that affects all helicopters with the affected buckles installed. Additionally, the purpose of the **SUMMARY** section is to briefly explain the AD action, which may include, but is not limited to, providing the following types of information: affected products or articles, required actions, and the unsafe condition. And the purpose of the Applicability paragraph is to clearly identify the affected products or articles.

**Requests for the Referenced Material and a Direct Link in the Background Section**

Avionord, Castle Air, Elifriulia S.p.A, and Sabena Technics requested a copy of the service bulletins referenced in AD 2024–01–11. Parker Meggitt requested the FAA add a hyperlink in the Background section to *www.meggitt.com/services_and_support/customer_experience/update-onbuckle-assembly-service-bulletins,* which provides a direct link to the service bulletins.

The service bulletins referenced in AD 2024–01–11 are available in the AD docket at *www.regulations.gov/document/FAA–2024–0034–0002.* The **ADDRESSES** section, as well as the Material Incorporated by Reference paragraph, provide availability information for the service bulletins, including the direct link requested by Parker Meggitt. Regarding the request to add the direct link in the Background section, the purpose of the Background section is to explain the unsafe condition and the FAA's justification for issuing the AD action. It may include, but is not limited to, providing the following types of information: the circumstances that created the need to correct the unsafe condition, historical information, consequences if the unsafe condition is not corrected, and any other information that supports the AD action. Additionally, the service bulletins referenced in AD 2024–01–11 are no longer available at that direct link. Since this request does not correct information, it has not been incorporated into this new AD.

**Comments Regarding Parker Meggitt Services' Email Address**

East West Helicopter-Panterra Heli Support, Elifriulia S.p.A., Parker Meggitt, Pegasus Aero-Group, Sabena Technics, and Summit Helicopters, Inc., stated that the email address identified in AD 2024–01–11 for contacting Parker Meggitt Services was incorrect.

The FAA has corrected the email address for contacting Parker Meggitt Services in this AD to *TechSupport@meggitt.com.*

**Request To Clarify the Received Report in the Background Section**

Parker Meggitt requested the FAA revise the Background section by clarifying that the report received by the FAA is for a ''2012'' manufacturing defect in the screws used inside Pacific Scientific Company buckle P/N 1111475 (all dash numbers) and P/N 1111548–01 to prevent operator confusion.

The FAA agrees and has revised the Background section in this new AD accordingly.

**Comments Regarding Illegible Dates of Manufacture or Lack of DOM Marking**

East West Helicopter-Panterra Heli Support commented that the DOM on the plastic tag on the back of the buckle is easily erased and the AD requires replacing any Torx head screws before further flight if the date tag is unreadable on the buckle. Airbus Atlantic commented that some buckles may not have been marked with a DOM and asked when the DOM marking was implemented.

The FAA acknowledges these comments and infers concern that some buckles may be repaired or replaced unnecessarily due to the date of manufacture not being legible. Applicable part-numbered buckles with an illegible or missing DOM, including those that may have never been marked, are considered as having an unknown DOM for the purposes of this AD and must comply with the requirements of this AD. Additionally, the compliance time to accomplish the inspections is within 3 months after the AD's effective date; only if, as a result of the inspections, it is determined that a Torx head screw is installed, is replacing each Torx head screw required before further flight. The DOM marking was added to buckle P/N 1111475 (all dash numbers) after the initial 2012 investigation while buckle P/N

1111548–01 has always been marked with the DOM. Additionally, part marking preservation and reidentification is the responsibility of operators.

**Comment Regarding Availability of Replacement Screws, Grounding Helicopters, and Requesting Alternative Methods of Compliance (AMOCs)**

East West Helicopter-Panterra Heli Support commented that the supplier of the affected screws has no screws available, and none are on order. East West Helicopter-Panterra Heli Support further commented that the lack of screws could ground helicopters and the alternate option to replace the entire seat belt harness with a parts cost of $8,135 is not stated in the Costs of Compliance section. East West Helicopter-Panterra Heli Support requested the FAA revise the AD to allow a daily inspection to ensure that no screw heads are broken off until the AD is due in May (2024), which could also provide time for screws to become available over the next couple of months and avoid grounding helicopters. An anonymous commenter referenced East West Helicopter-Panterra Heli Support's comment and inquired whether an AMOC could be requested for repetitive inspections until parts become available or for an extension to accomplish a repair.

To the extent spare parts may not exist to replace parts that fail the inspection requirements of this AD, the FAA cannot base its AD action on whether spare parts are available or can be produced. While every effort is made to avoid grounding aircraft, the FAA must address the unsafe condition. While operators may choose to replace the entire seat belt harness assembly, it is not necessary to do so as the buckle can be replaced, which may include repairing the buckle, as a component independently from the assembly. Regarding the request to allow a daily inspection to ensure that no screw heads are broken off, operators may request approval of any specific alternative actions as an AMOC under the provisions of paragraph (i) of this AD.

**Requests Regarding Deactivating a Seat**

An anonymous commenter requested the FAA revise its AD to allow deactivating and placarding as ''Inoperative'' an identified discrepant buckle on a seat, other than the one(s) which must be occupied by the minimum crew required to operate the affected rotorcraft, per 14 CFR 91.213(b) and MMEL [Master Minimum Equipment List] PL–34. The commenter also requested clarification of the FAA's position regarding deactivating non-operational seats.

The FAA agrees with the commenter's request and has added an optional action for the AD requirements. This AD allows, for a crewmember seat or passenger seat with a restraint system with an affected buckle installed, removing the male side from the lap of the restraint system assembly and fabricating and installing a placard on the seat stating that use of the seat is prohibited. Use of that crewmember seat or passenger seat is then prohibited until the actions required by the AD are accomplished and the male side from the lap of the restraint system assembly is reinstalled.

**Request To Change Citations of Referenced Material**

AS Aerospace Ltd requested the FAA change the paragraph citations to referenced service bulletins in the Required Actions paragraph to begin with a number instead of a letter, *e.g.,* state ''paragraph 4.B.(4)(a)'' instead of ''paragraph B.(4)(a)'' because the service bulletins identify a number before each section title.

The FAA disagrees. The paragraph citations to the service bulletins suffice since they identify the section of the service bulletins by title instead, *e.g.,* ''Accomplishment Instructions, paragraph B.(4)(a).''

**Request To Correct the Flow Chart in Referenced Material**

Airbus Atlantic commented that an error in the flowchart in the Parker Meggitt service bulletin results in buckles being incorrectly reidentified.

The flowcharts in Parker Meggitt SB 1111475–25–001–2023 and SB 1111548–25–001–2023, each original issue and dated September 1, 2023, specify only the reidentification of ''MOD. A.'' One of the changes incorporated in SB 1111475–25–001–2023 Rev 001 and in SB 1111548–25–001–2023 Rev 002 was a change in the flowcharts to reidentify the buckle with ''INS. A'' or ''MOD. A'' depending on the inspection results.

**Request To Revise a Service Bulletin Figure**

Airbus Atlantic requested revision of the ''Torx Head Screws vs. Hex Head Screws'' figure (Figure 7 of SB 1111475–25–001–2023 Rev 001 and Figure 5 of SB 1111548–25–001–2023 Rev 001) in the service bulletins to add the dates when each screw was used.

The FAA cannot require a manufacturer to revise its publications; however, the FAA does include exceptions in an AD to referenced material that is required for compliance to correct information within the referenced material. The proposed changes do not correct information in the referenced material and accordingly, have not been incorporated into this new AD.

**Requests for Clarification Regarding Returning Parts to Parker Meggitt**

An anonymous commenter requested clarification regarding whether a buckle needs to be scrapped when a screw head breaks off during disassembly because it cannot be sent to Parker Meggitt for repair. And, if so, the commenter requested the FAA revise the AD to state that such buckles must be scrapped and update the Costs of Compliance accordingly. The commenter also asked if the FAA intended to prevent operators from attempting to repair such buckles in the field by removing the threaded portion of the broken screw and installing a new screw and, if so, to consider deleting the paragraph in the Required Actions paragraph and let the service information stand as-is (*i.e.,* return a buckle with broken screws to Parker Meggitt for repair or replacement).

Since the AD does not require (permanently) removing a damaged buckle from service, the damaged buckle may be returned to an airworthy condition. The AD does not require returning a buckle to Parker Meggitt because the FAA does not have the authority to direct operators to return defective components to the manufacturer in this AD. Because the AD also does not specify any particular procedure to return a damaged buckle to an airworthy condition, a procedure that is acceptable to the FAA must be used, which includes operators choosing to return a damaged buckle to Parker Meggitt for repair as the AD does not prohibit an operator from doing so. Operators may also request approval of any specific corrective actions as an AMOC under the provisions of paragraph (i) of this AD.

**Requests Regarding the Magnet Used for the Magnet Test**

Airbus Helicopters commented regarding Meggitt Service Bulletin SB 1111475–25–001–2023 and stated that the magnetism strength of the magnet is the representative physical quantity to determine if each screw has a Torx head or hex head in the magnet test. Airbus Helicopters asked if Meggitt would provide more precise information concerning the magnet (particularly its magnetism strength) and if Meggitt would provide this magnet as a specific

tool to ensure proper application of the service bulletin. Airbus Atlantic also requested that the service bulletin specify precise/physical characteristics of the magnet to be used to perform the magnet test. Additionally, Airbus Atlantic requested that Meggitt specify the magnet as a special tool with a part number and provide that tool to operators.

Since AD 2024–01–11 was issued, SB 1111475–25–001–2023 Rev 001 has been revised to Rev 002, to incorporate various changes, including the addition of a website link to magnet P/N 5862K104 under the Material Information, paragraph G.—Special Tooling. The website at this link provides various magnet specification information. SB 1111475–25–001–2023 Rev 002 also recommends certain magnet dimensions and explains that a magnet that is strong enough to not slip off the buckle suffices for the purposes of the magnet test. Regarding the request for Meggitt to provide a magnet, the FAA does not have the authority to require a manufacturer to send any tooling to an operator.

**Requests Regarding the Magnet Test for a Buckle With Velcro Installed on Its Back Plate**

Airbus Helicopters commented regarding Meggitt Service Bulletin SB 1111475–25–001–2023 that the magnet test is not applicable for all buckles because some buckles have Velcro on their back plate that attaches padding between the buckle and the occupant. Airbus Helicopters requested that Meggitt provide an alternate method for buckles with this Velcro installed. Airbus Atlantic also expressed concern about inaccurate results from the magnet test when Velcro is attached to the buckle back plate.

Since AD 2024–01–11 was issued, SB 1111475–25–001–2023 Rev 001, as well as SB 1111548–25–001–2023 Rev 001, were revised to Rev 002 to incorporate various changes, including the addition of procedures to accomplish the magnet test for a buckle that has Velcro installed on its back plate. Therefore, this AD provides two other methods for determining if any screw has a Torx head as an alternative to the magnet test.

**Requests for Clarification of ''Thin Metal Stock'' and Removing a Buckle**

Airbus Helicopters commented regarding Meggitt Service Bulletin SB 1111475–25–001–2023 and requested that Meggitt provide more details about the ''thin metal stock'' to be used to remove a buckle, the way to proceed, and a reference to a well-known procedure of CMM [Component Maintenance Manual].

Since AD 2024–01–11 was issued, SB 1111475–25–001–2023 Rev 001 was revised to Rev 002 to incorporate various changes, including the addition of dimensions and specification of a shim or feeler gauge (metal stock) under the Material Information, paragraph G.—Special Tooling. This AD requires using Revision 2 of the referenced material to accomplish its requirements. AD 2024–01–11 does not refer to a component maintenance manual and the FAA cannot require a manufacturer to revise its publications.

**Requests for Torque Values**

Airbus Helicopters commented regarding Meggitt Service Bulletin SB 1111475–25–001–2023 and requested that Meggitt provide the precise torque values to reassemble the two parts of the buckle because the values are missing.

Since AD 2024–01–11 was issued, SB 1111475–25–001–2023 Rev 001 was revised to Rev 002 to incorporate various changes, including the addition of the torque values. Further, this AD requires using Revision 2 of the referenced material to accomplish its requirements.

**Request Regarding Service Bulletin Accomplishment Traceability**

Airbus Helicopters commented regarding Meggitt Service Bulletin SB 1111475–25–001–2023 and requested that Meggitt provide a proposal for buckle (re)identification that indicates the completion of its service bulletin to ensure the traceability of affected buckles.

Parker Meggitt SB 1111475–25–001–2023 Rev 002, which is incorporated by reference in this AD, specifies procedures for marking affected buckles that have passed the inspections with ''INS. A'' and marking affected buckles that have successfully been modified with ''MOD. A.''

**FAA's Determination**

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

**Material Incorporated by Reference Under 1 CFR Part 51**

The FAA reviewed SB 1111475–25–001–2023 Rev 002 for buckle P/N 1111475 and SB 1111548–25–001–2023 Rev 002 for buckle P/N 1111548–01. This material specifies procedures for inspecting the buckle for any missing or loose screw heads and depending on the results, replacing the buckle and sending the removed buckle to Parker Meggitt for repair or replacement. If after that first inspection, all of the screw heads are intact, this material specifies procedures for inspecting the buckle for any Torx head screws (alloy steel) and, depending on the results, allowing the buckle assembly to remain in-service temporarily, replacing any Torx head screws (alloy steel) with new hex head screws (stainless steel), and checking the functionality of the buckle. This material also specifies procedures for removing a buckle from a restraint system, installing a buckle on a restraint system, and returning buckles to Parker Meggitt. If the buckle passes the specified inspections or is modified by replacing Torx head screws (alloy steel) with new hex head screws (stainless steel) screws, this material specifies procedures for reidentifying the back of the buckle.

The buckle may be included as a component of a different part-numbered restraint system assembly. This material identifies known affected restraint system assembly P/Ns.

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

**AD Requirements**

This AD requires accomplishing the actions specified in the referenced material described previously, except as discussed under ''Differences Between this AD and the Referenced Material.''

**Differences Between This AD and the Referenced Material**

The material incorporated by reference does not specify any compliance times, whereas this AD requires accomplishing the required actions within three months. This AD also prohibits installing an affected buckle on any helicopter unless the buckle includes ''MOD A'' or ''INS A'' on the buckle as of the effective date of this AD.

The material incorporated by reference specifies sending any damaged buckles to Parker Meggitt for repair or replacement, and this AD does not. Instead, this AD requires replacing the buckle with an airworthy buckle.

The material incorporated by reference allows buckles with a Torx head (alloy steel) screw to remain in service temporarily and be replaced at a time convenient to the operator, and this AD does not. If a buckle has any number of Torx head (alloy steel) screws installed, this AD requires replacing all four screws with hex head screws before further flight.

If a screw head breaks off during disassembly of a buckle or if reassembly of a buckle is not possible, the material incorporated by reference specifies returning the buckle to Parker Meggitt, whereas this AD does not. If a screw head breaks off during disassembly, this AD requires replacing the buckle with an airworthy buckle. If reassembly of a buckle is not possible, then the buckle is not airworthy.

This AD has the optional action, for a crewmember seat or passenger seat with a restraint system with an affected buckle installed, within 3 months after the effective date, of removing the male side from the lap of the restraint system assembly and fabricating and installing a placard on the seat stating that use of the seat is prohibited. Use of that crewmember seat or passenger seat is then prohibited until the actions required by the AD are accomplished and the male side from the lap of the restraint system assembly is reinstalled. The material incorporated by reference does not include this optional action.

**Justification for Immediate Adoption and Determination of the Effective Date**

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because in an otherwise survivable accident, hard landing, or severe turbulence, the buckle may fail to restrain the occupant. Based on the rotorcraft accident rate, coupled with not knowing the propagation rate of this unsafe condition into failure, the FAA determined that the compliance time to inspect affected buckles installed in helicopters must be within three months. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b).

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

**Regulatory Flexibility Act**

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

**Costs of Compliance**

The FAA estimates that this AD affects approximately 21,313 buckles installed on restraint systems in aircraft worldwide. The FAA has no way of knowing the number of helicopters of U.S. Registry that may have a restraint system with an affected buckle installed. The estimated costs on U.S. operators reflects the maximum possible costs based on affected buckles installed on restraint systems in aircraft worldwide. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this AD.

Inspecting a buckle will take approximately 0.1 work-hour for an estimated cost of $9 per buckle and up to $191,817. for the U.S. fleet. If required, replacing a set of screws (four) will take approximately 0.5 work-hour and parts will cost a nominal amount for an estimated cost of $43 per buckle. Replacing a buckle will take approximately 0.5 work-hour and parts will cost approximately $740 for an estimated cost of $783 per buckle. The FAA estimates a nominal cost for reidentifying a buckle.

The optional action of removing the male side from the lap of the restraint system assembly on the crewmember or passenger seat and fabricating and installing a placard will take approximately 1.5 work-hours and parts will cost a nominal amount for an estimated cost of $128 per seat.

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

(2) Will not affect intrastate aviation in Alaska.

**List of Subjects in 14 CFR Part 39**

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

**The Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2024–01–11, Amendment 39–22662 (89 FR 6008, January 31, 2024); and

■ b. Adding the following new airworthiness directive:

**2024–20–04 Various Helicopters:** Amendment 39–22863; Docket No. FAA–2024–2328; Project Identifier AD–2024–00282–Q,R.

**(a) Effective Date**

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

**(b) Affected ADs**

This AD replaces AD 2024–01–11, Amendment 39–22662 (89 FR 6008, January 31, 2024) (AD 2024–01–11).

**(c) Applicability**

This AD applies to all helicopters, certificated in any category, with a restraint system with a Pacific Scientific Company rotary buckle assembly (buckle) part number (P/N) 1111475 (all dash numbers) or P/N 1111548–01 having a date of manufacture (DOM) between January 2012 and April 2013 inclusive, or an unknown DOM. These buckles may be installed on, but not limited to, Airbus Helicopters model helicopters.

**Note 1 to paragraph (c):** The buckle may be included as a component of a different part-numbered restraint system assembly.

**Note 2 to paragraph (c):** These buckles may also be installed on airplanes; however, the FAA determined that a longer compliance time to accomplish the required actions is allowable for buckles installed on airplanes. Accordingly, the FAA plans to publish a separate AD rulemaking to address all airplanes with an affected buckle installed.

**(d) Subject**

Joint Aircraft System Component (JASC) Code: 2500, Cabin Equipment/Furnishing; and 2510, Flight Compartment Equipment.

**(e) Unsafe Condition**

This AD was prompted by a report of a manufacturing defect in the screws used inside the buckle. The FAA is issuing this AD to prevent cracking and missing screw heads when under load. The unsafe condition, if not addressed, could result in a failure of the buckle to restrain the occupant.

**(f) Compliance**

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

**(g) Required Actions**

(1) For helicopters with buckle P/N 1111475 (all dash numbers), within 3 months after the effective date of this AD, inspect each buckle screw for cracked, loose, and missing screw heads by following the Accomplishment Instructions, paragraphs B.(1) and (2), of Parker Meggitt Service Bulletin (SB) 1111475–25–001–2023, Revision 002, dated April 1, 2024 (SB 1111475–25–001–2023 Rev 002).

(i) If any screw has a cracked, loose, or missing screw head, before further flight, replace the buckle with an airworthy buckle.

(ii) If none of the four screw heads are cracked, loose, or missing, before further flight, inspect each screw to determine if any screw has a Torx head by using one of the following methods in the Accomplishment Instructions of SB 1111475–25–001–2023 Rev 002: paragraph B.(4)(a) (Magnet Test); paragraph B.(4)(b) (Inspection); or paragraphs C.(2) through (4) (removing the buckle from the restraint system) and paragraphs D.(1)(a) through (d) (disassembling the buckle).

(A) If none of the four screws have a Torx head, before further flight, reassemble the buckle (if necessary) by following the Accomplishment Instructions, paragraphs D.(1)(f) through (l), of SB 1111475–25–001–2023 Rev 002, and reidentify the buckle with ''INS. A'' by following the Accomplishment Instructions, paragraph B.(6), of SB 1111475–25–001–2023 Rev 002.

(B) If at least one of the four screws has a Torx head, before further flight, with the buckle removed, replace each Torx head screw with a hex head screw, reassemble the buckle, and reidentify the buckle with ''MOD. A'' by following the Accomplishment Instructions, paragraphs D.(1)(e) through (m), of SB 1111475–25–001–2023 Rev 002, except you are not required to return any parts to Parker Meggitt. If a screw head breaks off during disassembly, before further flight, replace the buckle with an airworthy buckle.

**Note 3 to paragraph (g)(1):** SB 1111475–25–001–2023 Rev 002 refers to a magnifying glass as an ''eye loupe.''

(2) For helicopters with buckle P/N 1111548–01, within 3 months after the effective date of this AD, inspect each buckle screw for cracked, loose, and missing screw heads by following the Accomplishment Instructions, paragraph B.(1), of Parker Meggitt SB 1111548–25–001–2023, Revision 002, dated April 1, 2024 (SB 1111548–25–001–2023 Rev 002).

(i) If any screw has a cracked, loose, or missing screw head, before further flight, replace the buckle with an airworthy buckle.

(ii) If none of the four screw heads are cracked, loose, or missing, before further flight, inspect each screw to determine which screws have a Torx head by using one of the following methods in the Accomplishment Instructions of SB 1111548–25–001–2023 Rev 002: paragraph B.(3)(a) (Inspection); or paragraph C. (removing the buckle from the restraint system) and paragraphs D.(1)(a) through (c) (disassembling the buckle).

(A) If none of the four screws have a Torx head, before further flight, reassemble the buckle (if necessary) by following the Accomplishment Instructions, paragraphs D.(1)(e) through (l), of SB 1111548–25–001–2023 Rev 002, and reidentify the buckle with ''INS. A'' by following the Accomplishment Instructions, paragraph B.(5), of SB 1111548–25–001–2023 Rev 002.

(B) If at least one of the four screws has a Torx head, before further flight, with the buckle removed, replace each Torx head screw with a hex head screw, reassemble the buckle, and reidentify the buckle with ''MOD. A'' by following the Accomplishment Instructions, paragraphs D.(1)(d) through (m), of SB 1111548–25–001–2023 Rev 002, except you are not required to return any parts to Parker Meggitt. If a screw head breaks off during disassembly, before further flight, replace the buckle with an airworthy buckle.

**Note 4 to paragraph (g)(2):** SB 1111548–25–001–2023 Rev 002 refers to a magnifying glass as an ''eye loupe.''

(3) As of the effective date of this AD, do not install a buckle identified in paragraph (c) of this AD on any helicopter unless the buckle is marked with ''MOD. A'' or ''INS. A.''

(4) For a crewmember seat or passenger seat with a restraint system with a buckle identified in paragraph (c) of this AD installed, as an option for the actions required by paragraph (g)(1) or (2) of this AD, as applicable, within 3 months after the effective date of this AD:

(i) Remove the male side from the lap of the restraint system assembly.

(ii) Fabricate a placard using at least 1/8 inch letters with the words ''USE OF THIS SEAT IS PROHIBITED'' on it and install the placard on the seat within the crewmember or passenger's clear view. The seat is then inoperative until the actions required by paragraph (g)(1) or (2) of this AD, as applicable, are accomplished and the male side from the lap of the restraint system assembly is reinstalled.

**(h) Credit for Previous Actions**

(1) You may take credit for the actions required by paragraph (g)(1) or (2) of this AD, as applicable, if you accomplished AD 2024–01–11 before the effective date of this AD, provided torque of 15 to 25 in-lbs (1.69 to 2.82 N-m) was applied on the four hex head screws (P/N 0901101–149) during any repair of the buckle.

(2) You may take credit for actions required by paragraph (g)(1) or (2) of this AD, as applicable, if the corresponding actions were performed before the effective date of this AD using Parker Meggitt SB 1111475–25–001–2023, Revision 001, dated December 1, 2023, or Parker Meggitt SB 1111548–25–001–2023, Revision 001, dated December 1, 2023, as applicable, and provided torque of 15 to 25 in-lbs (1.69 to 2.82 N-m) was applied on the four hex head screws (P/N 0901101–149) during any repair of the buckle.

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, West Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the West Certification Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *AMOC@faa.gov*.

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

**(j) Additional Information**

For more information about this AD, contact David Kim, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5274; email: *david.kim@faa.gov.*

**(k) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Parker Meggitt Service Bulletin 1111475–25–001–2023, Revision 002, dated April 1, 2024.

(ii) Parker Meggitt Service Bulletin 1111548–25–001–2023, Revision 002, dated April 1, 2024.

(3) For Parker Meggitt material identified in this AD, contact Parker Meggitt Services, 1785 Voyager Avenue, Simi Valley, CA 93063; phone: 877–666–0712; email: *TechSupport@meggitt.com;* website: *meggitt.com/services_and_support/customer_experience/update-on-buckle-assembly-service-bulletins.*

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, 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 October 21, 2024.

**Steven W. Thompson,**

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

[FR Doc. 2024–24756 Filed 10–24–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

## 21 CFR Part 1308

**[Docket No. DEA–900N]**

## Schedules of Controlled Substances: Placement of Butonitazene, Flunitazene, and Metodesnitazene Substances in Schedule I

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Drug Enforcement Administration places butonitazene, flunitazene, and metodesnitazene including their isomers, esters, ethers, salts and salts of isomers, esters and ethers in schedule I of the Controlled Substances Act. The regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle these three specific controlled substances will continue to apply as a result of this action.

**DATES:** Effective October 25, 2024.

**FOR FURTHER INFORMATION CONTACT:** Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

**SUPPLEMENTARY INFORMATION:** In this final rule, the Drug Enforcement Administration (DEA) permanently schedules the following three controlled substances in schedule I of the Controlled Substances Act (CSA), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- Butonitazene (2-(2-(4-butoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)-*N,N*-diethylethan-1-amine),
- Flunitazene (*N,N*-diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine),
- Metodesnitazene (*N,N*-diethyl-2-(2-(4-methoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine).

### Legal Authority

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services (HHS), or on the petition of any interested party.[1] This action is supported, *inter alia,* by a recommendation from the Assistant Secretary for Health of HHS (Assistant Secretary for HHS or Assistant Secretary) and an evaluation of all other relevant data by DEA. This action continues the imposition of the regulatory controls and administrative, civil, and criminal sanctions of schedule I controlled substances on any person who handles (manufactures, distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) or proposes to handle butonitazene, flunitazene, and metodesnitazene.

### Background

On April 12, 2022, pursuant to 21 U.S.C. 811(h)(1), DEA published an order in the **Federal Register** temporarily placing butonitazene, flunitazene, metodesnitazene, and four additional benzimidazole-opioids in schedule I of the Controlled Substances Act (CSA) based upon a finding that these substances pose an imminent hazard to the public safety.[2] That temporary order was effective upon the date of publication. Under 21 U.S.C. 811(h)(2), the temporary scheduling of a substance expires at the end of two years from the date of issuance of the scheduling order, except that DEA may extend temporary scheduling of that substance for up to one year during the pendency of permanent scheduling proceedings under 21 U.S.C. 811(a)(1) with respect to the substance. Pursuant to 21 U.S.C. 811(h)(2), the temporary scheduling of butonitazene, flunitazene, and metodesnitazene was set to expire on April 12, 2024. However, on April 11, 2024, the DEA Administrator extended the temporary order in a separate action.[3] On the same day, the Administrator, on her own motion pursuant to 21 U.S.C. 811(a), initiated scheduling proceedings and published a notice of proposed rulemaking (NPRM) to permanently control butonitazene, flunitazene, and metodesnitazene in schedule I of the CSA.[4] Specifically, DEA proposed to add these substances to the opiates list under 21 CFR 1308.11(b).

### DEA and HHS Eight Factor Analyses

On November 15, 2023, the Assistant Secretary submitted HHS's scientific and medical evaluation and scheduling recommendation for butonitazene, flunitazene, metodesnitazene, and three other benzimidazole-opioids and their salts to the Administrator,[5] which recommended placing butonitazene, flunitazene, and metodesnitazene and their salts in schedule I of the CSA. In accordance with 21 U.S.C. 811(c), upon receipt of the scientific and medical evaluation and scheduling

[1] 21 U.S.C. 811(a).

[2] *See* Schedules of Controlled Substances: Temporary Placement of Butonitazene, Etodesnitazene, Flunitazene, Metodesnitazene, Metonitazene, *N*-Pyrrolidino etonitazene, and Protonitazene in Schedule I, 87 FR 21556 (Apr. 12, 2022). The four additional benzimidazole-opioids were etodesnitazene, metonitazene, *N*-pyrrolidino etonitazene, and protonitazene. DEA pursued separate scheduling actions for metonitazene, *see* 88 FR 56466 (Aug. 18, 2023) and for etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene, *see* 89 FR 25514 (Apr. 11, 2024) to remain as schedule I substances under the CSA in order to meet the United States' obligations under the United Nations Single Convention on Narcotic Drugs, Mar. 30, 1961, 18 U.S.T. 1407, 520 U.N.T.S. 151 (Single Convention), as amended by the 1972 Protocol.

[3] *See* Schedules of Controlled Substances: Extension of Temporary Placement of Butonitazene, Flunitazene, and Metodesnitazene in Schedule I of the Controlled Substances Act, 89 FR 25517 (Apr. 11, 2024).

[4] *See* Schedules of Controlled Substances: Placement of Butonitazene, Flunitazene, and Metodesnitazene Substances in Schedule I, 89 FR 25544 (Apr. 11, 2024).

[5] DEA published a final order to permanently place the three other benzimidazole-opioids (etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene) in schedule I of the CSA. *See* Schedules of Controlled Substances: Placement of Etodesnitazene, N-Pyrrolidino Etonitazene, and Protonitazene in Schedule I, 89 FR 25514 (Apr. 11, 2024).

recommendation from HHS, DEA reviewed the documents and all other relevant data, and conducted its own eight-factor analysis of the abuse potential of these three substances. Please note that both the DEA and HHS eight-factor analyses are available in their entirety under the tab ''Supporting Documents'' of the public docket for this action at *http://www.regulations.gov* under Docket Number ''DEA–900N.''

**Determination To Permanently Schedule Butonitazene, Flunitazene, and Metodesnitazene**

After review of the available data including the scientific and medical evaluation and the scheduling recommendation from HHS, DEA published an NPRM in the **Federal Register** on April 11, 2024, which proposed the placement of butonitazene, flunitazene, and metodesnitazene in schedule I of the CSA.[6] The NPRM provided an opportunity for interested persons to file a request for a hearing in accordance with DEA regulations on or before May 13, 2024. DEA received no hearing requests. The NPRM also provided an opportunity for interested persons to submit comments on the proposed rule on or before May 13, 2024.

**Comments Received**

DEA received two comments on the proposed rule to control butonitazene, flunitazene, and metodesnitazene in schedule I of the CSA. One commenter provided support for the rule. This commenter noted that permanent placement of these substances would be beneficial to the community safety. DEA appreciates the support for this rulemaking. The second commenter commended the proposed rule but noted that a class control action for the nitazene drug class would be more appropriate as opposed to individually scheduling substances in the benzimidazole-opioid drug class. DEA appreciates this comment as a potential alternative for consideration. However, due to the current threat of these specific substances, DEA will continue with solely scheduling these three substances.

**Scheduling Conclusion**

After consideration of the relevant matters presented through public comments, the scientific and medical evaluation and accompanying scheduling recommendation of HHS, and DEA's own eight-factor analysis, DEA finds that these facts and all relevant data constitute substantial evidence of potential for abuse of butonitazene, flunitazene, and metodesnitazene. DEA is therefore permanently scheduling these three benzimidazole-opioids as schedule I controlled substances under the CSA.

**Determination of Appropriate Schedule**

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule.[7] After consideration of the analysis and recommendation of the Assistant Secretary for HHS and review of all other available data, the Administrator of DEA, pursuant to 21 U.S.C. 811(a) and 21 U.S.C. 812(b)(1), finds that:

(1) Butonitazene, flunitazene, and metodesnitazene have a high potential for abuse. Butonitazene, flunitazene, and metodesnitazene, similar to etonitazene and fentanyl, are mu-opioid receptor agonists. These three benzimidazole-opioids have analgesic effects, and these effects are mediated by mu-opioid receptor agonism. HHS states that substances that produce mu-opioid receptor agonist effects in the central nervous system are considered as having a high potential for abuse (*e.g.* morphine and fentanyl). Data obtained from drug discrimination studies indicate that butonitazene, flunitazene, and metodesnitazene fully substituted for the discriminative stimulus effects of morphine.

(2) Butonitazene, flunitazene, and metodesnitazene have no currently accepted medical use in the United States. There are no FDA-approved drug products for butonitazene, flunitazene, and metodesnitazene in the United States. There are no known therapeutic applications for these benzimidazole-opioids, and DEA is not aware of any currently accepted medical uses for these substances in the United States.[8]

(3) There is a lack of accepted safety for use of butonitazene, flunitazene, and metodesnitazene under medical supervision. Because these substances have no FDA-approved medical use and have not been investigated as new drugs, their safety for use under medical supervision is not determined.

Based on these findings, the Administrator of DEA concludes that butonitazene, flunitazene, and metodesnitazene, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, warrant continued control in schedule I of the CSA.[9]

**Requirements for Handling Butonitazene, Flunitazene, and Metodesnitazene**

As discussed above, these three substances are currently subject to a temporary scheduling order, which added them to schedule I. Butonitazene, flunitazene, and metodesnitazene will continue to be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I substances, including the following:

[6] *See* Schedules of Controlled Substances: Placement of Butonitazene, Flunitazene, and Metodesnitazene Substances in Schedule I, 89 FR 25544 (Apr. 11, 2024).

[7] 21 U.S.C. 812(b).

[8] To place a drug or other substance in schedule I under the CSA, DEA must consider whether the substance has a currently accepted medical use in treatment in the United States. 21 U.S.C. 812(b)(1)(B). There is no evidence suggesting that butonitazene, flunitazene, and metodesnitazene have a currently accepted medical use in treatment in the United States. To determine whether a drug or other substance has a currently accepted medical use, DEA has traditionally applied a five-part test to a drug or substance that has not been approved by the FDA: i. The drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. See *Marijuana Scheduling Petition; Denial of Petition; Remand,* 57 FR 10499 (Mar. 26, 1992), pet. for rev. denied, *Alliance for Cannabis Therapeutics* v. *Drug Enforcement Admin.*, 15 F.3d 1131, 1135 (D.C. Cir. 1994). DEA and HHS applied the traditional five-part test for currently accepted medical use in this matter. In a recent published letter in a different context, HHS applied an additional two-part test to determine currently accepted medical use for substances that do not satisfy the five-part test: (1) whether there exists widespread, current experience with medical use of the substance by licensed health care practitioners operating in accordance with implemented jurisdiction-authorized programs, where medical use is recognized by entities that regulate the practice of medicine, and, if so, (2) whether there exists some credible scientific support for at least one of the medical conditions for which part (1) is satisfied. On April 11, 2024, the Department of Justice's Office of Legal Counsel (OLC) issued an opinion, which, among other things, concluded that HHS's two-part test would be sufficient to establish that a drug has a currently accepted medical use. Office of Legal Counsel, Memorandum for Merrick B. Garland Attorney General Re: Questions Related to the Potential Rescheduling of Marijuana at 3 (April 11, 2024). For purposes of this final rule, there is no evidence that health care providers have widespread experience with medical use of butonitazene, flunitazene, and metodesnitazene, or that the use of butonitazene, flunitazene, and metodesnitazene are recognized by entities that regulate the practice of medicine under either the traditional five-part test or the two-part test.

[9] 21 U.S.C. 812(b)(1).

*1. Registration.* Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) or who desires to handle butonitazene, flunitazene, and metodesnitazene must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of these substances in a manner not authorized by the CSA is unlawful and those in possession of any quantity of these substances may be subject to prosecution pursuant to the CSA.

*2. Disposal of stocks.* Butonitazene, flunitazene, and metodesnitazene must be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable federal, state, local, and tribal laws.

*3. Security.* Butonitazene, flunitazene, and metodesnitazene are subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, and 871(b), and in accordance with 21 CFR 1301.71–1301.76. Non-practitioners handling these three substances also must comply with the screening requirements of 21 CFR 1301.90–1301.93.

*4. Labeling and Packaging.* All labels and labeling for commercial containers of butonitazene, flunitazene, and metodesnitazene must comply with 21 U.S.C. 825 and be in accordance with 21 CFR part 1302.

*5. Quota.* Only registered manufacturers are permitted to manufacture butonitazene, flunitazene, and metodesnitazene in accordance with a quota assigned pursuant to 21 U.S.C. 826, and in accordance with 21 CFR part 1303.

*6. Inventory.* Any person registered with DEA to handle butonitazene, flunitazene, and metodesnitazene must have an initial inventory of all stocks of controlled substances (including these substances) on hand on the date the registrant first engages in the handling of controlled substances pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including butonitazene, flunitazene, and metodesnitazene) on hand every two years pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

*7. Records and Reports.* Every DEA registrant must maintain records and submit reports with respect to butonitazene, flunitazene, and metodesnitazene, pursuant to 21 U.S.C. 827, 832(a), and 958(e), and in accordance with 21 CFR 1301.74(b) and (c) and 1301.76(b) and parts 1304, 1312, and 1317. Manufacturers and distributors would be required to submit reports regarding butonitazene, flunitazene, and metodesnitazene to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827, and in accordance with 21 CFR parts 1304 and 1312.

*8. Order Forms.* Every DEA registrant who distributes butonitazene, flunitazene, and metodesnitazene must comply with the order form requirements, pursuant to 21 U.S.C. 828 and 21 CFR part 1305.

*9. Importation and Exportation.* All importation and exportation of butonitazene, flunitazene, and metodesnitazene must comply with 21 U.S.C. 952, 953, 957, and 958, and be in accordance with 21 CFR part 1312.

*10. Liability.* Any activity involving butonitazene, flunitazene, and metodesnitazene not authorized by, or in violation of, the CSA or its implementing regulations is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

## Regulatory Analyses

*Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14094 (Modernizing Regulatory Review)*

In accordance with 21 U.S.C. 811(a), this final scheduling action is subject to formal rulemaking procedures done ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563. E.O. 14094 modernizes the regulatory review process to advance policies that promote the public interest and address national priorities.

*Executive Order 12988, Civil Justice Reform*

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

*Executive Order 13132, Federalism*

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does not have substantial direct effects on the states, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

This rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

*Regulatory Flexibility Act*

The Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities.

On April 12, 2022, DEA published an order to temporarily place seven benzimidazole-opioids in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). DEA estimates that all entities handling or planning to handle butonitazene, flunitazene, and metodesnitazene have already established and implemented systems and processes required to handle these substances.

There are currently 45 registrations authorized to specifically handle butonitazene, flunitazene, or metodesnitazene, as well as 1,239 registered analytical labs and 861 researchers that are authorized to handle schedule I controlled substances generally. These 45 registrations represent 31 entities. A review of the 45 registrations indicates that all entities that currently handle butonitazene, flunitazene, and metodesnitazene also handle other schedule I controlled substances and have established and implemented (or maintained) systems and processes required to handle these substances. Therefore, DEA anticipates this final rule will impose minimal or no economic impact on any affected entities; and thus, will not have a significant economic impact on any affected small entity. Therefore, DEA

has concluded that this rule will not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

In accordance with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year . . . .'' Therefore, neither a Small Government Agency Plan nor any other action is required under the UMRA.

*Paperwork Reduction Act of 1995*

This rule would not impose a new collection or modify an existing collection of information under the Paperwork Reduction Act of 1995.[10] Also, this rule would not impose new or modify existing recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. However, this rule would require compliance with the following existing OMB collections: 1117–0003, 1117–0004, 1117–0006, 1117–0008, 1117–0009, 1117–0010, 1117–0012, 1117–0014, 1117–0021, 1117–0023, 1117–0029, and 1117–0056. 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.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

## PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11:
■ a. Redesignate paragraphs (b)(62) through (106) as (b)(65) through (109)
■ b. Redesignate paragraphs (b)(44) through (61) as (b)(46) through (63);
■ c. Redesignate paragraphs (b)(24) through (43) as (b)(25) through (44);
■ d. Add new paragraphs (b)(24), (b)(45), and (b)(64); and
■ e. Remove and reserve paragraphs (h)(50), (52), and (53).

The additions to read as follows:

**§ 1308.11 Schedule I.**

* * * * *

(b) * * *

| | |
|---|---|
| * * * * * * * | |
| (24) Butonitazene (2-(2-(4-butoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)-*N,N*-diethylethan-1-amine) | 9751 |
| * * * * * * * | |
| (45) Flunitazene (*N,N*-diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine) | 9756 |
| * * * * * * * | |
| (64) Metodesnitazene (*N,N*-diethyl-2-(2-(4-methoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine) | 9764 |

* * * * *

**Signing Authority**

This document of the Drug Enforcement Administration was signed on October 15, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

**Heather Achbach,**

*Federal Register Liaison Officer, Drug Enforcement Administration.*

[FR Doc. 2024–24635 Filed 10–24–24; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement

### 30 CFR Part 250

**[Docket ID: BSEE–2021–0003; EEEE500000245E1700D2 ET1SF0000.EAQ000]**

**RIN 1014–AA49**

## Oil and Gas and Sulfur Operations in the Outer Continental Shelf—High Pressure High Temperature Updates; Correction

**AGENCY:** Bureau of Safety and Environmental Enforcement (BSEE), Interior.

**ACTION:** Final rule; correction.

**SUMMARY:** BSEE is correcting a final rule that appeared in the **Federal Register** on August 30, 2024. BSEE is publishing a correction to fix an erroneous statement in the preamble of the final rule. BSEE inadvertently stated it did not receive public comments to an identified section of the rule. However, BSEE had received a comment associated with that section of the rule. BSEE evaluated and addressed that comment in other discussions in the preamble of the final rule.

**DATES:** Effective October 25, 2024.

**FOR FURTHER INFORMATION CONTACT:** Kirk Malstrom, Regulations and Standards Branch, (202) 258–1518, or by email: *regs@bsee.gov.*

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2024–18598 appearing on page 71088 in the **Federal Register** of Friday, August 30, 2024, the following corrections to the preamble are made:

1. Under the heading ''How must barrier systems be used (§ 250.207)'', which begins near the bottom of the third column on page 71087, the text under the subheading ''Summary of Final Rule Revisions'', which begins near the top of the first column on page 71088, is corrected to read:

BSEE received and considered a comment regarding proposed § 250.207 and includes the proposed language in the final rule without change.

*Summary of Comment:* A commenter expressed concerns with the applicability of this section to existing blowout preventer barrier system requirements and asked if new and

[10] 44 U.S.C. 3501–3521.

unusual technology can be a barrier. The commenter also suggested that BSEE include capabilities for one specific type of barrier that can shear and seal pipe used for certain well operations.

*Response:* As discussed in this section and other sections of the final rule preamble, this section would not alter or impact any existing regulations (see summary of proposed rule revisions for this section). BSEE also stated that the New or Unusual Technology Barrier Equipment Conceptual Plan requirements apply to new or unusual technology ''that is identified'' as barrier equipment (see final rule preamble section III for § 250.201). Operators that use new or unusual technology identified as a barrier must comply with the applicable requirements of this final rule (*e.g.,* see §§ 250.201, 250.207, and 250.229). BSEE disagrees that changes to this section are necessary. This section does not identify any specific types of barriers, and BSEE's intent is not to limit the use of new or unusual technology by including specific operating capabilities that may not be applicable to all barriers (see final rule preamble section III for § 250.206).

This action by the Principal Deputy Assistant Secretary is taken pursuant to an existing delegation of authority.

**Steven H. Feldgus,**

*Principal Deputy Assistant Secretary, Land and Minerals Management.*

[FR Doc. 2024–24783 Filed 10–24–24; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–USCG–2023–0652]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Jupiter, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary interim rule with request for comments.

**SUMMARY:** The Coast Guard is temporarily modifying the operating schedule that governs the Indiantown Road Bridge across the Atlantic Intracoastal Waterway (AICW), mile 1006.2, at Jupiter, FL. The bridge is currently operating under a temporary final rule (TFR) allowing the drawbridge to remain closed to navigation during designated times daily including weekends, to alleviate vehicle traffic congestion caused by the replacement of an adjacent bridge. Based on observed roadway traffic, it has been determined that bridge closures on the weekend and Federal holidays is not necessary.

**DATES:** This temporary interim rule is effective from October 25, 2024 through 11:59 p.m. on August 31, 2025.

Comments and related material must reach the Coast Guard on or before November 25, 2024.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov.* Type the docket number USCG–2023–0652 in the ''SEARCH'' box and click ''SEARCH''. In the Document Type column, select ''Supporting & Related Material''.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary interim rule, call or email Mr. Leonard Newsom, Seventh District Bridge Branch, Coast Guard; telephone (571) 613–1816, email *Leonard.D.Newsom@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
FL Florida
AICW Atlantic Intracoastal Waterway
FDOT Florida Department of Transportation
TFR Temporary Final Rule
TIR Temporary Interim Rule

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary interim 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), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to the public interest to delay the issuance of the rule and the beneficial impacts it provides to the local community and users of the waterway. The bridge is currently allowed to remain closed to navigation, daily, during designated times to assist with vehicle congestion. FDOT has determined the bridge need not remain closed to navigation during the designated times on weekends and Federal holidays until the TFR expires on August 31, 2025.

On February 2, 2024, the Coast Guard published a TFR entitled ''Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, at Jupiter, FL'' in the **Federal Register** (89 FR 7287) which allowed the bridge owner, FDOT to deviate from the current operating schedule in 33 CFR 117.261(q) to alleviate vehicle traffic congestion on the Indiantown Road Bridge caused by the replacement of an adjacent bridge.

The Coast Guard is soliciting comments on this rulemaking during the first 30 days of this rule going into effect. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective upon publication in the **Federal Register**. For reasons presented above, delaying the effective date of this rule would be impracticable and contrary to the public interest due to the fact that an increase in marine traffic is noticed on weekends and Federal holidays when vehicle congestion is not significant. Allowing the drawbridge to remain closed during designated times for vehicle congestion is not necessary for weekends and Federal holidays.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this temporary interim rule under authority in 33 U.S.C. 499. The Indiantown Road Bridge across the AICW, mile 1006.2, at Jupiter, FL is a double-leaf bascule bridge with 35 feet of vertical clearance in the closed position. The Indiantown Road Bridge normally operates under § 117.261(q); however, paragraph (q) has been stayed and a temporary paragraph (p) was issued to alleviate vehicle traffic congestion on the Indiantown Road Bridge caused by the replacement of an adjacent bridge.

The bridge is currently allowed to remain closed to navigation during designated times daily until 11:59 p.m. on August 31, 2025. On June 25, 2024, the Coast Guard was notified by the bridge owner, Florida Department of Transportation (FDOT), that the modified schedule was not required on weekends and Federal holidays as vehicle congestion is not significant. FDOT has requested the Coast Guard

remove the weekend and Federal holiday restrictions.

## IV. Discussion of the Temporary Interim Rule

The Coast Guard is issuing this rule, which permits a temporary deviation from the temporary final rule that governs the Indiantown Road Bridge across the AICW, mile 1006.2, at Jupiter, FL. This rule allows the bridge to open on the hour and half hour on weekends and Federal holiday through August 31, 2025. This temporary interim rule is necessary to meet the reasonable needs of navigation until construction of an adjacent bridge is completed. 33 CFR 117.261(q) will remain stayed until 11:59 p.m. on August 31, 2025, and the current temporary paragraph (p) will be revised to reflect the new temporary operating schedule.

## V. Regulatory Analyses

We developed this temporary interim rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders.

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the ability that vessels able to transit the bridge while in the closed position may do so at any time.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 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 bridge 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 contact 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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Government*

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 Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). The Coast Guard has 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 promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

## VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0652 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION**

**CONTACT** section of this document for alternate instructions.

To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you click on the'' Dockets'' tab and then the rule, you should see a ''Subscribe'' option for email alerts. Selecting this option will enable notifications when comments are posted, or if/when a final rule is published.

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1. Revision No. 01.3

■ 2. Section 117.261 is amended by revising paragraph (p).

**§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.**

* * * * *

(p) *Indiantown Road Bridge, mile 1006.2, at Jupiter.* The draw shall open on the hour and half hour except that the draw need not open from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday except Federal holidays until 11:59 p.m. on August 31, 2025.

* * * * *

Dated: October 18, 2024.

**Douglas M. Schofield,**

*Rear Admiral, U.S. Coast Guard, Commander, Coast Guard Seventh District.*

[FR Doc. 2024–24711 Filed 10–24–24; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2024–0957]**

**RIN 1625–AA00**

## Safety Zones; Houston Ship Channel and Morgan's Point, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing two temporary safety zones, a 100-yard radius moving safety zone and a 25-yard radius fixed safety zone, around the M/V PIETERSGRACHT, in the navigable waters of the Houston Ship Channel and its vicinity. The temporary safety zones are necessary to protect persons, property, and the marine environment from potential hazards associated with the transfer of gantry cranes. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zones unless specifically authorized by the Captain of the Port Sector Houston-Galveston or a designated representative.

**DATES:** This rule is effective from 1 a.m. on October 29, 2024, through 5 p.m. on November 15, 2024.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0957 in the search box, and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rule, call or email First Class Marine Science Technician Christopher Morgan, Sector Houston-Galveston Waterways Management Division, U.S. Coast Guard; telephone 713–398–5823, email *houstonwwm@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

COTP Captain of the Port
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 under authority in 5 U.S.C. 553(b)(B). This statutory 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.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Prompt action is needed to respond to potential safety hazards associated with the transfer of this equipment. It is impracticable to publish an NPRM because we must establish these safety zones by October 29, 2024.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because prompt action is needed to respond to the potential safety hazards associated with the transfer of gantry cranes scheduled to begin on October 29, 2024.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Houston-Galveston (COTP) has determined that potential hazards associated with the transfer of gantry cranes starting October 29, 2024, will be a safety concern for anyone within a 100-yard radius of the M/V PIETERSGRACHT while in transit and within a 25-yard radius of the M/V PIETERSGRACHT while moored. This rule is needed to protect persons, property, and the marine environment within the navigable waters of the safety zones while the M/V PIETERSGRACHT transits to and unloads gantry cranes in Morgan's Point, Texas.

### IV. Discussion of the Rule

This rule establishes two temporary safety zones from 1 a.m. on October 29, 2024, through 5 p.m. on November 15, 2024. The temporary safety zones include a moving safety zone, covering all navigable waters within a 100-yard radius of the M/V PIETERSGRACHT, a general cargo ship, while underway and a fixed safety zone covering all navigable waters within a 25-yard radius of the M/V PIETERSGRACHT while moored. The duration of these

zones is intended to ensure the safety of the public, vessels and the navigable waters in the specified areas during the transit of the gantry cranes in the Houston Ship Channel and while the vessel is moored and unloading. No vessel or person will be permitted to enter, transit through, anchor in, or remain within the safety zones without obtaining permission from the COTP or a designated representative.

*Moving Safety Zone:* This area includes all waters within a 100-yard radius of the M/V PIETERSGRACHT as the vessel transits from the Gulf of Mexico off the coast of Galveston and through the Houston Ship Channel. The approximate start position is 29°19′01.21″ N, 094°38′38.1″ W, located in the Gulf of Mexico off the coast of Galveston, Texas.

*Fixed Safety Zone:* This area includes all waters within a 25-yard radius of the M/V PIETERSGRACHT once the M/V PIETERSGRACHT is moored at Barbours Cut Terminal in Morgan's Point, Texas, at coordinates 29°41′03″ N, 094°59′40″ W.

## 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 the 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, the Office of Management and Budget has not reviewed this rule.

This regulatory action determination is based on the safety zones' size, location, duration, and time-of-day. The safety zones will be subject to enforcement the entire duration of the effective period to facilitate the safe transfer of gantry cranes in the Houston Ship Channel. Although the rule prohibits persons and vessels from entering, transiting through, anchoring in, or remaining within the regulated area without authorization from the COTP or a designated representative, persons and vessels may be present in the surrounding areas during the enforcement period. The Coast Guard will provide advance notification of the safety zones to the local maritime community by Local Notice to Mariners or Broadcast Notice to Mariners, and the rule will allow persons and vessels to seek permission to enter the zones.

### *B. Impact on Small Entities*

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. 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 principles of federalism 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 Polic1y 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 safety zones that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the safety zones around the M/V PIETERSGRACHT while underway and moored in the Houston Ship Channel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01,

Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0957 to read as follows:

**§ 165.T08–0957 Fixed and Moving Safety Zone; Vicinity of the M/VPIETERSGRACHT, Houston Ship Channel and Morgan's Point, TX.**

(a) *Location.* The following areas are temporary safety zones:

(1) *Moving Safety Zone.* All waters within a 100-yard radius of the M/V PIETERSGRACHT, as the vessel transits from the approximate coordinates 29°19′01.21″ N, 094°38′38.1″ W, off the coast of Galveston, TX, and proceeds through the Houston Ship Channel to the assigned docking station.

(2) *Fixed Safety Zone.* All waters within a 25-yard radius of the M/V PIETERSGRACHT while moored at the Barbours Cut Terminal in Morgan's Point, Texas.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Sector Houston-Galveston (COTP) in the enforcement of the safety zones.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, all persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zones described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zones by contacting the COTP by telephone at 866–539–8114, or the COTP's designated representative via VHF radio on channel 16. If authorization is granted by the COTP or the COTP's designated representative, all persons and vessels receiving such authorization must comply with the lawful instructions of the COTP or the COTP's designated representative.

(d) *Enforcement period.* This rule will be subject to enforcement from 1 a.m. on October 29, 2024, through 5 p.m. on November 15, 2024.

**Keith M. Donohue,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Houston-Galveston.*

[FR Doc. 2024–24757 Filed 10–24–24; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 14

**RIN 2900–AR93**

## Fee Reasonableness Reviews; Effect of Loss of Accreditation on Direct Payment

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is issuing this final rule to address its process for reviewing, determining, and allocating reasonable fees for claim representation, and to address the effect on direct payment of the termination of a claims agent's or attorney's VA accreditation.

**DATES:**

*Effective date:* This final rule is effective April 1, 2025.

*Applicability date:* The provisions of this final rule shall apply to all fee allocation notices issued on or after the effective date of this final rule.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Taylor, Office of General Counsel (022D), 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–7699. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** On December 21, 2023, VA published in the **Federal Register** (88 FR 88,295) a proposed rule to address its process for reviewing, determining, and allocating reasonable fees for claim representation, and to address the effect on direct payment of the termination of a claims agent's or attorney's VA accreditation. The proposed rule allowed for a comment period ending on February 20, 2024. During the comment period, VA received 15 comments, which are discussed below. After considering these comments, VA has decided to finalize the proposed rule without amendment.

**Comments on Representatives and Fees Generally**

One commenter stated that ''the tone of [VA's] proposal suggests that attorney involvement in the [claims] process is part of some problem.'' VA thanks the commenter for this comment, but, to be clear, VA takes no issue with VA-accredited attorneys and claims agents (hereinafter ''agents'') assisting claimants and recognizes the important service they provide. But the fact of the matter is that there has been an increase in multi-attorney and multi-agent cases and, when those agents and attorneys request direct payment, VA needs an efficient process to allocate fees in all those cases. This rule provides such a process. And this rule's process will (1) empower agents and attorneys to negotiate fees on their own and (2) deliver fees to agents and attorneys more expeditiously (and benefits to veterans more expeditiously). Those are not anti-attorney or anti-agent measures or results.

Another commenter stated that fees should be a matter between a veteran and representative, and that representatives should not get fees from VA. VA thanks the commenter, but—to be clear—VA does not pay representatives independently. VA only pays representatives (out of a claimant's past-due benefits) when the claimant and the representative have requested it. And, under this rule, VA will only get involved with the question of fees when (1) direct payment is requested or (2) a fee reasonableness review is requested or otherwise warranted. Moreover, consistent with this commenter's general view on fee matters, this rule sets forth reasonable default allocations that will allow claimants and representatives to resolve fee matters on their own in many cases. Nevertheless, if that effort is unsuccessful, VA's Office of General Counsel (OGC) remains available to review and decide a reasonable fee allocation for the case.

A third commenter stated that VA should ''require agents or attorneys to

request a fee reasonableness review[ ] in order to receive direct payment.'' VA appreciates this comment, but has not been provided evidence of widespread acceptance of unreasonable fees that would warrant such a drastic action of not releasing *any* fees absent individualized review. Particularly given the workload burden that approach would create, and the legal presumption of fee reasonableness for certain agents or attorneys under 38 CFR 14.636(f)(1), VA declines to implement that approach at this time.

VA makes no changes in response to these comments.

**Comments on Unaccredited Companies and Upfront Fees**

One commenter stated that the proposed rule was excellent, but questioned how VA was dealing with unaccredited companies that charge high fees to veterans. Another commenter similarly stated support for limitations on fees, but was concerned about individuals and companies charging upfront fees. A third commenter stated that VA needs to shut down unaccredited companies that ''rob veterans, botch claims, and cost vet[eran]s benefits.'' The commenter requested that VA refer these companies to its Office of Inspector General (OIG) and the Department of Justice (DOJ). A fourth commenter stated that VA should be taking action against unaccredited actors, rather than further regulating accredited agents and attorneys. The commenter stated that this rule ''creates more opportunity for unaccredited actors to enter this space.''

The issues of unaccredited companies and upfront fees are beyond the scope of this particular rulemaking. But they are issues VA is actively pursuing in other realms, including coordination with OIG and DOJ, and we do want to take this opportunity to reiterate the following: No individual or organization that lacks VA accreditation may charge any fee for preparation, presentation, or prosecution of a VA benefits claim. 38 U.S.C. 5901. And no individual or organization (even with accreditation) may charge a fee to a veteran for services on a VA benefits claim prior to the initial decision on the claim. 38 U.S.C. 5904(c). Veterans can protect themselves against unaccredited companies involved in predatory practices by only engaging with VA-accredited representatives on VA benefits issues. Moreover, in view of VA's oversight of and authority regarding accredited representatives, veterans engaging with VA-accredited representatives can avail themselves of the fee reasonableness process described in this rule if they believe they are being charged an unreasonable fee.

As to the fourth commenter's allegation that this rule ''creates more opportunity for unaccredited actors to enter this space,'' we do not understand the basis for this allegation. To the extent the allegation is related to VA's statement that including claimants in the default allocation of § 14.636(i)(1)(ii) ''accounts for the possibility that the claimant may have entered into a non-direct pay agreement with other agents or attorneys'' (88 FR at 88,296), that statement is referring to *accredited* agents and attorneys, not unaccredited actors, as confirmed by § 14.636(b) (''Only accredited agents and attorneys may receive fees from claimants . . . .''). Alternatively, to the extent the allegation is based on the commenter's belief that this rule ''could create'' a disincentive for accredited agents or attorneys to represent claimants, we disagree with that premise, as further explained below.

VA makes no change to this rule in response to these comments, but nevertheless thanks the commenters for raising this important issue.

**Comments on Declining Direct Payment for Agents or Attorneys Whose VA Accreditation Has Been Terminated**

One commenter expressed ''full support'' for VA's proposal to decline direct payment for agents or attorneys who have had their accreditation revoked (§ 14.636(h)(1)(iii)). Another commenter agreed with such an approach, and applauded VA's efforts to strengthen regulations that protect veterans and their dependents from unreasonable fees. A third commenter, however, was concerned ''with the impact this policy may have on those who voluntarily terminate their accreditation due to illness or retirement.'' The commenter questioned ''whether these individuals will lose their fees or be forced to stay accredited to receive earned fees even when they are no longer taking on new clients.''

VA thanks each of the commenters on this issue. As to the last commenter's question, under this rule, even though there will be no direct payment for agents or attorneys whose VA accreditation has been terminated, that does not mean they lose the right to previously-earned fees or are forced to stay accredited to retain fee eligibility. Rather, upon receipt of a fee allocation notice, if they believe they deserve a fee from the award at issue, they can work out an arrangement with the other parties or (if that is unsuccessful) can request an OGC fee reasonableness review. In sum, while VA will no longer directly pay agents or attorneys who have lost their accreditation, this rule still allows those individuals to pursue a fee if they believe they have earned one in the case.

VA makes no change in response to these comments.

**Comments on Current Fee Reasonableness Wait Times**

One commenter stated that their law firm has five cases that have been pending fee reasonableness review since 2022, even though all the attorneys on the case were from the same firm. A similar commenter stated that they are currently waiting for a fee reasonableness determination, there is no timeline for such a determination, and that the process is haphazard. A third commenter stated that fee matters are ''often inexplicably and systematically delayed.'' A fourth commenter described their ''unpleasant experience'' waiting over 430 days for a fee reasonableness review that ''lacks any sort of transparent business process.'' This commenter stated that the case was referred for a reasonableness review simply because another attorney—who did not represent the claimant at the Board of Veterans' Appeals (Board) and now remained silent on the issue of fees—had represented the claimant six years prior.

VA thanks these commenters. This rule has been designed to remedy this issue and reduce fee reasonableness wait times. With the institution of reasonable default allocation rules, there will be less cases in the queue for a fee reasonableness review; thus, those cases that warrant such review will receive a determination more promptly. The first commenter's situation is an apt example. Under this rule, if no party objects to the default allocation within 60 days, VA may immediately release the fee to the successor attorney at the firm (or split the fee, depending on which default allocation rule applies). *See* 38 CFR 14.636(i)(1)–(2). Parties will no longer have to wait for a fee reasonableness review just because two attorneys represented the claimant. The fourth commenter's situation is also instructive. Even though another attorney provided representation six years prior, if no party objects within 60 days, the commenter could receive the entire fee shortly thereafter (assuming the § 14.636(i)(1) default is applicable). Moreover, the efficiency gains under this rule could also free up OGC resources to implement business practices that better serve the parties during the fee reasonableness process. Because this rule remedies these

commenters' concerns, VA makes no change in response to the comments.

The fourth commenter further stated that the increase in fee reasonableness case inventory was the result of VA's policy choice to refer all direct-pay multi-attorney or multi-agent matters for a fee reasonableness review without any opportunity for the parties to resolve the matter on their own. We do not dispute that VA's policy to refer to OGC all direct-pay multi-attorney/agent fee matters, in conjunction with the rising number of multi-attorney/agent matters, has been a factor for the increase. Because there was no rule setting forth default allocations, VA had to refer all these cases for a determination on how much to pay each agent or attorney. Now, however, as stated in the preamble to the proposed rule, VA believes that the best course forward is to establish default allocation rules, which will allow veterans and representatives the opportunity to resolve fee matters on their own in lieu of a fee reasonableness review. 88 FR at 88,295. We believe this approach accords with the commenter's view. VA thanks the commenter and makes no change in response to the comment.

**Comments on the § 14.636(i)(1)(i) Default Allocation**

One commenter expressed support for the default allocation for cases involving a ''continuous'' agent or attorney, § 14.636(i)(1)(i), stating that such an allocation ''incentivizes ethical behavior and the high quality representation that our Veterans deserve.'' The commenter stated that there is an ''unethical (but sadly widespread) practice wherein a representative submits a few documents on behalf of a client, drops representation of that client, and then sits back and collects fees for the next 5–10 years based on the work done by subsequent representatives or by the Veteran on his [or her] own.'' According to the commenter, this default properly prioritizes ''protecting honest Veterans from unscrupulous representatives'' and ''encouraging ethical and responsible legal representation of Veterans'' over certain representatives' attempts ''to collect fees from awards granted to Veterans long after their representation ends.'' A second commenter, however, expressed concern with this default allocation, stating that a discharged agent or ''attorney can spend years developing evidence, submitting argument, consulting with and advising a client, and investing other resources on a case. . . . VA would entirely ignore all these services and simply award the fee to the 'continuous' agent or attorney.''

VA thanks both commenters for their comments. We agree with several of the points made by the first commenter. As to the second commenter's concern, we acknowledge that there are situations where the discharged [1] agent or attorney performed more valuable services for the claim than the continuous agent or attorney; there are also situations where the continuous agent or attorney performed the more valuable services. Accordingly, we structured the default allocation to be nothing more than an initial baseline: If the discharged agent or attorney (or the claimant) disagrees with the default in a given case, the parties have a 60-day window to resolve the matter on their own—and, if an agreement cannot be reached, OGC reasonableness review is available.[2] But the efficiency gain of a default is that—if no party has an issue with the continuous agent or attorney receiving the fee, or if the parties reach an agreement on their own as to how they will re-allocate the fee after its release—that is the end of the matter and OGC will not have to adjudicate a case that no party has asked it to resolve. Accordingly, VA makes no change in response to these comments.

**Comments on the § 14.636(i)(1)(ii) Default Allocation**

One commenter expressed concern with the default allocation for cases where all agents and attorneys have been discharged, § 14.636(i)(1)(ii), stating that ''VA would treat both attorneys equally, even if the latter performed only minimal work.'' VA thanks the commenter for the comment, but, again, the default allocation is just an initial baseline; if any party believes the default split is not reasonable in a given case, the parties can work out on their own how to re-allocate the fee after receipt or (if that effort proves unsuccessful) request OGC review. The default is not there to assume that all cases with discharged agents or attorneys involve equal work by those agents or attorneys; it is there to provide a generally reasonable baseline that will be satisfactory to the parties in many circumstances and will enable OGC to focus its resources on those cases where a party has affirmatively expressed a desire for OGC review.

Another commenter recalled a situation in which their client was ''unknowingly solicited to sign a new [representation] agreement'' with another entity, such that they subsequently had to re-establish representation of the client. The commenter stated that, under this rule, the ''soliciting entity could have received an equal split'' or ''I may have been boxed out of my fees,'' *i.e.,* ''my years of work may have been thrown away or allocated out by default because a different or multiple representatives could have existed on decision day.'' VA thanks the commenter, but, to be clear, in this situation, so long as the representation is re-established prior to the date of the award of benefits (and is direct-pay eligible), the commenter would be allocated the entire fee under § 14.636(i)(1)(i). If the representation is not re-established in time, the commenter would nevertheless receive the fee allocation notice and, if dissatisfied with a § 14.636(i)(1)(ii) split, could request OGC review to ensure receipt of a reasonable fee. Accordingly, this rule provides agents and attorneys in such circumstances a sufficient remedy.

A third commenter stated opposition to a ''default fee split of any kind'' because it ''unlawfully impose[s] fee sharing'' and is unethical under ABA Formal Opinion 487. *See* ABA Comm. On Ethics & Prof'l Responsibility, Formal Op. 487 (2019). VA thanks the commenter, but Opinion 487 addresses a *successor counsel's obligations* to its client and prior counsel upon (and prior to) fee receipt; it does not address an *agency's* authorities or obligations under 38 U.S.C. 5904 in a multi-agent or multi-attorney case. To be clear, we do not dispute the relevance of this opinion in terms of the ethical obligations of representatives. Indeed, in the preamble to its proposed rule, VA stated that, ''upon receipt of a fee allocation notice, the agent or attorney has a professional responsibility to review the default fee and ensure that it is not clearly unreasonable; if it is, that agent or attorney has an ethical obligation to return that fee to the claimant.'' 88 FR at 88,296. VA further emphasized that ''[t]he failure to return the fee to the claimant in such circumstances could constitute a violation of VA's standards of conduct warranting suspension or cancellation of the agent's or attorney's accreditation to represent claimants before VA.'' *Id.* So, we agree that the Model Rules of Professional Conduct and Opinion 487 are relevant to agent and attorney obligations under this rule, but we do not agree that either ethically precludes VA from implementing this rule. We also do not agree with the commenter's allegation that this rule imposes mandatory fee sharing; as

[1] Herein, ''discharged'' refers to representatives who were either discharged or withdrew from the representation prior to the award of benefits.

[2] As merely an initial baseline, the default has no effect once a party requests OGC review. 88 FR at 88,296.

stated above, the default allocation is just an initial baseline, and if any agent or attorney believes they should not have to share a fee with another representative, they can simply file for OGC reasonableness review.

Accordingly, VA makes no change in response to these comments.

**Comments on Fee Reasonableness Data**

One commenter stated that the ''very small pool of data'' presented by VA in the preamble to the proposed rule (88 FR at 88,296) was insufficient to ''draw a sweeping conclusion that a client should automatically be part of the default allocation,'' when considering ''the large number of fees awarded in a year that never are contested.'' Another commenter stated that different data—comparing the cases that returned some of the potential fee to the claimant with ''the total number of cases where fees were generated, entitlement was established, and there was no referral or contest to OGC''—would be more relevant.

VA appreciates these comments, but disagrees about what data is most relevant here. The purpose of the data presented in the preamble to the proposed rule was to explain why we included the claimant in the default allocation for cases where all agents or attorneys were discharged. 38 CFR 14.636(i)(1)(ii). We reviewed the data for OGC reviews in such cases (not just a sample, but the entire pool of such cases from fiscal year 2022 and the first three-quarters of fiscal year 2023); the data reflected that—more often than not—OGC found it reasonable to return some of the potential fee to the claimant; and we concluded (for this reason and others, *see* 88 FR at 88,296) that a default that included the claimant in the allocation was a generally reasonable baseline for this type of case. Comparing this data to the total number of cases where OGC review was *not* provided is less relevant, because chronicling the number of cases where *no entity decided reasonableness* does not illuminate what a generally reasonable baseline for this type of case would or should be.[3]

A third commenter stated that VA's data reflects that OGC should continue reviewing fee reasonableness for every multi-agent or multi-attorney case. VA appreciates this comment, but the data presented was not addressing all multi-agent or multi-attorney cases; it was only addressing cases where all agents or attorneys had been discharged; and there is no basis for assuming that the data from this subset of cases is replicated for ''continuous'' agent or attorney matters, where fundamentally different factors are at play that generally result in the return of less money to claimants, including (1) the fact that the favorable decision awarding benefits was obtained *during* the representation and (2) the presumption that the continuous representative's fee is reasonable under § 14.636(f)(1). In general, VA believes that OGC's time and resources should be primarily dedicated to protecting claimants from unreasonable fees and resolving disputes over fees, rather than *sua sponte* deciding a fee allocation between attorneys or agents at no benefit to a claimant (as occurs in many cases where the § 14.636(f)(1) presumption of fee reasonableness applies).

A fourth commenter suggested that additional data—regarding OGC's inventory, OGC's oldest pending cases, VA regional offices that refer cases to OGC, and the percentage of OGC's cases initiated by a party—would be relevant. While VA does not have comprehensive data on all these issues, a review of OGC's incoming cases from the first quarter of fiscal year 2024 reflects that 77.5% of incoming cases were referred by the Veterans Benefits Administration, while 22.5% were the result of a party's request for review. Moreover, a sample of 138 OGC cases decided between March 2022 and January 2024 reflects that, on average, a decision on fee reasonableness was issued 2.9 years after VA's determination on fee eligibility. This data confirms that this rule's fundamental change—from automatic OGC review of direct-pay multi-agent or multi-attorney cases to party-initiated review[4]—is likely to have a significant effect on efficiency and to enable both representatives and veterans to receive their fees and benefits faster.[5]

VA makes no change in response to these comments.

**Comments on Allowing for Compromise Between the Parties**

One commenter expressed appreciation for ''the time and effort OGC exerted to propose a solution'' for expediting fee matters and agreed with VA that ''there are many fee matters that can be worked out between the parties'' (quoting 88 FR at 88,295). However, the commenter then opined that VA's proposal ''does not provide for such resolutions'' and suggested that ''parties should be permitted to submit a negotiated agreement.'' Another commenter stated that VA should ''create a process for attorneys and accredited agents'' to submit a ''consented arrangement.'' A third commenter suggested that ''VA create a form in which attorneys and accredited agents clearly state the mutually requested allocation of the fee, waive the rights to appeal and to reasonableness review, and in which claimants could additionally opt to waive the 60-day due process period. Upon receipt of this form signed by all parties, VA would simply release payment according to the parties' mutual agreement.'' The commenter stated that this process would not ''overlook[ ] the possibility of a reasonable compromise [on fees] between accredited agents and attorneys.''

VA thanks the commenters for these suggestions. But this final rule *does* allow for ''negotiated agreement[s]'' or ''consented arrangement[s],'' and *does not* overlook the possibility of compromise amongst the parties at issue. Indeed, VA has structured the default allocation rules so that the parties have a 60-day window to reach a compromise on their own. If a compromise is reached, there is no need to submit anything to VA: VA will release the fee in accord with the fee allocation notice and the parties can simply re-allocate the fee on their own in accord with the compromise reached. Thus, this final rule achieves the same aims as the commenters' proposals.

Moreover, while achieving the same aims, the final rule is preferable to the commenters' proposals. The commenters' proposals would require OGC review whenever an agreement *is not* submitted; this final rule would require OGC review whenever a request for reasonableness review *is* submitted. That difference between ''opt-in'' and ''opt-out'' will have a significant effect on the queue for OGC reasonableness reviews and the time that attorneys, agents, and claimants must wait to receive their earned fees and benefits. The final rule is preferable on that front.

[3] We will take this opportunity to note that the data for the first three quarters of fiscal year 2023 (88 FR at 88,296) remained consistent through the last quarter. In total, of the 115 fee reasonableness decisions issued in fiscal year 2023 addressing the situation where all agents and attorneys had been discharged, OGC returned some of the potential fee to the claimant in 103 of those decisions (89%). Overall, $2.2 million was at stake in these 115 cases, and OGC returned $1.52 million to claimants (69% of the amount at stake). This data further confirms that § 14.636(i)(1)(ii) provides a generally reasonable baseline for this type of case.

[4] Though OGC may still initiate its own review, § 14.636(i)(4), this rule was structured so that most of its reviews would be the product of party initiation.

[5] The above data (as well as the data provided in the preamble to the proposed rule) has been placed on the rulemaking docket, available at *www.regulations.gov*.

Finally, to the extent the commenters are seeking an avenue to waive the 60-day period, it is unclear that the benefit of such an avenue (fee release days or weeks earlier) outweighs the burden of carefully reviewing such a waiver to ensure that claimants have knowingly and voluntarily waived their appellate rights (to both OGC and Board review). We do not outright reject the idea, but think it is best to implement this final rule and then reassess. The final rule as it stands will, in many cases, reduce the time for fee receipt from 2.9 years on average (see data noted above) to approximately 60 days.

Accordingly, VA makes no change in response to these comments.

**Comments on Consequences of This Rule**

One commenter stated that this rule could add to OGC's inventory of fee reasonableness cases, because discharged agents or attorneys who worked on a case for years will not be satisfied with the provision of fees to a continuous agent or attorney under § 14.636(i)(1)(i), or with a split fee under § 14.636(i)(1)(ii), and will therefore request OGC review. Another commenter similarly predicted ''more reasonableness reviews/appeals'' under this rule.

VA appreciates the comments, but disagrees that OGC will have a higher inventory under this rule. Currently, OGC reviews *every* direct-pay case involving multiple agents or attorneys, whether the parties desire that review or not. Under this rule, OGC will generally limit its review to cases where a party requests it. That is a dramatic difference, as it could divert up to 77.5% of OGC's incoming caseload (per the data presented above). The situation laid out by the first commenter—discharged agents or attorneys who provided extensive services on a case for years—may be the most common circumstance where (the parties have difficulty reaching a compromise and) OGC review is desired, but there are many situations (*e.g.,* all representatives are from the same law firm; all representatives reach an agreement to re-allocate fees upon release; all representatives are fine with the default allocation) where OGC review will no longer be needed under this rule. This efficiency gain will enable both representatives and veterans to receive their fees and benefits faster.

The first commenter further stated that this rule could incentivize claimants ''to terminate representation when they anticipate a favorable decision,'' and could disincentivize agents and attorneys from representing claimants with prior agent or attorney representation. The second commenter echoed the concern about a potential disincentive here. VA appreciates the comments, but sees no basis for such speculation. First, the prospect that a claimant could be so confident that a favorable decision is forthcoming, so knowledgeable about § 14.636(i)(1)(ii), and so manipulative as to terminate representation to take advantage of that provision, is extremely unlikely. This assessment is confirmed by another commenter, who stated that ''the vast majority of the thousands of clients we've successfully represented before VA have been proven to be extremely honest and would never even think to purposely drop us as their legal representative in order to avoid having to pay our legal fee.'' In any event, even in that extremely unlikely case of claimant manipulation, the attorney or agent at issue could simply file for OGC review to ensure receipt of a reasonable fee for the case. Second, even if VA decided *not* to enact this rule, that same ''incentive to terminate'' would still exist, because terminating a representative before a decision renders the presumption of fee reasonableness inapplicable. *Compare* 38 CFR 14.636(f)(1) *with* 38 CFR 14.636(f)(2). So this rule presents no meaningful incentive change for claimants.

The same logic applies to the concern that agents and attorneys will not represent claimants with prior agent or attorney representation. Even if VA decided *not* to enact this rule, that same ''disincentive'' already exists under current practice, because all direct-pay cases involving multiple agents or attorneys are currently referred to OGC for allocation of the fee. So, either way, agents and attorneys know that the fee in the case will have to account for the prior agent or attorney. If anything, when compared to current practice, the rule change *promotes* representation of claimants with prior agent or attorney representation, given the structure of the § 14.636(i)(1)(i) default.

Accordingly, VA makes no change in response to these comments.

**Comments on Fee Eligibility and Reasonableness**

One commenter stated that VA's proposal unlawfully vests OGC with the authority to decide questions of fee eligibility in the first instance. Respectfully, that is a misunderstanding. Under this rule, § 14.636(i)(1) is clear that ''the agency of original jurisdiction that issued the decision'' awarding past-due benefits—which is not OGC—''shall decide whether the agents or attorneys who filed direct-pay fee agreements in the case are eligible for direct payment.'' Moreover, § 14.636(i)(5) provides that OGC may address fee eligibility only ''if no other agency of original jurisdiction has made a determination on that issue.'' This language is substantively identical to VA's previous regulatory language on the matter. VA is not expanding, or attempting to expand, the scope of OGC's authority in this rulemaking.

Another commenter stated that VA's proposal ''conflates'' the concepts of entitlement to a fee and reasonableness of a fee, because the default rules assume fee entitlement for all agents and attorneys. Again, with respect, that is a misunderstanding. Under this rule, § 14.636(i)(1) is clear that the agency of original jurisdiction that issued the decision awarding past-due benefits ''shall decide whether the agents or attorneys who filed direct-pay fee agreements in the case are eligible for direct payment''; § 14.636(i)(1)(i) and (ii) also contain the ''eligible for direct payment'' caveat; and § 14.636(i)(2) provides that ''direct payment eligibility determination[s]'' are appealable to the Board. In sum, VA's rule does not assume fee eligibility or entitlement for all agents and attorneys—it requires an agency of original jurisdiction finding of eligibility before an attorney or agent is included in the default allocation.

The same commenter asserted that VA's proposal ''creates a default on reasonableness that conflicts with'' 38 U.S.C. 5904(a)(5). VA appreciates the comment, but, in 2019, VA addressed the interplay between section 5904(a)(5) (''A fee that does not exceed 20 percent of the past due amount of benefits awarded on a claim shall be presumed reasonable.'') and the holding of *Scates* v. *Principi,* 282 F.3d 1362, 1365–66 (Fed. Cir. 2002) (discharged attorneys are only entitled to a fee based on quantum meruit that reflects their contribution to and responsibility for the benefits awarded). 84 FR 138, 151 (2019). VA explained that the section 5904(a)(5) presumption applied to continuous agents or attorneys whose fee does not exceed 20 percent of the past-due benefits awarded, while the *Scates* quantum meruit standard applied to discharged agents or attorneys. 84 FR at 151. VA incorporated that distinction in 38 CFR 14.636(f)(1)–(2). *See also Cox* v. *McDonough,* 34 Vet. App. 112, 126 (2021) (confirming that, per *Scates,* the fee reasonableness presumption does not apply when attorney is discharged), *aff'd,* 2023 WL 1846117 (Fed. Cir. 2023).

This rule merely continues that distinction. As VA explained in the

preamble to its proposed rule, the default allocation for cases involving a (direct pay eligible) ''continuous'' agent or attorney is logical because that individual's fee is presumed reasonable under § 14.636(f)(1); and the default allocation for cases where all agents or attorneys have been discharged is logical because the reasonableness presumption does not apply to those individuals—quantum meruit does, under *Scates* and § 14.636(f)(2). 88 FR at 88,296. So, to the extent the commenter discerns a conflict between this rule and section 5904(a)(5), any such conflict would be based in the holding of *Scates* and the distinction laid out at § 14.636(f)(1)–(2), not the provisions being instituted here.

A third commenter asserted that a default allocation that includes a claimant ''absent a concern raised by that individual is misplaced'' given the presumption of fee reasonableness. Again, however, the default allocation that includes a claimant (§ 14.636(i)(1)(ii)) is only applicable when the presumption of fee reasonableness does not apply and quantum meruit does. In a quantum meruit setting, where discharged attorneys or agents bear the burden of proving the value of their services, *Dobbs* v. *DePuy Orthopedics, Inc.,* 842 F.3d 1045, 1050 (7th Cir. 2016); *Turpin* v. *Anderson,* 957 S.W. 2d 421, 427 (Mo.App. 1997), there is nothing improper about (1) having a default allocation that effectively proposes a quantum meruit fee amount and (2) requiring discharged attorneys or agents to (negotiate with the other parties or) file with OGC if they believe they have earned more.

Accordingly, VA makes no change in response to these comments.

**Comment on Non-Direct Pay Agreements**

One commenter suggested that VA's proposal may have contained a ''simple oversight'' in not treating ''a current legal representative with a valid non-direct pay fee agreement'' as ''a continuous agent or attorney (meaning that there would be no presumption that they deserve their entire legal fee). . . .'' The commenter requested that VA pay no fee to discharged representatives if the claimant has a current legal representative with a valid non-direct pay fee agreement; alternatively, that VA institute a presumption that a discharged representative's fee agreement has ''no legal force'' if ''factors indicate that [the representative's] work was unsuccessful''; or, in the further alternative, that VA ''simply stop'' direct payment ''in all cases.''

VA appreciates the comment, but declines these requests. At the outset, as a technical matter, those with non-direct pay agreements *do* meet the definition of ''continuous agent or attorney'' in § 14.636(i) as long as they provided representation that continued through the date of the decision awarding benefits. But they are not entitled to a ''presumption that they deserve their entire legal fee,'' which could be 30, 33, or even 50 percent of the claimant's past-due benefits. Indeed, in VA's experience non-direct pay agreements hardly ever qualify for the statutory presumption of reasonableness: A review of 206 non-direct pay fee agreements received by OGC between February 15, 2023, and March 6, 2023, reflects that 204 of the agreements (99.03%) charged a fee over 20 percent of the past-due benefits awarded and therefore were ineligible for the presumption of reasonableness. 38 U.S.C. 5904(a)(5). In contrast, direct pay agreements must charge a fee that does not exceed 20 percent of the past-due benefits awarded, 38 U.S.C. 5904(d)(1), and therefore are all eligible for the presumption of reasonableness, 38 U.S.C. 5904(a)(5). Thus, direct pay and non-direct pay agreements do not always warrant identical treatment, and particularly when it comes to the default allocation rules, which—only implicated ''[w]hen one or more *direct-pay* fee agreements has been filed''—are primarily designed to facilitate efficient direct payment. 38 CFR 14.636(i)(1) (emphasis added).

That said, as noted in the preamble to the proposed rule, the default allocation of § 14.636(i)(1)(ii) ''accounts for the possibility that the claimant may have entered into a non-direct pay agreement with other agents or attorneys and may be personally responsible for paying those other agents or attorneys.'' 88 FR at 88,296. So this rule does preserve a portion of the fee for agents and attorneys with non-direct pay fee agreements. If the agent or attorney with the non-direct pay fee agreement believes that portion is insufficient, they have 60 days to resolve the matter with the other parties on their own; if an agreement cannot be reached, they can request OGC reasonableness review.

VA has considered the options presented by the commenter, including declining direct payment for discharged representatives, premising direct payment on a multi-factor test, or stopping direct payment altogether. But thousands of agents and attorneys and countless claimants still find value in direct payment, given (1) the relative certainty of collection it provides to agents and attorneys, (2) the 20 percent fee limitation it guarantees for claimants, and (3) the power imbalance and potential for confusion that arises when a representative privately attempts to collect a fee from a claimant. While this rule's enactment of § 14.636(h)(1)(iii) is itself evidence that VA is open to the prospect of declining direct payment in certain types of cases, VA is not willing—at this point—to abandon the direct payment option in the circumstances contemplated by the commenter (or to institute a potentially lengthy and subjective multi-factor test). Accordingly, VA makes no change in response to this comment.

**Comment on Rosinski and Snyder**

One commenter stated that the ''cash payment'' provision that VA proposed to relocate without change from § 14.636(h)(1)(iii) to § 14.636(h)(1)(iv) ''directly conflicts'' with *Rosinski* v. *Wilkie,* 32 Vet. App. 264 (2020), and *Snyder* v. *Nicholson,* 489 F.3d 1213 (Fed. Cir. 2007). VA thanks the commenter for the comment, but its proposed rule did not contemplate a substantive change to this provision; it merely relocated the provision without change to make way for a new and unrelated direct-payment requirement. That said, upon review of the comment, VA has determined that the continued propriety and suitability of the cash payment provision in light of *Rosinski* and *Snyder* does warrant additional consideration and public comment, so VA will issue a proposed amendment to the provision in an upcoming rulemaking. In terms of the current rulemaking, however, VA did not inform the public that the substance of this provision was at issue, and VA received no other comments weighing in on this issue, so VA declines to make any changes to the current rulemaking in response to this comment.

**Questions About This Rule**

One commenter asked how VA will ensure that all affected parties will be provided a fee allocation notice, because (according to the commenter) ''VA mailing irregularities are well-documented.'' Under this rule, VA ''shall issue'' the fee allocation notice ''to the parties,'' which includes ''the claimant or appellant [and] any agent or attorney who represented the claimant or appellant in the case.'' 38 CFR 14.636(i), (i)(1). So, all affected parties will be provided notice. But VA declines to implement any distinct procedure from its ordinary notification processes, and the commenter has suggested no alternative procedures.

The commenter also asked ''what training and resources'' will be provided to retrain affected employees and ''what quality assurance will be implemented.'' Suffice it to say here that training will be provided, procedures manuals will be updated, and quality review will be implemented. Because the commenter has not suggested any specific actions on that front, VA declines further comment on the matter.

The commenter further asked how VA ''will handle waiver of prior attorneys in fee cases,'' because (according to the commenter) a reasonableness review in the case of waiver ''is unnecessary'' and VA's approach to waiver has been ''inconsistent[ ].'' When an agent or attorney waives fees, VA will treat them as ineligible for direct payment (just like a *pro bono* agent or attorney) when applying the default rules of § 14.636(i)(1)(i) and (ii) to the case.

Finally, this commenter asked ''what notice VA will issue to whom if it determines there has been no qualifying request for review, or no entitlement to fees,'' because (according to the commenter) ''VA routinely makes such findings erroneously.'' As to ''no entitlement,'' as long as one ''direct-pay fee agreement[ ] has been filed,'' VA will provide notice to all parties of any determination of fee ineligibility. 38 CFR 14.636(i)(1). As to ''no qualifying request for review,'' if no request for OGC review or appeal to the Board is timely filed, VA may release the fee without additional notice. 38 CFR 14.636(i)(2).

The above question relates to a comment by another commenter, who recalled a situation where VA overlooked their direct-pay fee agreement and the claimant thus received the entirety of the past-due benefits. If the rare circumstance arises where VA mistakenly overlooks a direct-pay fee agreement (or a timely request for OGC review) and releases the fee, the affected party should contact OGC, which could move to review the matter on its own initiative. 38 CFR 14.636(i)(4).

A different commenter asked whether ''there should be a route to address'' the situation where veterans had to pay attorney fees from successful clear and unmistakable (CUE) claims pertaining to a Secretary of Veterans Affairs equitable relief decision on the issue of traumatic brain injury. Respectfully, this topic is outside of the scope of this rulemaking. This rulemaking does not address or amend any provisions regarding fees associated with CUE or equitable relief.

VA thanks the commenters and makes no change in response to these questions.

**Severability**

The purpose of this section is to clarify VA's intent with respect to the severability of provisions of this rule. Each provision of this rulemaking is capable of operating independently. If any provision of this rule is determined by judicial review or operation of law to be invalid, that partial invalidation will not render the remainder of this rule invalid. Likewise, if the application of any portion of this rule to a particular circumstance is determined to be invalid, VA intends that the rule remain applicable to all other circumstances.

**Executive Orders 12866, 13563, and 14094**

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Orders 12866 and 13563. The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under E.O. 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The basis for this certification is the fact that the rule will merely institute reasonable default rules for fee allocation and provide that agents and attorneys who have lost their VA accreditation collect any earned fees without VA assistance. These changes will not result in any loss of fees to which an agent or attorney is reasonably entitled, because, as noted above, any party dissatisfied with the default allocation in a given case can request OGC's determination on reasonable fees in the case. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

**Unfunded Mandates**

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

**Paperwork Reduction Act**

This final rule includes a provision constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collection of information associated with this rulemaking has an assigned OMB control number of 2900–0605 requiring a reinstatement. A reinstatement of this collection of information requires review and approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval. VA received no comments on the collection of information requiring reinstatement.

OMB has received the collection of information for reinstatement. OMB's receipt of the collection of information for reinstatement is not an approval to conduct or sponsor an information collection under the Paperwork Reduction Act of 1995. In accordance with 5 CFR 1320, the collection of information reinstatement associated with this rulemaking is not approved by OMB at this time. OMB's approval of the collection of information reinstatement will occur within 30 days after the Final rulemaking publishes. If OMB does not approve the collection of information reinstatement as requested, VA will immediately remove the provision containing the collection of information or take such other action as is directed by OMB.

The collection of information contained in 38 CFR 14.629 and 14.636 is described immediately following this paragraph, under its respective title.

*Title:* Application for Accreditation as a Claims Agent or Attorney, Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements.

*OMB Control No:* 2900–0605.

CFR Provisions: 38 CFR 14.636.

• *Summary of collection of information:*

(1) Applicants seeking accreditation as claims agents or attorneys to represent benefits claimants before VA must file VA Form 21a with OGC. The information requested in VA Form 21a includes basic identifying information, as well as certain information concerning training and experience, military service, and employment.

(2) Accredited agents and attorneys must file with VA any agreement for the payment of fees charged for representing claimants before VA. 38 U.S.C. 5904(c)(2); 38 CFR 14.636(g).

(3) Claimants, accredited agents, or accredited attorneys may request an OGC determination on a reasonable fee allocation in a given case. If they do, OGC will solicit (optional) responses from the other parties in the case. 38 U.S.C. 5904(c)(3); 38 CFR 14.636(i).

• *Description of need for information and proposed use of information:*

(1) The information in the VA Form 21a is used by OGC to determine the applicant's eligibility for accreditation as a claims agent or attorney. More specifically, it is used to evaluate qualifications, ensure against conflicts of interest, and to establish that statutory and regulatory eligibility requirements, *e.g.,* good character and reputation, are met.

(2) The information in recertifications is used by OGC to monitor whether accredited attorneys and agents continue to have appropriate character and reputation and whether they remain fit to prepare, present, and prosecute VA benefit claims.

(3) The information in a fee agreement is used by the Veterans Benefits Administration (VBA) to associate the fee agreement with the claimant's claims file, to potentially determine the attorney or agent's fee eligibility, and to potentially process direct payment of a fee from the claimant's past-due benefits. It is used by OGC to monitor whether the agreement is in compliance with laws governing paid representation, and to potentially review fee reasonableness.

(4) The information in a request for OGC fee review, or a response to such request, is used by OGC to determine the agents' or attorneys' contribution to and responsibility for the ultimate outcome of the claimant's claim, so that a determination on reasonable fees can be rendered.

• *Description of likely respondents:* Claimants, Attorneys, Agents.

• *Estimated number of respondents:* 34,695.

(1) For VA Form 21a applications, 2,280.

(2) For recertifications, 4,860.

(3) For fee agreements, 27,250 (750 first time filers and 26,500 repeat filers).

(4) For requests for OGC fee review, 305.

Total estimated number of respondents (2,280, 4,860, 27,250, 305 = 34,695).

• *Estimated frequency of responses:* One time.

• *Estimated Completion Time:* Varies as specified below.

(1) For VA Form 21a applications, 45 minutes.

(2) For recertifications, 10 minutes.

(3) For fee agreements, 1 hour for first time filers and 10 minutes for repeat filers.

(4) For requests for OGC fee review, 2 hours.

• *Total Annual Burden Hours:* 8,297 hours.

(1) For VA Form 21a applications, 1,710 hours.

(2) For recertifications, 810 hours.

(3) For fee agreements, 5,167 hours (750 hours for first time filers and 4,417 hours for repeat filers).

(4) For requests for OGC fee review, 610 hours.

Total estimated annual burden (1,710 hours, 810, hours, 5,167 hours, 610 hours = 8,297 hours).

• *Estimated cost to respondents per year:* $633,349.

(1) For VA Form 21a applications, $79,845 ($41,360 + $22,666 + $15,819).

| | | |
|---|---|---|
| 650 initial responses by attorneys | $84.84 × 487.5 hours (650 × 45 minutes/response) | $41,360.00 |
| 960 initial responses by non-attorneys | $31.48 × 720 hours (960 × 45 minutes/response) | 22,666.00 |
| 670 follow-up responses by non-attorneys | $31.48 × 502.5 hours (670 × 45 minutes/response) | 15,819.00 |

(2) For recertifications, $68,720 (810 hours × $84.84).

(3) For fee agreements, $438,368 (5,167 hours × $84.84).

(4) For requests for OGC fee review, $46,416 ($43,268 + $3,148).

| | | |
|---|---|---|
| 255 responses by non-claimants | $84.84 × 510 hours (255 × 120 minutes/response) | $43,268.00 |
| 50 responses by claimants | $31.48 × 100 hours (50 × 120 minutes/response) | 3,148.00 |

*Total estimated cost to respondents per year:* ($79,845, $68,720, $438,368, $46,416 = $633,349).

* To estimate the total information collection burden cost, VA used the May 2023. Bureau of Labor Statistics (BLS) average hourly wage codes of 23–1011: Lawyers ($84.84) and 00–0000: All Occupations ($31.48) to derive PRA estimates. This information is available at *https://www.bls.gov/oes/current/oes_nat.htm.* Please note numbers are subject to rounding for VA estimates.

**Congressional Review Act**

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 5 U.S.C. 804(2).

**List of Subjects in 38 CFR Part 14**

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

**Signing Authority**

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on October 17, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Jeffrey M. Martin,**

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

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 14 as set forth below:

## PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

■ 1. The authority citation for part 14 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5901–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

■ 2. Amend § 14.636 by:
■ a. Removing paragraph (c)(4);
■ b. Revising paragraphs (e), (g)(3), and (h)(1)(ii) and (iii);
■ c. Adding paragraph (h)(1)(iv); and
■ d. Revising paragraphs (i) through (k).

The revisions read as follows:

**§ 14.636 Payment of fees for representation by agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.**

* * * * *

(e) *Fee reasonableness factors.* Fees set forth in a fee agreement, charged, or received for the services of an agent or attorney admitted to practice before VA must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

(1) The extent and type of services the agent or attorney performed;

(2) The complexity of the case;

(3) The level of skill and competence required of the agent or attorney in giving the services;

(4) The amount of time the agent or attorney spent on the case;

(5) The results the agent or attorney achieved, including the amount of any benefits recovered;

(6) The level of review to which the claim was taken and the level of the review at which the agent or attorney was retained;

(7) Rates charged by other agents or attorneys for similar services;

(8) Whether, and to what extent, the payment of fees is contingent upon the results achieved;

(9) If applicable, the reasons why an agent or attorney was discharged or withdrew from representation before the date of the decision awarding benefits; and

(10) If applicable, the fee entitlement of another agent or attorney in the case.

* * * * *

(g) * * *

(3) A copy of a direct-pay fee agreement, as defined in paragraph (g)(2) of this section, must be filed with the agency of original jurisdiction within 30 days of its execution. A copy of any fee agreement that is not a direct-pay fee agreement must be filed with the Office of the General Counsel within 30 days of its execution by mailing the copy to the following address: Office of the General Counsel (022D), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Only fee agreements that do not provide for the direct payment of fees, documents related to review of fees under paragraph (i) of this section, and documents related to review of expenses under § 14.637, may be filed with the Office of the General Counsel. All documents relating to the adjudication of a claim for VA benefits, including any correspondence, evidence, or argument, must be filed with the agency of original jurisdiction, Board of Veterans' Appeals, or other VA office as appropriate. VA may accept fee agreements that were not filed within 30 days of execution upon a showing of sufficient cause.

(h) * * *

(1) * * *

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant,

(iii) The agent or attorney is accredited (*see* §§ 14.627(a) and 14.629(b)) on the date of VA's fee allocation notice (*see* paragraph (i) of this section), and

(iv) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an appellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (See 38 U.S.C. 5304(a) and 38 CFR 3.750))

* * * * *

(i) *Fee review.* For purposes of this paragraph (i), ''party'' means the claimant or appellant or any agent or attorney who represented the claimant or appellant in the case; ''eligible for direct payment'' means eligible for direct payment of a fee under the requirements of paragraphs (c), (g), and (h) of this section; ''continuous agent or attorney'' means the agent or attorney who provided representation that continued through the date of the decision awarding benefits; and ''timely filed'' means within 60 days of the fee allocation notice.

(1) When one or more direct-pay fee agreements has been filed in accordance with paragraph (g) of this section and a decision awards past-due benefits in a case, the agency of original jurisdiction that issued the decision shall issue to the parties a fee allocation notice. The fee allocation notice shall decide whether the agents or attorneys who filed direct-pay fee agreements in the case are eligible for direct payment, and shall provide one of two default fee allocations:

(i) In cases where a continuous agent or attorney is eligible for direct payment, the default shall be allocation of the fee to the continuous agent or attorney.

(ii) In cases where paragraph (i)(1)(i) of this section does not apply, the default shall be an equal split of the fee based on the number of agents or attorneys who are eligible for direct payment plus the claimant or appellant.

(2) A party that disagrees with the default fee allocation in a given case may file a request for Office of the General Counsel fee review, as provided in paragraph (i)(3) of this section. A party that disagrees with a direct payment eligibility determination may only appeal to the Board of Veterans' Appeals. Absent a timely filed request for Office of the General Counsel fee review or a timely filed appeal to the Board of Veterans' Appeals, the default fee allocation described in paragraphs (i)(1)(i) and (ii) of this section is final and VA may release the fee.

(3) A request for Office of the General Counsel fee review under this paragraph (i) must be filed electronically in accordance with the instructions on the Office of the General Counsel's website, or at the following address: Office of the General Counsel (022D), 810 Vermont Avenue NW, Washington, DC 20420. The request must include the names of the veteran and all parties, the applicable VA file number, and the date of the decision awarding benefits. The request must set forth the requestor's proposal as to reasonable fee allocation, and the reasons therefor, and must be accompanied by all argument and evidence the requestor desires to submit.

(4) Upon the receipt of a timely filed request under paragraph (i)(3) of this section, or upon his or her own initiative, the Deputy Chief Counsel with subject-matter jurisdiction will initiate the Office of the General Counsel's motion for a fee review by sending notice to the parties. Not later than 30 days from the date of the motion, any party may file a response, with all argument and evidence the party desires to submit, electronically in accordance with the instructions on the Office of the General Counsel's website, or at the following address: Office of the General Counsel (022D), 810 Vermont Avenue, NW, Washington, DC 20420. Such responses must be served on all other parties. The Deputy Chief Counsel

with subject-matter jurisdiction may, for a reasonable period upon a showing of sufficient cause, extend the time for any party's response.

(5) The General Counsel or his or her designee shall render the Office of the General Counsel's decision on the matter. The decision will be premised on the reasonableness factors of paragraph (e) of this section, the standards of paragraph (f) of this section, the limitation on direct payment of paragraph (h)(1)(i) of this section, the claims file, the parties' submissions, and all relevant factors. The decision may address the issue of fee eligibility if no other agency of original jurisdiction has made a determination on that issue.

(6) The Office of the General Counsel's decision is a final adjudicative action that may only be appealed to the Board of Veterans' Appeals. Unless a party files a Notice of Disagreement with the Office of the General Counsel's decision, the parties must allocate any excess payment in accordance with the decision not later than the expiration of the time within which the Office of the General Counsel's decision may be appealed to the Board of Veterans' Appeals.

(j) *Failure to comply.* In addition to whatever other penalties may be prescribed by law or regulation, failure to comply with the requirements of this section may result in proceedings under § 14.633 to terminate the agent's or attorney's accreditation to practice before VA.

(k) *Appeals.* Except as otherwise provided in this section, appeals shall be initiated and processed using the procedures in 38 CFR part 20 applicable to appeals under the modernized system.

[FR Doc. 2024–24708 Filed 10–24–24; 8:45 am]

**BILLING CODE 8320–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2024–0338; FRL–12118–03–R9]**

## Interim Final Determination To Stay or Defer Sanctions; California; San Joaquin Valley Unified Air Pollution Control District

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

**ACTION:** Interim final determination.

**SUMMARY:** The Environmental Protection Agency (EPA) is making an interim final determination that the State of California has submitted revisions to the California State Implementation Plan (SIP) that correct the deficiency prompting the partial disapproval of previous SIP submissions addressing the requirements under the Clean Air Act (CAA or ''Act'') for contingency measures for the 2008 ozone national ambient air quality standards (NAAQS or ''standards'') for the San Joaquin Valley ozone nonattainment area. This determination is based upon a proposed conditional approval, published elsewhere in this issue of the **Federal Register**, of SIP revisions addressing the contingency measure requirements for the 2008 ozone NAAQS for the San Joaquin Valley. The effect of this interim final determination is to stay the application of the offset sanction and to defer the application of the highway sanction that were triggered by the EPA's previous partial disapproval of SIP revisions submitted to address the contingency measure requirements for the 2008 ozone NAAQS for this area.

**DATES:** This interim final determination is effective on October 25, 2024. However, comments will be accepted on or before November 25, 2024.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0338 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Andrew Ledezma, Air Planning Office (ARD–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3985, or by email at *Ledezma.Andrew@epa.gov.*

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

### Table of Contents



## I. Background

In March 2019, the EPA took final action to approve, or conditionally approve, certain state implementation plan (SIP) revisions submitted by the State of California to meet CAA requirements for the 2008 ozone NAAQS in the San Joaquin Valley, California, ozone nonattainment area.[1] Specifically, the EPA approved the base year emissions inventory, reasonable further progress (RFP) demonstration, and motor vehicle emissions budgets, and conditionally approved the contingency measure element for the 2008 ozone NAAQS. We justified a conditional approval of the contingency measure element, even though the contingency measure itself would only achieve a small fraction of the recommended amount for contingency measures, on the basis of a surplus in emissions reductions that could be anticipated from already-implemented measures in the milestone years and year after the attainment year and a commitment by the State to achieve additional emissions reductions by the attainment year in the San Joaquin Valley that would reduce the chances that additional contingency measures would be needed for failure to attain the 2008 ozone NAAQS by the applicable attainment date.[2]

Our final conditional approval of the contingency measure element was the subject of a legal challenge and, in a 2021 Ninth Circuit decision in the *Association of Irritated Residents* v. *EPA* case, the Court remanded the conditional approval action back to the Agency.[3] In so doing, the Court found that, by taking into account the emissions reductions from already-implemented measures to find that the contingency measure would suffice to

[1] 84 FR 11198 (March 25, 2019).

[2] 83 FR 61346, at 61357 (November 29, 2018) (proposed conditional approval), finalized at 84 FR 11198, at 11205–11206.

[3] *Association of Irritated Residents* v. *EPA,* 10 F.4th 937 (9th Cir. 2021).

meet the applicable requirement, the EPA was circumventing the court's 2016 holding in *Bahr* v. *EPA*.[4] The Court also held that the EPA could not avoid the need for robust contingency measures by assuming that they will not be needed.[5]

In October 2022, in light of the *Association of Irritated Residents* v. *EPA* decision, the EPA took final action to withdraw our previous conditional approval and to partially disapprove the contingency measure element submitted to address the contingency measure requirements for the San Joaquin Valley for the 2008 ozone NAAQS.[6] We did so because we found that, if we did not take into account surplus emissions reductions or the State's commitment to achieve additional emissions reductions in San Joaquin Valley by the attainment year, then the one contingency measure that was included in the contingency measure element would have had to shoulder the entire burden of achieving the recommended amount for contingency measures (if triggered) but would have only achieved a small fraction of the recommended amount.[7] The effective date of our final partial disapproval action was November 2, 2022.

Pursuant to section 179 of the CAA and 40 CFR 52.31, the EPA's partial disapproval of the contingency measure element triggered sanctions clocks. More specifically, and as explained in our final partial disapproval action, under 40 CFR 52.31, the offset sanction in CAA section 179(b)(2) would be imposed 18 months after November 2, 2022, and the highway funding sanction in CAA section 179(b)(1) would be imposed six months after the offset sanction was imposed, unless the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadlines.[8]

In April 2024, in response to our final partial disapproval, the State of California adopted and submitted the ''Ozone Contingency Measure State Implementation Plan Revision for the 2008 and 2015 8-Hour Ozone Standards'' (April 25, 2024) (''2024 SJV Ozone Contingency Measure Plan'') to the EPA as a revision to the California SIP.[9] In the Proposed Rules section of this issue of the **Federal Register**, we have proposed to conditionally approve the 2024 SJV Ozone Contingency Measure Plan for the 2008 ozone NAAQS for the San Joaquin Valley ozone nonattainment area. Based on the proposed conditional approval action in this issue of the **Federal Register** with respect to the contingency measure element, we are taking this final rulemaking action, effective upon publication, to stay application of the offset sanction and defer application of the highway sanction that were triggered by the EPA's October 3, 2022 partial disapproval of the contingency measure element for the San Joaquin Valley 2008 ozone nonattainment area.[10] We are doing so because we find that it is more likely than not that the 2024 SJV Ozone Contingency Measure Plan corrects the deficiencies that triggered such sanctions, when considered with two contingency measures that EPA has approved in separate rulemaking actions [11] and commitments to adopt and submit five additional contingency measures for the San Joaquin Valley ozone nonattainment area.

The EPA is providing the public with an opportunity to comment on this stay of the offset sanction and deferral of the highway sanction. If comments are submitted that change our assessment, as described in this interim final determination and in our proposed conditional approval, that the 2024 SJV Ozone Contingency Measure Plan meets the contingency measure requirements for the 2008 ozone NAAQS for the San Joaquin Valley nonattainment area, we will take final action to lift this stay of the offset sanction and deferral of the highway sanction under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our October 3, 2022 final action will continue to be stayed or deferred unless and until the conditional approval converts to a disapproval or the EPA proposes to or takes final action to disapprove in whole or in part the revised SIP the State submits to fulfill the commitment in the conditionally-approved plan, at which time the sanctions would reapply.[12] Any sanction clock triggered by the October 2022 partial disapproval would be permanently stopped and sanctions applied, stayed, or deferred would be permanently lifted upon a final EPA finding that the deficiency forming the basis of the finding has been corrected.[13]

## II. EPA Evaluation and Action

We are making an interim final determination under 40 CFR 52.31(d)(2)(ii) to stay the application of the offset sanction and to defer the application of the highway sanction associated with our October 3, 2022 final action partially disapproving the contingency measure element for the 2008 ozone NAAQS for the San Joaquin Valley nonattainment area. This determination is based on a concurrent proposal to conditionally approve the 2024 SJV Ozone Contingency Measure Plan as meeting the 2008 ozone contingency measure requirement, which, if fully approved, would correct the deficiencies that triggered sanctions under section 179 of the CAA.

The EPA has preliminarily determined that the submission of the 2024 SJV Ozone Contingency Measure Plan more likely than not adequately addresses the deficiencies identified in the October 3, 2022 partial disapproval, when considered together with previously approved contingency measures and commitments to adopt and submit additional contingency measures in accordance with the commitments in the State's commitment letter. As we are proposing conditional approval, relief from sanctions should be provided as quickly as possible.

Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is still providing the public with an opportunity to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public

[4] Id., at 946. The reference to ''*Bahr* v. *EPA*'' is to *Bahr* v. *EPA*, 836 F.3d 1218, at 1235–1237 (9th Cir. 2016). Under the *Bahr* holding, contingency measures under CAA sections 172(c)(9) and 182(c)(9) must be designed so as to be implemented prospectively; already-implemented control measures may not serve as contingency measures even if they provide emissions reductions beyond those needed for any other CAA purpose.

[5] Id. at 947.

[6] 87 FR 59688 (October 3, 2022).

[7] Id, at 59690.

[8] Id.

[9] The California Air Resources Board (CARB) submitted the San Joaquin Valley Unified Air Pollution Control District's 2024 SJV Ozone Contingency Measure Plan electronically on April 29, 2024 as an attachment to a letter dated April 26, 2024 from Stephen S. Cliff, Ph.D., Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX.

[10] See 40 CFR 52.31(d)(2)(ii).

[11] The two existing contingency measures for the 2008 ozone NAAQS for the San Joaquin Valley relate to architectural coatings and the California smog check program. The EPA approved these contingency measures at 87 FR 78544 (December 22, 2022) (architectural coatings contingency measure) and 89 FR 56222 (July 9, 2024) (smog check contingency measure).

[12] See 40 CFR 52.31(d)(3)(ii).

[13] See 40 CFR 52.31(d)(5).

interest. The EPA has reviewed the 2024 SJV Ozone Contingency Measure Plan and, through its proposed action, is indicating that it is more likely than not that the Plan corrects the deficiencies that were the basis for the partial disapproval that started the sanctions clocks. Therefore, it is not in the public interest to apply sanctions. The EPA believes that it is necessary to use the interim final rulemaking process to stay the application of the offset sanction and defer the application of the highway sanction while the EPA completes our rulemaking process to take final action on the 2024 SJV Ozone Contingency Measure Plan. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this document is to relieve a restriction (5 U.S.C. 553(d)(1)).

## III. Statutory and Executive Order Reviews

This action stays or defers application of sanctions and imposes no additional requirements.

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. This action stays or defers application of sanctions and imposes no new requirements.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action stays or defers application of sanctions and imposes no new requirements.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This action stays or defers application of sanctions and imposes no new requirements. In addition, this action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations. The EPA believes that this type of action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations, and/or Indigenous peoples. This action stays or defers application of sanctions in accordance with CAA regulatory provisions and imposes no additional requirements.

*K. Congressional Review Act (CRA)*

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this action as discussed in section II of this preamble, including the basis for that finding.

*L. Petitions for Judicial Review*

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 24, 2024. Filing a petition for reconsideration by the EPA Administrator of this action does not affect the finality of this action for the purpose of judicial review nor does it extend the time within which 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 CAA section 307(b)(2)).

## List of Subjects in 40 CFR Part 52

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

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

Dated: October 16, 2024.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

[FR Doc. 2024–24707 Filed 10–24–24; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2024–0413; FRL–12300–01–OCSPP]**

## Extension of Time-Limited Tolerances for Emergency Exemptions

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

**ACTION:** Final rule.

**SUMMARY:** This regulation extends time-limited tolerances for residues of the pesticides sodium salt of acifluorfen in or on Beet, sugar, roots and Beet, sugar, leaves; thiamethoxam in or on Rice, grain and Rice, straw; and clothianidin in or on Rice, grain. These actions are in response to EPA's granting of emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. In addition, the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

**DATES:** This regulation is effective October 25, 2024. Objections and requests for hearings must be received on or before December 24, 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–2024–0413, 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 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–2024–0413, in the subject line on the first page of your submission. All requests must be in writing and must be received by the Hearing Clerk on or before December 24, 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–2024–0413, 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. Background and Statutory Findings

EPA previously published final rules in the **Federal Register** establishing time-limited tolerances for the chemicals and commodities listed below, under FFDCA section 408, 21 U.S.C. 346a. EPA established the tolerances because FFDCA section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established at EPA's own initiative and without providing notice or time for public comment.

EPA received requests to extend the emergency uses of the sodium salt of acifluorfen and thiamethoxam for this year's growing season. The use of thiamethoxam may also result in residues of its major metabolite, clothianidin, which is measured and regulated separately. The estimated potential residue level of clothianidin in or on rice grain from the emergency exemption use of thiamethoxam is higher, at 0.5 ppm, than the tolerance established at 40 CFR 180.586(a) of 0.01 ppm in or on rice grain, associated with a different registered use pattern. Therefore, a time-limited tolerance (associated with this emergency exemption use of thiamethoxam) was previously established at 0.5 ppm in or on rice grain at 40 CFR 180.586(b). After having reviewed these submissions, EPA concurs that emergency conditions continue to exist. EPA assessed the potential risks presented by residues for each chemical in or on the listed commodities. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2) and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and

with FIFRA section 18. The data and other relevant material have been evaluated and were discussed in the final rules originally establishing the time-limited tolerances. Based on the data and information considered, the Agency affirms that extension of these time-limited tolerances will continue to meet the requirements of FFDCA section 408(l)(6). Therefore, the time-limited tolerances are extended until December 31, 2027. Although these tolerances will expire and are revoked on December 31, 2027, under FFDCA section 408(l)(5), residues of the pesticides not in excess of the amounts specified in the tolerances remaining in or on the commodities after that date will not be unlawful, provided the residues are present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residues do not exceed the level that was authorized by the tolerance. EPA will take action to revoke the tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Time-limited tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

*Sodium salt of acifluorfen.* Pursuant to requests by the Michigan, Minnesota, and North Dakota Departments of Agriculture, EPA has authorized under FIFRA section 18 the use of the sodium salt of acifluorfen on sugar beets for control of glyphosate-resistant pigweed species, Palmer amaranth and waterhemp, in their respective States. This regulation extends the time-limited tolerances for residues of the herbicide sodium salt of acifluorfen, including its metabolites and degradates, in or on Beet, sugar, roots at 0.1 parts per million (ppm), and Beet, sugar, leaves at 0.1 ppm, for an additional 3-year period. The tolerances will expire and are revoked on December 31, 2027. The time-limited tolerances were originally published in the **Federal Register** of March 31, 2022 (87 FR 18717) (FRL–9657–01–OCSPP).

*Thiamethoxam.* Pursuant to a request from the Texas Department of Agriculture, EPA has authorized under FIFRA section 18 the use of thiamethoxam on rice for control of the rice delphacid in Texas. This regulation extends the time-limited tolerances for residues of thiamethoxam, including its metabolites and degradates, in or on Rice, grain at 6 ppm, and Rice, straw at 2 ppm, for an additional 3-year period. The tolerances will expire and are revoked on December 31, 2027. The time-limited tolerances were originally published in the **Federal Register** of October 7, 2019 (84 FR 53326) (FRL–9996–14).

*Clothianidin.* Pursuant to a request from the Texas Department of Agriculture, EPA has authorized under FIFRA section 18 the use of thiamethoxam on rice for control of the rice delphacid in Texas. Residues of clothianidin, a major metabolite of thiamethoxam, could occur in rice grain as a result of this use, and a separate time-limited tolerance was established. This regulation extends the time-limited tolerance for residues of clothianidin in or on Rice, grain at 0.5 ppm for an additional 3-year period. The tolerance will expire and is revoked on December 31, 2027. The time-limited tolerance was originally published in the **Federal Register** of October 7, 2019 (84 FR 53331) (FRL–9996–15).

## III. 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 MRLs for sodium salt of acifluorfen.

The Codex established MRLs for thiamethoxam on rice commodities on February 6, 2023. Since these were not in place when EPA established the subject time-limited tolerances, there were no issues with harmonization at that time (October 7, 2019). However, the Codex and EPA residue definitions for thiamethoxam are different. EPA's definition is for thiamethoxam plus its metabolite (CGA–322704), while the Codex definition is for thiamethoxam only. Additionally, the Codex MRLs are based upon a different use pattern than that for the emergency exemption use in the U.S. Therefore, because of these differences, it is not possible to harmonize the time-limited tolerances for thiamethoxam with the Codex MRLs. Since EPA has determined these time-limited tolerances are safe, EPA is extending the expiration dates for these time-limited tolerances despite the lack of harmonization with the related Codex MRLs.

For clothianidin, the time-limited tolerance of 0.5 ppm in or on Rice, grain is consistent and harmonized with the existing Codex MRL of 0.5 ppm.

## IV. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(e) at EPA's own initiative to support use authorized under emergency exemptions. 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 time-limited tolerances and exemptions that are established under FFDCA section 408(e) at EPA's own initiative to support use authorized under emergency exemptions, such as the tolerances 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).

## V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA has submitted 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: October 21, 2024.

**Charles Smith,**

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

Therefore, for 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. Amend § 180.383, in paragraph (b), by revising table 2 to read as follows:

**§ 180.83 Sodium salt of acifluorfen; tolerances for residues.**

* * * * *

(b) * * *

TABLE 2 TO PARAGRAPH (b)

| Commodity | Parts per million | Expiration date |
|---|---|---|
| Beet, sugar, roots | 0.1 | 12/31/2027 |
| Beet, sugar, leaves | 0.1 | 12/31/2027 |

* * * * *

■ 3. Amend § 180.565, in paragraph (b), by revising the table to read as follows:

**§ 180.565 Thiamethoxam; tolerances for residues.**

* * * * *

(b) * * *

TABLE 2 TO PARAGRAPH (b)

| Commodity | Parts per million | Expiration date |
|---|---|---|
| Rice, grain | 6 | 12/31/2027 |
| Rice, straw | 2 | 12/31/2027 |

* * * * *

■ 4. Amend § 180.586, in table 3 to paragraph (b), by revising the entry for ''Rice, grain'' to read as follows:

**§ 180.586 Clothianidin; tolerances for residues.**

* * * * *

(b) * * *

TABLE 3 TO PARAGRAPH (b)

| Commodity | Parts per million | Expiration date |
|---|---|---|
| * * * * * * * | | |
| Rice, grain | 0.5 | 12/31/2027 |

* * * * *

[FR Doc. 2024–24814 Filed 10–24–24; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 431 and 457**

**[CMS–0057–F2]**

**RIN 0938–AU87**

# Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Advancing Interoperability and Improving Prior Authorization Processes for Medicare Advantage Organizations, Medicaid Managed Care Plans, State Medicaid Agencies, Children's Health Insurance Program (CHIP) Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans on the Federally-Facilitated Exchanges, Merit-Based Incentive Payment System (MIPS) Eligible Clinicians, and Eligible Hospitals and Critical Access Hospitals in the Medicare Promoting Interoperability Program; Correcting Amendment

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This document corrects technical errors in the final rule that appeared in the February 8, 2024 **Federal Register** titled ''Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Advancing Interoperability and Improving Prior Authorization Processes for Medicare Advantage Organizations, Medicaid Managed Care Plans, State Medicaid Agencies, Children's Health Insurance Program (CHIP) Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans on the Federally-Facilitated Exchanges, Merit-Based Incentive Payment System (MIPS) Eligible Clinicians, and Eligible Hospitals and Critical Access Hospitals in the Medicare Promoting Interoperability Program''.

**DATES:** This correcting amendment is effective October 25, 2024.

**FOR FURTHER INFORMATION CONTACT:** David Koppel (303) 844–2883.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In FR Doc. 2024–00895 of February 8, 2024 (89 FR 8758), the final rule titled ''Medicare and Medicaid Programs; Patient Protection and Affordable Care Act; Advancing Interoperability and Improving Prior Authorization Processes for Medicare Advantage Organizations, Medicaid Managed Care Plans, State Medicaid Agencies, Children's Health Insurance Program (CHIP) Agencies and CHIP Managed Care Entities, Issuers of Qualified Health Plans on the Federally-Facilitated Exchanges, Merit-Based Incentive Payment System (MIPS) Eligible Clinicians, and Eligible Hospitals and Critical Access Hospitals in the Medicare Promoting Interoperability Program'' (hereinafter referred to as ''CMS Interoperability and Prior Authorization final rule''), there were technical errors associated with the regulations text that are identified and corrected in this correcting amendment.

## II. Summary of Errors

In §§ 431.60 and 457.730, we are correcting errors in executing the amendatory instructions regarding the removal of paragraph (g) (Data availability) and the redesignation of paragraph (f) (Beneficiary resources regarding privacy and security) as the new paragraph (g).

## III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Specifically, 5 U.S.C. 553 requires the agency to publish a notice of the proposed rule in the **Federal Register** that includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. Further, 5 U.S.C. 553 requires the agency to give interested parties the opportunity to participate in the rulemaking through public comment on a proposed rule. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment for rulemaking to carry out the administration of the Medicare program under title XVIII of the Act. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Social Security Act (the Act) mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements. In cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act, also provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting amendment does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements of the APA or section 1871 of the Act. This correcting amendment corrects technical errors in the regulatory text of the final rule but does not make substantive changes to the policies that were adopted in the final rule. As a result, this correcting amendment is intended to ensure that the regulations at §§ 431.60 and 457.730 accurately reflect the policies adopted in the final rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the regulatory text correction in this document into the final rule or delaying the effective date would be unnecessary, as we are not altering our policies or regulatory changes, but rather, we are simply implementing the policies and regulatory changes that we previously proposed, requested comment on, and subsequently finalized.

This final rule correcting amendment is intended solely to ensure that the final rule and the Code of Federal Regulations (CFR) accurately reflect policies and regulatory changes that have been adopted through rulemaking. Furthermore, such notice and comment procedures would be contrary to the public interest because it is in the public's interest to ensure that the final rule accurately reflects our policies and regulatory changes. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

## List of Subjects

*42 CFR Part 431*

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting

and recordkeeping requirements, State fair hearings.

*42 CFR Part 457*

Administrative practice and procedure, Grant programs—health, Health insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services corrects 42 CFR chapter IV by making the following correcting amendments:

## PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority citation for part 431 continues to read as follows:

**Authority:** 42 U.S.C. 1302.

■ 2. Section 431.60 is amended by revising paragraph (g) to read as follows:

**§ 431.60 Beneficiary access to and exchange of data.**

* * * * *

(g) *Beneficiary resources regarding privacy and security.* The State must provide in an easily accessible location on its public website and through other appropriate mechanisms through which it ordinarily communicates with current and former beneficiaries seeking to access their health information held by the State Medicaid agency, educational resources in non-technical, simple and easy-to-understand language explaining at a minimum—

(1) General information on steps the individual may consider taking to help protect the privacy and security of their health information, including factors to consider in selecting an application including secondary uses of data, and the importance of understanding the security and privacy practices of any application to which they will entrust their health information; and

(2) An overview of which types of organizations or individuals are and are not likely to be HIPAA covered entities, the oversight responsibilities of the Office for Civil Rights (OCR) and the Federal Trade Commission (FTC), and how to submit a complaint to—

(i) The HHS Office for Civil Rights (OCR); and

(ii) The Federal Trade Commission (FTC).

* * * * *

## PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 3. The authority citation for part 457 continues to read as follows:

**Authority:** 42 U.S.C. 1302.

■ 4. Section 457.730 is amended by revising paragraph (g) to read as follows:

**§ 457.730 Beneficiary access to and exchange of data.**

* * * * *

(g) *Beneficiary resources regarding privacy and security.* A State must provide in an easily accessible location on its public website and through other appropriate mechanisms through which it ordinarily communicates with current and former beneficiaries seeking to access their health information held by the State CHIP agency, educational resources in non-technical, simple and easy-to-understand language explaining at a minimum—

(1) General information on steps the individual may consider taking to help protect the privacy and security of their health information, including factors to consider in selecting an application including secondary uses of data, and the importance of understanding the security and privacy practices of any application to which they will entrust their health information; and

(2) An overview of which types of organizations or individuals are and are not likely to be HIPAA covered entities, the oversight responsibilities of OCR and FTC, and how to submit a complaint to—

(i) The HHS Office for Civil Rights (OCR); and

(ii) The Federal Trade Commission (FTC).

* * * * *

**Elizabeth J. Gramling,**

*Executive Secretary to the Department, Department of Health and Human Services.*

[FR Doc. 2024–24801 Filed 10–24–24; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 98

**RIN 0970–AD02**

## Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF); Corrections

**AGENCY:** Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Correcting amendments.

**SUMMARY:** On March 1, 2024, the Department of Health and Human Services published a final rule to improve child care access, affordability, and stability in the Child Care and Development Fund. An amendment in the final rule was incorporated incorrectly due to technical inaccuracies in the instructions. Additionally, this document addresses one reference error of the rule. This document makes technical changes to correct the final regulations.

**DATES:** Effective on October 25, 2024.

**FOR FURTHER INFORMATION CONTACT:** Megan Campbell, Office of Child Care, 202–690–6499 or *megan.campbell@acf.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The ''Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)'' rule, published at 89 FR 15366 on March 1, 2024, included an inaccurate amendatory instruction for § 98.21. Another reference error in § 98.83 dates to a previous amendment to the CCDF rule, published at 81 FR 67438 on September 30, 2016. This document corrects the final regulations.

**List of Subjects in 45 CFR Part 98**

Child care, Grant programs—social programs.

Accordingly, 45 CFR part 98 is corrected by making the following correcting amendments:

## PART 98—CHILD CARE AND DEVELOPMENT FUND

■ 1. The authority citation for part 98 continues to read as follows:

**Authority:** 42 U.S.C. 618, 9858.

**§ 98.21 [Amended]**

■ 2. Amend § 98.21 by removing paragraph (h) and redesignating paragraphs (i) through (k) as paragraphs (h) through (j).

■ 3. Amend § 98.83 by revising paragraph (j)(2) to read as follows:

**§ 98.83 Requirements for tribal programs.**

* * * * *

(j) * * *

(2) Federal obligation of funds for planning costs, pursuant to paragraph (j)(1) of this section, is subject to the actual availability of the appropriation.

* * * * *

**Elizabeth J. Gramling,**

*Executive Secretary, Department of Health and Human Services.*

[FR Doc. 2024–24781 Filed 10–24–24; 8:45 am]

**BILLING CODE P**

# Proposed Rules

Federal Register
Vol. 89, No. 207
Friday, October 25, 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.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 125

**RIN 3245–AH95**

### Small Business Contracting: Increasing Small Business Participation on Multiple Award Contracts

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would apply the Rule of Two to multiple-award contract task and delivery orders, with some exceptions. Under the Rule of Two, unless an exception applies, an agency must set aside the award for small businesses where there is a reasonable expectation of receiving offers from two or more small-business contract holders under the multiple-award contract that are competitive in terms of price, quality, and delivery. Documentation requirements apply where the agency decides not to move forward with a set-aside order.

**DATES:** Comments must be received on or before December 24, 2024.

**ADDRESSES:** You may submit comments, identified by RIN 3245–AH95, and/or Docket Number SBA–2024–0002 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* and follow the instructions for submitting comments.
- *Mail (for paper, disk, or CD–ROM submissions):* Donna Fudge, Lead Procurement Policy Analyst, Office of Policy Planning and Liaison, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted on *https://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *https://www.regulations.gov,* please submit the comments to Donna Fudge and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential.

**FOR FURTHER INFORMATION CONTACT:** Donna Fudge, Lead Procurement Policy Analyst, Office of Policy Planning and Liaison, Small Business Administration, at *donna.fudge@sba.gov,* (202) 205–6363.

**SUPPLEMENTARY INFORMATION:** This proposed rule would expand the use of the small-business Rule of Two in multiple-award contracting and make other regulatory revisions to encourage the use of small businesses when creating new multiple-award contracts. In issuing this proposed rule, SBA implements recommendations of the Office of Federal Procurement Policy (OFPP) in its memorandum titled ''*Increasing Small Business Participation on Multiple-Award Contracts,*'' dated January 25, 2024.

Section 15(a)(1)(C) of the Small Business Act, 15 U.S.C. 644(a)(1)(C), provides that the Small Business Administration (SBA) shall ''assur[e] that a fair proportion of the total purchases and contracts for goods and services of the Government in each industry category . . . are awarded to small business concerns.'' To further this statutory provision, SBA's regulations and the Federal Acquisition Regulation (FAR) provide that an acquisition shall be set aside for small business concerns whenever there is reasonable expectation that offers will be obtained from at least two responsible small business concerns that are competitive in terms of fair market prices, quality, and delivery (13 CFR 125.2(f); 48 CFR 19.502–2). This provision in SBA's regulations and the FAR is commonly referred to as the Rule of Two.

The Rule of Two dates back to 1964, when the Department of Navy first adopted it. Additional agencies implemented the rule afterward, and the FAR extended the Rule of Two for governmentwide application in 1984. The Rule of Two is the cornerstone of the Federal Government's support for small-business prime contracting. In Fiscal Year (FY) 2023, set-aside awards accounted for 65% of contracting dollars awarded to small businesses, the highest percentage since data became available in 2010. Those set-aside dollars pushed the government's spending with small business prime contractors to $178 billion in FY23, or 28.4%. Prior to the government-wide application of the Rule of Two in 1984, the Federal Government spent just 21% of its procurement dollars with small businesses.

This proposed rule would clarify the applicability of the Rule of Two to multiple-award contracts by directing that an agency set aside an order under a multiple-award contract for small business contract holders when the contracting officer determines there is a reasonable expectation of obtaining offers from two or more small business contract holders under the multiple-award contract that are competitive in terms of market prices, quality, and delivery. Like the OFPP memorandum, the proposed rule provides several exceptions, such as orders under the Federal Supply Schedule, or where an exception to fair opportunity or an agency-specific exception applies. When an agency is unable to set aside an order over the micro-purchase threshold and an exception does not apply, the contracting officer must document their rationale and provide the documentation to the agency's small business specialist or the Office of Small and Disadvantaged Business Utilization (OSDBU) or, for the Department of Defense, the Office of Small Business Programs (OSBP). An SBA procurement center representative (PCR) can review the documentation and may submit recommendations to increase small business opportunities.

These proposed changes result from an interagency negotiation among SBA, the FAR Council, and other agencies. SBA initiated this negotiation for three reasons.

First, the Small Business Act specifies that a fair proportion of the total ''purchase and contracts'' for goods and services shall be awarded to small business concerns. The statute does not limit the fair proportion language only to contracts. Rather, it applies it to both ''purchase[s] *and* contracts.'' The Federal Government is directed to assure that a fair proportion of purchases and contracts are awarded to small businesses. SBA believes that the use of the words ''purchase and'' means that the Rule of Two should not apply only when an agency is considering the

award of a contract. It should also apply to all purchases of goods and services, as well. As such, SBA believes that it makes sense to apply the Rule of Two to orders issued under multiple-award contracts. Again, it should apply to all ''purchases,'' not just to all new contracts.

Second, the proposed rule would provide certainty on how to apply the Rule of Two to task and delivery orders under multiple-award contracts and eliminate confusion created by an unresolved question in dispute between the Court of Federal Claims and the Government Accountability Office (GAO). The Court of Federal Claims agreed with the small-business plaintiffs in *Tolliver Group* that ''an agency must apply the Rule of Two before an agency can even identify the possible universe of procurement vehicles which may be utilized for a particular scope of work.'' 151 Fed. Cl. at 104. In a GAO protest decided after the court's ruling, GAO maintained its longstanding interpretation, which differs from the Court's position, that, in 15 U.S.C. 644(r), Congress intended to clearly delineate a distinction between a procuring agency's mandatory set-aside obligations when establishing a contract, and an agency's discretion with respect to setting aside task or delivery orders under a multiple-award contracts, *i.e.,* indefinite delivery indefinite quantity (IDIQ) contracts. *Itility, LLC,* B–419167, Dec. 23, 2020, 2020 CPD P412 at 18. The proposed change to require application of the Rule of Two to task and delivery orders under multiple-award contracts, with certain exceptions, should eliminate lingering confusion.

Third, for similar reasons as those described in the OFPP memorandum, the proposed rule advances equity in Federal procurement practices. This rule is expected to create more contract opportunities for small businesses, particularly small disadvantaged businesses (SDBs). Executive Order 14091 established a government-wide goal of awarding 15 percent of Federal contract spending to SDBs in FY 2025, and this proposed rule would put the government in a better position to achieve that goal.

This proposed rule rests on the authority in the Small Business Jobs Act of 2010, Public Law 111–240, sec. 1331, codified at 15 U.S.C. 644(r), for SBA and the FAR Council to establish guidance under which Federal agencies may, at their discretion and notwithstanding fair opportunity requirements, set aside orders placed against multiple-award contracts for small business concerns. Under this proposal, agencies are required to document their decisions not to set aside an order for small businesses. Such a decision might be based on one of the exceptions in the regulation, or because the Rule of Two is not satisfied—*i.e.,* where there are zero small businesses or only one small business that are responsible, available, and reasonably priced.

The OFPP memorandum, footnote 4, stated that Federal Supply Schedule orders are not covered by the term ''multiple-award contract'' as used in the memorandum. The memorandum stated that Schedules are continually open to new entrants and highly accessible to small businesses. Similarly, this proposed rule would not cover the Federal Supply Schedule. This also mirrors the treatment of the Federal Supply Schedule by the Court of Federal Claims, which exempted the Schedule from the Rule of Two in *VSolvit, LLC* v. *United States,* 151 Fed. Cl. 678 (2020), because of specific language providing so in FAR subpart 8.4.

**Severability**

SBA intends for the provisions of this proposed rule, if finalized, to be severable from each other such that if a court were to hold that any provision is invalid or unenforceable as to a particular person or circumstance, the rule would remain in effect as to any other person or circumstance.

*Section-by-Section Analysis*

13 CFR 125.2(c)(1)(i)

The proposed rule adopts the updated terminology of ''certified service-disabled veteran-owned small businesses concerns,'' given that SBA now certifies service-disabled veteran-owned small businesses.

13 CFR 125.2(c)(2)

The proposed rule would add a new § 125.2(c)(2) with new documentation and coordination requirements when an agency plans to establish a multiple award contract without an order set-aside provision. The current § 125.2(c)(3) only requires notification at least 30 days prior to the solicitation's issuance when an agency would issue a bundled requirement or one that would be unlikely for award to a small business. SBA believes that 30 days is not enough time to intervene in a large procurement when, oftentimes, the agency has been planning the procurement for over a year. The proposed rule would require small business specialists to notify the PCR as early in the acquisition planning process as possible where the multiple-award contract exceeds the substantial bundling threshold (even if the contract is not bundled), and the number of small business awardees is expected to be less than 30 percent of the total number of awardees. With the notification, the contracting officer must include market research and documentation explaining why the multiple-award contract is not set-aside or reserved with an expectation of at least 30 percent for small businesses. In the future, if this proposed rule is finalized, small business should make up at least 30 percent of new multiple-award contract holders and that should make the Rule of Two more effective on orders issued under those multiple award contracts.

The 30-percent threshold is based on the current proportion of multiple-award contract dollars going to small business, and agencies can reach that threshold by using contract reserves. Contract reserves are a procurement strategy available only for multiple-award contracts in which the agency sets aside some of the contract awards for small businesses (or a small business program such as 8(a) or HUBZone), and then competes orders only among those set-aside awardees.

13 CFR 125.2(c)(4)

The proposed rule incorporates the OFPP memorandum's recommendation that agencies share with small-business specialists documentation of the basis for not setting aside orders over the micro-purchase threshold, unless an exception applies. Small business specialists are agency staff, typically working with the agency's OSDBU or OSBP. Small business specialists play a vital role in ensuring that the agency prioritizes small-business participation when planning acquisitions. Under the proposed rule, the agency would also document, and share with its small business specialist, the decision to place an order under a multiple-award contract with only one or no small business contract holders.

13 CFR 125.2(e)(6)

The proposed rule would revise the regulation on setting aside orders, § 125.2(e)(6)(i), to require the set-aside of orders over the micro-purchase threshold where the Rule of Two is satisfied with respect to small-business contract holders. The only exceptions to applying the Rule of Two are for orders under Federal Supply Schedule contracts, when an exception to fair opportunity applies, or where agency procedures reflect an appropriate exception. When one of these three exceptions does not apply, the agency

would be required to document its determination not to issue a set-aside and coordinate that documentation with the small business specialist. If the agency chooses to issue an order under a multiple award contract that has one or no small business contract holders, the agency must document the rationale for that decision, including the market research conducted by the agency, coordinate that documentation with the small business specialist, and ensure that the small business specialist has a reasonable opportunity to respond. This requirement would not apply to orders under the Federal Supply Schedule, where an exception to fair opportunity applies, or an agency-specific exception applies.

Through this proposed rule, SBA seeks to expand small-business participation on multiple-award contracts. Unlike the *Tolliver* decision, this proposed rule does not require the application of the Rule of Two prior to choosing a particular multiple-award contract vehicle. Thus, although the proposed rule would permit an agency to use existing multiple award vehicles, agencies would be required to conduct the Rule of Two analysis on the selected multiple-award contract before issuing an order (unless an exception applies). Agencies are not expected to amend ordering procedures of existing multiple-award contracts that did not provide for order set-asides, but they could choose to do so if there is adequate time remaining on the contract (*i.e.,* more than one year), to permit small business concerns to fully perform or deliver under an order.

Exceptions to the application of the mandatory Rule of Two would apply for orders under the Federal Supply Schedule, where an exception to fair opportunity applies (such as there being only one responsible source), and agency-specific exceptions. For example, agencies may use an agency-specific exception to address supply chain and national security risks, to address goods or services that no small businesses provide and would not provide in the future, or to respond to a major disaster or emergency. The proposed rule would require that agency exceptions be developed in consultation with both the agency OSDBU or OSBP and SBA, and made public before they are used. The exception procedures must have an appropriate mechanism to ensure responsible use.

**Compliance With Executive Orders 12866, 12988, 13132, 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)**

*Executive Order 12866*

The Office of Management and Budget (OMB) anticipates that this rulemaking will be a significant regulatory action and, therefore, is subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. Accordingly, the next section contains SBA's Regulatory Impact Analysis.

*Regulatory Impact Analysis:*

1. *Is there a need for the regulatory action?*

This action implements recommendations made in OFPP's memorandum titled ''Increasing Small Business Participation on Multiple-Award Contracts''. It also addresses confusion from the contradictory decisions between the Court of Federal Claims and the Government Accountability Office (GAO). The Court of Federal Claims agreed with the small-business plaintiffs in *Tolliver Group* that ''an agency must apply the Rule of Two before an agency can even identify the possible universe of procurement vehicles which may be utilized for a particular scope of work.'' 151 Fed. Cl. at 104. In a GAO protest decided after the court's ruling, GAO ruled that agencies may set aside orders even if the underlying multiple-award contract does not notify contract holders to future set-asides. *Itility, LLC,* B–419167, Dec. 23, 2020, 2020 CPD P412 at 18. GAO has ruled agencies may set aside orders even if the underlying does not notify contract holders to future set-asides. *Marine Hydraulics Int'l LLC,* B–420562, May 25, 2022, 2022 CPD P122 at 10. This rulemaking is intended to eliminate any confusion and ensure that the policy is consistently implemented across all agencies. The proposed rule also supports Administration efforts to develop a competitive small-business contracting base and increase spending with small disadvantaged businesses (SDBs).

2. *What is the baseline, and the incremental benefits and costs of this regulatory action?*

Based on SBA's analysis of FY 2019 to FY 2023 data, as shown in the table below, this change could add up to $6 billion per year in small business contract spending. The table below shows the dollar gap between small-business spending on non-set-aside multiple-award task and delivery order contracts, and that same spending government wide, when the governmentwide numbers are adjusted to use the same NAICS-code distribution present in the non-set-aside multiple-award task-order contracts:

| Dollars and potential dollars in multiple-award contracts FY | Total dollars on MACs ($B) | Small business dollars on MACs (not set aside) ($B) | MAC small business % | Overall small business % (NAICS adjusted) | Potential MAC small business dollars ($B) | Gap between actual and potential SB dollars ($B) |
|---|---|---|---|---|---|---|
| 2019 | $75.5 | $14.2 | 18.8 | 24.8 | $18.8 | $4.5 |
| 2020 | 92.5 | 16.9 | 18.3 | 25.2 | 23.3 | 6.4 |
| 2021 | 78.5 | 16.6 | 21.2 | 25.7 | 20.1 | 3.5 |
| 2022 | 84.4 | 17.0 | 20.2 | 24.3 | 20.6 | 3.5 |
| 2023 | 100.7 | 19.2 | 19.1 | 25.1 | 25.3 | 6.1 |

In the table above, the fifth column (Overall Small Business % (NAICS adjusted)) is multiplied by total dollars (second column) to determine the numbers in the sixth column (Potential MAC Small Business Dollars ($B)). SBA presumes that applying the Rule of Two to task and delivery orders would close the dollar gap between small-business spending on non-set-aside multiple-award contracts and small-business spending, governmentwide, as adjusted. The action could add up to $6 billion to small-business contract spending. With contract spending exceeding $600 billion annually, this equates to less than 1 percent of all Federal contract spending.

This rulemaking will impose costs to the acquisition workforce to comply with the market-research, documentation, and coordination requirements when the Rule of Two is not applied, as specified in the rulemaking. Although some agencies currently apply the Rule of Two when ordering under a multiple-award

contract vehicle and may have documentation and coordination procedures, SBA will assume for the purpose of calculating the potential cost that no agencies currently require the application of the Rule of Two.

In FY23, agencies awarded 130,246 orders to other-than-small businesses off multiple-award contracts, not including the Federal Supply Schedule. Many of those orders went repeatedly from the same agency to the same other-than-small contractors. The proposed rule allows agencies to use market research conducted within the past 18 months, so if an agency were ordering to the same other-than-small contractor repeatedly under the same multiple-award contract, the agency would, most likely, reuse market research from prior awards. After eliminating orders that went to the same other-than-small contractor on a single vehicle from the same agency, only 5,513 orders remain that would require new small-business market research annually. The actual number of affected orders is likely less because the 5,513 orders presume annual market research (*i.e.,* every 12 months), but the proposed rule allows for market research to be used from up to 18 months prior.

Contracting officers must base a decision on sufficient facts, considering market research, to demonstrate a reasonable assessment of the availability of small businesses on the selected multiple-award contract. Market research may include but is not limited to a review of procurement history, search of databases such as SBA's Dynamic Small Business Search (DSBS), consultation with SBA Procurement Center, or internet searches. Because of the variety of market research methods, SBA estimates that the time required for justification of a decision ranges from a half-hour to search relevant databases to several hours for more extensive open-market research, with the distribution of methods skewed toward database searches rather than intensive market research. SBA therefore estimates that the mean time required for justification is 60 minutes for an estimated annual number of 5,500 affected contracts, resulting in an estimated annual burden to the government for market research of $683,870.[1]

Additionally, agency small-business specialists would review documentation for orders not set-aside above the micropurchase threshold. FAR section 7.104(d) currently requires such a review for orders not set-aside above the substantial bundling threshold. The number of additional orders to be reviewed annually (excluding those going from the same agency to the same contractor for the reasons explained in the last paragraph) is 3,700. SBA estimates that the time required for a small-business specialist to review this order documentation is 60 minutes. This considers that the orders are relatively low-dollar. SBA therefore estimates the annual burden to the government for small-business specialist review to be $460,000.

3. *What are the alternatives to this rulemaking?*

SBA considered a rule that would require the agency to assess the Rule of Two prior to choosing an existing contracting vehicle. That approach could increase consideration of small businesses that may not presently be on a multiple-award contract, but fails to recognize that the capabilities and capacity of many qualified small businesses already on multiple-award contracts are not being fully leveraged by agencies. SBA's research suggests that the changes proposed by this rulemaking to increase opportunities for small business contract holders on multiple-award contracts could advance diversity and resilience by adding up to $6 billion per year in contract awards to small businesses. Requiring application of the Rule of Two prior to selecting an existing contracting vehicle would, in many cases, duplicate the small business market research that agencies have conducted when establishing the multiple-award contract and could undermine important benefits that these vehicles were designed to create, including the ability to meet mission needs in a timely manner at lower cost and the ability to implement Governmentwide priorities.

*Executive Order 12988*

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect. While this rulemaking will have no effect on task and delivery orders already awarded, it will apply to all new multiple-award contracts, the orders placed under those contracts, and a new order entered into on existing multiple-award contracts where ordering procedures allow for the set aside of the order.

*Executive Order 13132*

For the purposes of Executive Order 13132, SBA has determined that this rulemaking will not have 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. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this rulemaking has no federalism implications warranting preparation of a federalism assessment.

*Executive Order 13563*

Executive Order 13563, Improving Regulation and Regulatory Review, directs agencies to, among other things: (a) afford the public a meaningful opportunity to comment through the internet on proposed regulations, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among government officials, experts, stakeholders, and the public; and (c) seek the views of those who are likely to be affected by the rulemaking, even before issuing a notice of proposed rulemaking. As far as practicable or relevant, SBA considered these requirements in developing this proposed rule, as discussed below.

*Did the agency use the best available techniques to quantify anticipated present and future costs when responding to Executive Order 12866 (e.g., identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes)?*

To the extent possible, the agency utilized the most recent data available in the Federal Procurement Data System—Next Generation, DSBS, and SAM.

*Public participation:* Did the agency: (a) afford the public a meaningful opportunity to comment through the internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among government officials, experts, stakeholders, and the public; (c) provide timely online access to the rulemaking docket on *Regulations.gov*; and (d) seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of proposed rulemaking?

The proposed rule will have a 60-day comment period and will be posted on *www.regulations.gov* to allow the public to comment meaningfully on its provisions. SBA has also discussed some of the proposals in this rulemaking with stakeholders at various

[1] As performed by a GS–13 Step 5 (DC locality in 2024 of $62.17 with 100% added for benefits and overhead).

small business on-line and in-person procurement conferences.

*Flexibility:* Did the agency identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public?

The proposed rule is intended to eliminate confusion in the small business acquisition community arising due to contradictory decisions of the Court of Federal Claims and the GAO, and increase procurement opportunities for small businesses.

*Paperwork Reduction Act, 44 U.S.C. Ch. 35*

This rulemaking does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

*Regulatory Flexibility Act, 5 U.S.C. 601–612*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small nonprofit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule implements an OFPP memorandum and seeks to resolve confusion created by differing interpretations of the Rule of Two by the Court of Federal Claims (*Tolliver Group,* 151 Fed. Cl. 70) and the GAO (*iTility,* B–419167). It does not impose any costs on small business, but rather increases procurement opportunities for small business. Therefore, SBA does not believe the rulemaking would have a disparate impact on small entities or would impose any additional significant costs on them. For the reasons discussed, SBA certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 13 CFR Part 125**

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

For the reasons discussed in the preamble, the Small Business Administration proposes to amend 13 CFR part 125 as follows:

## PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 1. The authority citation for part 125 continues to read as follows:

**Authority:** 15 U.S.C. 632(p), (q), 634(b)(6), 637, 644, 657f, 657q, 657r, and 657s; 38 U.S.C. 501 and 8127.

■ 2. Amend § 125.2 by:

■ a. In paragraph (c)(1)(i), removing the words ''small business concerns owned and controlled by service-disabled veterans'' and adding, in their place, the words ''certified service-disabled veteran-owned small business concerns'';

■ b. Redesignating paragraphs (c)(2) through (6) as (c)(3) through (7), respectively;

■ c. Adding new paragraph (c)(2);

■ d. Adding new paragraphs (c)(5)(iv) and (v);

■ e. Removing paragraphs (e)(6)(ii) and (iii);

■ f. Redesignating paragraphs (e)(6)(i), (iv), and (v) as (e)(6)(iii), (v), and (vi), respectively;

■ g. Adding new paragraphs (e)(6)(i) and (ii);

■ h. Removing the first sentence of newly redesignated paragraph (e)(6)(iii); and

■ i. Adding new paragraph (e)(6)(iv).

The additions and revisions read as follows:

**§ 125.2 What are SBA's and the procuring agency's responsibilities when providing contracting assistance to small businesses?**

* * * * *

(c) * * *

(2) *PCR notification and early coordination on certain Multiple-award Contracts.* (i) The agency's small business specialist must notify SBA's Procurement Center Representative during the development of the acquisition plan as early in the planning process as possible if:

(A) The dollar value of the Multiple-award Contract exceeds the agency's threshold for substantial bundling, though this requirement is not limited to bundled requirements; and

(B) the number of small business contract holders is expected to be under 30 percent of all expected holders.

(ii) When the number of small business contract holders on a multiple-award contract exceeding the substantial-bundling threshold is expected to be under 30 percent of all expected holders, the agency must document the acquisition plan with the rationale, including market research conducted, for not setting aside or reserving the contract for small business. The explanation should be reviewed by the agency's small business specialist.

* * * * *

(5) * * *

(iv) When placing an order valued over the micro purchase threshold under a multiple-award contract that has no or only one small business contract awardee, agencies must document and provide to its small business specialist:

(A) How the market research of small business contract holders, including small businesses that are not contract holders on the multiple award contract against which the order would be placed, and mission needs informed the agency's decision for selecting the multiple award contract to fulfill its needs

(B) The market research the agency conducted within the past 18 months regarding the multiple award contract.

(C) The requirement of this paragraph (c)(5)(iv) does not apply to orders under the Federal Supply Schedule, where an exception to fair opportunity applies, when an agency exception applies, or to repetitive orders, including orders placed using automated ordering procedures, issued by an agency when a prior order was documented and coordinated within the prior 18 months.

(v) When placing an order valued over the micro-purchase threshold under a multiple award contract that has two or more small business contract awardees but the agency does not set-aside the order for small business, agencies must document and provide to its small business specialist the basis for not setting aside the order, and ensure the specialist has an opportunity to respond. The agency small business specialist must notify the SBA PCR when the value of such an order exceeds a dollar amount negotiated between the agency and the PCR. This documentation and coordination requirement does not apply to orders placed under the Federal Supply Schedule, citing an exception to fair opportunity, or using an agency-specific exception.

(e) * * *

(6) * * *

(i) Notwithstanding the fair opportunity requirements set forth in 10 U.S.C. 3406(c) and 41 U.S.C. 4106(c), and unless the order is under a Federal Supply Schedule or an agency exception in accordance with agency procedures applies, a contracting officer shall set aside orders valued over the micro-purchase threshold (MPT) for small business contract holders when the contracting officer determines there is a reasonable expectation of obtaining

offers from two or more small business contract holders under the multiple-award contract that are competitive in terms of fair market price, quality, and delivery.

(ii) When placing an order valued over the MPT under a multiple award contract, and the contracting officer does not set-aside the order for small business, the contracting officer must document and provide to its small business specialist the basis for not setting aside the order, in accordance with paragraph (c)(4)(v) of this section.

* * * * *

(iv) Agencies may develop procedures for the use of agency-specific exceptions. Exception procedures must be developed in consultation with both the agency small business director and SBA, and made available to the public. Exception procedures must have an appropriate mechanism to ensure responsible use.

* * * * *

**Isabella Casillas Guzman,**

*Administrator.*

[FR Doc. 2024–24716 Filed 10–24–24; 8:45 am]

**BILLING CODE 8026–09–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Parts 1220 and 1221

**[Docket No. CPSC–2024–0034]**

### Revision to the Voluntary Standard for Non-Full-Size Baby Cribs and Play Yards

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of revised standard; request for comments.

**SUMMARY:** Two of the U.S. Consumer Product Safety Commission's (Commission or CPSC) mandatory rules, Safety Standard for Non-Full-Size Baby Cribs and Safety Standard for Play Yards, incorporate by reference the same voluntary standard, ASTM F406, *Standard Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards.* The Safety Standard for Non-Full-Size Baby Cribs incorporates the 2022 version of ASTM F406, and the Safety Standard for Play Yards incorporates the 2019 version of ASTM F406. ASTM notified the Commission that it has revised ASTM F406 and published ASTM F406–2024. CPSC seeks comment on whether adopting the revised voluntary standard would improve the safety of non-full-size cribs and/or play yards.

**DATES:** Comments must be received by November 8, 2024.

**ADDRESSES:** You can submit comments, identified by Docket No. CPSC–2024–0034, by any of the following methods:

*Electronic Submissions:* Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. CPSC typically does not accept comments submitted by email, except as described below.

*Mail/Hand Delivery/Courier/Confidential Written Submissions:* CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal. You may, however, submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

*Instructions:* All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit to this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

*Docket:* For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2024–0034, into the ''Search'' box, and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Frederick DeGrano, Project Manager, Division of Mechanical and Combustion Engineering, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2711; email: *fdegrano@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Commission to adopt mandatory standards for durable infant or toddler products. 15 U.S.C. 2056a(b)(1). Mandatory standards must be ''substantially the same as'' voluntary standards, or they may be ''more stringent'' than the applicable voluntary standards, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the products. *Id.* Mandatory standards may be based, in whole or in part, on a voluntary standard.

Section 104(b)(4)(B) of the CPSIA specifies the process for when a voluntary standards organization revises a standard that the Commission incorporated by reference under section 104(b)(1). First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject or accept the revised standard. To reject a revised standard, the Commission must notify the voluntary standards organization within 90 days of receiving the notice of revision that the Commission has determined that the revised standard does not improve the safety of the consumer product and that CPSC is retaining the existing standard. If the Commission does not take this action, the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision (or a later date specified by the Commission in the **Federal Register**). 15 U.S.C. 2056a(b)(4)(B).

Under this authority, the Commission issued two mandatory safety rules that incorporate by reference applicable provisions of ASTM F406: Safety Standard for Non-Full-Size Baby Cribs, codified at 16 CFR part 1220 (75 FR 81787, Dec. 28, 2010), and Safety Standard for Play Yards, codified at 16 CFR part 1221 (77 FR 52228, Aug. 29, 2012). These mandatory standards include performance requirements and test methods, as well as requirements for warning labels and instructions, to address hazards to children. After the Commission's promulgation of these final rules, ASTM published several revisions to ASTM F406 that the Commission considered for incorporation by reference in the mandatory rules, parts 1220 and 1221. Most recently, in 2023, the Commission revised the non-full-size (NFS) cribs mandatory standard to incorporate by reference ASTM F406–2022, but rejected ASTM F406–2022 as it applied

to play yards. 88 FR 13686 (Mar. 6, 2023) (NFS cribs); March 2, 2023, Letter to K. Morgan, President, ASTM International (play yards).[1] Accordingly, the NFS cribs mandatory rule currently incorporates the 2022 version of ASTM F406 and the play yard mandatory rule currently incorporates the 2019 version of ASTM F406.

On October 7, 2024, ASTM notified the Commission that it had approved and published another revised version of the voluntary standard, ASTM F406–2024. CPSC staff is assessing the revised voluntary standard to determine, consistent with section 104(b)(4)(B) of the CPSIA, its effect on the safety of NFS cribs subject to 16 CFR part 1220, and, separately, the safety of play yards subject to 16 CFR part 1221. The Commission invites public comment on those questions to inform staff's assessment and subsequent Commission consideration of the revisions in ASTM F406–2024.[2]

The currently incorporated voluntary standards (ASTM F406–2019 and ASTM F406–2022) and the revised voluntary standard (ASTM F406–2024) are available for review in several ways. A read-only copy of the existing, incorporated standards are available for viewing, at no cost, on the ASTM website at: *https://www.astm.org/READINGLIBRARY/.* A read-only copy of the revised standard (ASTM F406–2024), including red-lined versions that identify the changes from the 2019 and 2022 versions to the 2024 version, are available, at no cost, on ASTM's website at: *https://www.astm.org/CPSC.htm.* Interested parties can also download copies of the standards by purchasing them from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: 610–832–9585; *https://www.astm.org.* Alternatively, interested parties can schedule an appointment to inspect copies of the standards at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, telephone: 301–504–7479.

Comments must be received by November 8, 2024. Because of the short statutory time frame Congress established for the Commission to consider revised voluntary standards under section 104(b)(4) of the CPSIA, CPSC will not consider comments received after this date.

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2024–24130 Filed 10–24–24; 8:45 am]

**BILLING CODE 6355–01–P**

[1] Available at: *https://www.cpsc.gov/s3fs-public/Play-Yard-PL112-28-Letter-to-ASTM-3-3-2023.pdf?VersionId=qKf310sZqWpkJlZtiqXEETeswtfzJlVt.*

[2] The Commission voted (5–0) to publish this notice.

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## 25 CFR Part 1194

**[Docket No. BIA–2024–0002; 245A2100DD/AAKC001030/A0A501010.999900]**

**RIN 1076–AF78**

## Safeguard Tribal Objects of Patrimony

**AGENCY:** Office of the Assistant Secretary, Indian Affairs, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Interior (Department) proposes new regulations that provide a framework to prevent the export for sale in foreign countries of Native American cultural items that are held in violation of current Federal laws; to repatriate such items from individuals and organizations having such items; and to improve coordination among Federal agencies, Indian Tribes, and Native Hawaiian organizations seeking to prevent the export and sale, and support the repatriation, of such items. The proposed rule would establish an export certification system, set forth procedures for detention and repatriation of items subject to the rule, establish a framework for voluntary return of items subject to the rule, and establish interagency and Native working groups.

**DATES:**

*Proposed regulations:* Interested parties are invited to submit comments, which must be received on or before December 24, 2024.

*Information collection requirements:* If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB by November 25, 2024.

*Tribal consultation sessions:* The Department of the Interior will conduct virtual consultation sessions with federally recognized Indian Tribes on November 18, 2024, and November 19, 2024.

*Native Hawaiian consultation sessions:* The Department of the Interior will conduct virtual consultation sessions with the Native Hawaiian Community November 25, 2024, and November 26, 2024.

**ADDRESSES:**

*Proposed regulations:* You may submit comments on the proposed rule, and information collection requirements in the proposed rule, by any one of the following methods.

- Please visit *https://www.regulations.gov/docket/BIA-2024-0002* or *https://www.regulations.gov* and enter ''RIN 1076–AF78'' in the search box and click ''Search.'' Follow the instructions for sending comments.
- *Mail:* Please mail comments to Indian Affairs, RACA, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104.

*Tribal Consultation Sessions:* Federally recognized Indian Tribes may register for the November 18, 2024, virtual consultation session at *https://www.zoomgov.com/meeting/register/vJIsd-murTkrEoCEm5Y2To4t7GKtXSRhCnQ.* Federally recognized Indian Tribes may register for the November 19, 2024, virtual consultation session at *https://www.zoomgov.com/meeting/register/vJItdOmqqjkqHaI5eOnhZTOtLE2GojpXIow.*

*Native Hawaiian Consultation Sessions:* The Native Hawaiian Community may register for the November 25, 2024, virtual consultation session at *https://www.zoomgov.com/meeting/register/vJItceqvpz0uGDSfTDedEwLOmP5bvkGLjUA.* The Native Hawaiian Community may register for the November 26, 2024, virtual consultation session at *https://www.zoomgov.com/meeting/register/vJItfuurqj0rGIjrBn1_9KsywIdmkmIIjoY.*

*Information Collection Requirements:* Written comments and suggestions on the information collection requirements should be submitted to OMB at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and then scrolling down to the ''Department of the Interior.'' Please also provide a copy of your comments to DOI at *consultation@bia.gov;* and reference ''OMB Control Number 1076–NEW STOP Act'' in the subject line of your email.

*Accessibility:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**,

individuals can obtain this document in an alternate format, usable by people with disabilities, at the Office of the Assistant Secretary—Indian Affairs, Room 4660, 1849 C Street NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action (RACA), Office of the Assistant Secretary—Indian Affairs; Department of the Interior, telephone (202) 738–6065, *consultation@bia.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

**SUPPLEMENTARY INFORMATION:** This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary; AS–IA) by 209 DM 8.

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## I. Statutory Authority and Background

Congress empowered the Secretary of the Interior, under section 10 of the Safeguard Tribal Objects of Patrimony Act (STOP Act) of 2021, Public Law 117–258, codified at 25 U.S.C. 3071 *et seq.,* to ''promulgate rules and regulations to carry out this Act'' in consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General, and after consultation with Indian Tribes and Native Hawaiian organizations. *See* 25 U.S.C. 3078. The proposed regulations at 25 CFR part 1194 implement this authority.

The Department of the Interior (Department) issued a Dear Tribal Leader Letter inviting input on the development of draft regulations for the STOP Act on April 22, 2023, and a Dear Native Hawaiian Community Leader Letter inviting input on the development of draft regulations for the STOP Act on July 20, 2023. The Department held five consultation sessions with Indian Tribes, and two consultation sessions with the Native Hawaiian Community. The Department convened with Indian Tribes for a first consultation in person on May 31, 2023, at U.S. Geological Survey Oklahoma–Texas Walker Science Center in Oklahoma City, OK; for a second consultation in person on July 14, 2023, at the Bureau of Land Management Fairbanks District Office, in Fairbanks, AK; and for a fifth consultation in person on August 18, 2023, at the Bureau of Land Management New Mexico State Office, in Santa Fe, New Mexico. The Department conducted the third and fourth consultations with Indian Tribes virtually on Zoom on July 27, 2023, and August 8, 2023, respectively. The Department convened the first consultation with the Native Hawaiian Community in person on August 23, 2023, at the State of Hawai'i Office of Hawaiian Affairs in Honolulu, HI, and conducted the next consultation virtually on Zoom on August 24, 2023. The Department of State and the Department of Homeland Security joined several of these consultations. Following the consultation sessions, the Department accepted written comments until September 1, 2023.

Thereafter, beginning on August 31, 2023, the Department convened multiple times per week with representatives of the Secretary of State, the Secretary of Homeland Security, and the Attorney General, to develop the proposed rule based on the feedback received in consultation.

## II. Public Comments on the Development of the Rule and Response to Comments

Interior asked for answers to three framing questions during the consultations. Individual comments were separated and categorized after the closing of the comment period on September 1, 2023. In total, the submissions were separated into 501 individual comments. Generally, around 131 comments were exclusively supportive, no comments were not supportive, and 370 provided constructive feedback on how the rule may be improved. The Assistant Secretary for Indian Affairs (AS—IA) has decided to proceed to the proposed rule stage after careful consideration of all comments. The AS—IA's responses to significant comments that provide constructive feedback, were neutral, or provided general support along with constructive criticism are detailed below. No responses are provided for comments that were exclusively supportive.

*A. Framing Question One: Which Assistant Secretary, Bureau or Office within the Department of the Interior should be responsible for the STOP Act program?*

*1. Comment:* Fourteen Tribes and organizations recommended that the STOP Act program be housed within the Assistant Secretary-Indian Affairs. Five Tribes recommended that the STOP Act program be housed within the Bureau of Indian Affairs, Office of Justice Services. Four Tribes and organizations asked for one office to take central control over implementation without identifying a specific office. One commenter recommended the National Park Service. Some of these comments came from the same letter.

*Response:* The Department believes the balance of comments support placing the STOP Act program within the Office of the Assistant Secretary-Indian Affairs.

*2. Comment:* One Tribe requested more information on the roles and responsibilities of the various offices and bureaus within the Department because the framing question alone was not helpful.

*Response:* The Department referred this individual to the information about each of the Bureaus and Offices for the Department of the Interior, which may be found at this link: *https://www.doi.gov/bureaus.*

*3. Comment:* One commenter asked that the Office of Native Hawaiian Relations (ONHR) view itself as a centralized agency in this process.

*Response:* The Department appreciates ONHR's engagement in the drafting of the proposed rule and looks forward to ONHR's active role in implementation of these regulations following publication of a final rule.

*B. Framing Question Two: What types of interagency agreements would be helpful for the program and for Act implementation?*

*4. Comment:* One Tribe asked that the Department of State prioritize engagement with any foreign

government or institution that has been identified by Tribes as holding exported cultural items or ones that are primary markets for items. One Tribe commented that foreign governments and entities that are open to voluntarily returning items should require a different level of engagement than those who are not willing to engage on repatriation.

*Response:* The Department has conferred with the Department of State about the substance of these comments. The Department of State already engages with international institutions on repatriation and will continue this work in line with provisions in the STOP Act.

*5. Comment:* One organization and one Tribe asked that formation of any agreements include Tribal consultation as early in the process of development as possible to ensure seamless coordination and harmonization of efforts.

*Response:* The Department agrees. As interagency agreements are formed involving the Department, the Department commits to consultation to the degree possible.

*6. Comment:* Two commenters asked that the United States military be part of any interagency working group.

*Response:* The Department appreciates this feedback and will reach out to the Department of Defense to seek engagement in implementation of a final rule.

*7. Comment:* One commenter expressed that exporters who act in violation of the STOP Act do not do so alone, and the Department should consult with experts to examine whether the Racketeer Influenced and Corrupt Organizations Act might apply in this situation.

*Response:* The process for an export certification in subpart B of the proposed regulations, including discussions about potential exports without a certification, was developed with input from the Department of Justice.

*8. Comment:* One commenter expressed that the STOP Act cannot be a barrier to repatriation and that getting through customs would continue to be difficult.

*Response:* The process for voluntary return in subpart E of the proposed regulations was developed with input from the Departments of State and Homeland Security, including constituent agency, U.S. Customs and Border Protection.

*9. Comment:* A Tribe asked that the Department of State notify foreign nations of the STOP Act's passage to facilitate repatriations under other nations' domestic laws and that the Department of State designate a liaison to facilitate voluntary returns. A Tribe and a Tribal Organization asked that the implementing regulations utilize the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 Convention) to advocate for stronger international cooperation, and to encourage other countries to adopt measures similar to the STOP Act.

*Response:* The STOP Act, and its implementing regulations, apply primarily to items that a putative exporter seeks to take out of the United States prior to their exit from the country. The STOP Act does not contain mechanisms to persuade or obligate international governments or institutions. The 1970 Convention provides a common framework of measures each State Party may take, including some included in the STOP Act, such as the prohibition of exportation of designated cultural property and the establishment of export certificates. The Department works with the Department of State to raise awareness of the STOP Act in order to help other countries that are party to the 1970 Convention to identify items that are prohibited from exportation under the Act and, therefore, may be restricted from import into those countries. The Department of State will designate a liaison to facilitate voluntary returns.

*10. Comment:* One commenter expressed that international engagement will be important based on processes that exist in international conventions like a Hague Convention that was unspecified by the author. The commenter expressed that establishing such processes could help with international borders.

*Response:* The Department appreciates this feedback and will confer with the Department of State on types of international engagement.

*11. Comment:* A collective of Tribes asked that the Department of Justice direct all United States Attorneys to prosecute violations of 25 U.S.C. 3073(a)(2) that are referred to them by the Department of the Interior, the Department of Homeland Security, or the Federal Bureau of Investigation. The same collective asked that the Department of Justice add the STOP Act, NAGPRA, and ARPA to the list of statutes enforced by the Department of Justice Environmental Crimes Section.

*Response:* This comment is beyond the scope of these regulations. However, the Department has conferred with the Department of Justice about the substance of these comments.

*12. Comment:* One Tribal commenter asked for memoranda of understanding (MOUs) among DOI's National Park Service, Insular and International Affairs, and the Office of the Inspector General that lay out the purpose, duties and responsibilities, standards and procedures, reporting requirements, confidentiality provisions, and other resolutions. One Tribal commenter proposed an agreement between the Departments of State and Homeland Security that focused upon NAGPRA and repatriation and international repatriation. One Tribal commenter proposed a memorandum between the State Department and the Federal Bureau of Investigation that focused upon international auctions. A Tribe proposed an agreement among the National NAGPRA Program, NAGPRA Review Committee, Cultural Heritage Coordinating Committee, Bureau of Indian Affairs' Office of Justice Services' Cultural Resources Unit, and all other relevant Federal entities. A Tribe and a Tribal organization proposed cooperative agreements be established among the Department, other Federal agencies, Native Nations, and Native organizations and institutions. A Tribe proposed an agreement among the NPS, the Transportation Security Administration, the United States Forest Service, and the Bureau of Land Management. Two Tribes proposed an agreement among the NAGPRA Program, the Cultural Heritage Coordinating Committee established by the Protect and Preserve International Cultural Property Act, the Bureau of Indian Affairs' Office of Justice Services' Cultural Resources Unit, and all other relevant Federal entities. A collective of Tribes proposed an agreement among the Department of Commerce, Department of Homeland Security, Department of Justice, and Department of State regarding the export of Native American cultural items. A Tribe asked that Cooperative Agreements be established among the Interior, agencies, and Tribal nations to foster collaboration, training, documentation, outreach, and education. A Tribe requests agreements so that the Department of Commerce creates a ''cultural items'' and ''archaeological resource'' list; Homeland Security notifies international travelers and shippers and instructs all baggage and cargo inspectors to prepare to identify any cultural items or archaeological resources; Justice notifies all attorneys of their responsibilities to prosecute violations referred to them; and the Department asks Congress for three million dollars for STOP Act

implementation. A Tribe commented that Tribes may encounter problems importing items back into the United States because of protected animal parts in the items, or for other related reasons, and asks that interagency agreements provide a way to avoid seizure or delays.

*Response:* The Department is grateful for the breadth and variety of feedback received about parties to interagency agreements. Given the diversity of agreements proposed, the Department will carefully evaluate the efficacy and need for each of these agreements upon implementation of the proposed rule. The scope of work for the Interagency Working Group, set forth at proposed subpart F, includes coordination of policy-making processes to facilitate repatriation. The Department's goal is to establish broad regulatory authority, in alignment with statutory authority, to allow for creation of inter-Departmental MOUs, as appropriate, as these commenters have proposed.

*13. Comment:* A Tribe asked that any interagency agreements, when read with the regulations, include all STOP Act action items and the two should be written to carry out all action items needed. A Tribal organization and a Tribe asked that any agreements include a step-by-step guide, contacts for each agency with one single Federal point of contact for Tribes, provisions that encourage Tribal collaboration with all agencies, encourage the Native work group to advise Federal agencies, facilitate voluntary return, and provide for Federal monitoring. Another Tribe asked that agreements be set up quickly and outline commitments of resources and responsibilities for agencies involved, include a single point of contact for Tribes, and a regular time period for review and revisions. Three Tribes and a Tribal organization asked that interagency agreements include a step-by-step guide or flow chart, and contacts for each agency. A Tribe asked that interagency agreements should provide for regular and mandatory meetings co-led by the Native Working Group and Interagency Working Group. A Tribe asked that any agreements include training, funding to Tribes for collaboration and travel to retrieve sacred items, coordination among the various agencies, a framework for the safe return of items, and guidelines and policies for how sacred items are returned, including addressing privacy, photography, media requests, and agency information provided to the public. A Tribe asked that any agreements include appropriate steps and a chain of command, mandatory training for agency officials and staff (semi-annual), consultation requirements with Tribes, and agreements designed to facilitate the importation of items voluntarily returned from foreign nations. A Tribe asked that any agreements address safeguarding, protection and inappropriate disclosure, or facilitation of misappropriation or misuse of tangible or intangible cultural heritage. A Native Hawaiian organization asked for an interagency agreement under which the Executive Branch may engage counterpart governmental entities for foreign countries directly and advocate for the return of stolen cultural objects; and call on respective U.S. Embassies to engage appropriate international government authorities and actively negotiate a process for the return of cultural objects.

*Response:* The Department is grateful for the breadth and variety of feedback received about the contents of interagency agreements. Given the diversity of agreements proposed, the Department will carefully evaluate the efficacy and what should go into each agreement upon implementation of the proposed rule. The scope of work for the Interagency Working Group, set forth at proposed subpart F, includes coordination of policy-making processes to facilitate repatriation. The Department's goal is to establish broad regulatory authority, in alignment with statutory authority, to allow for specific inclusion in various inter-Departmental MOUs such as those commenters have proposed.

*14. Comment:* A Tribe and a Tribal organization asked that interagency consultation agreements be established to provide meaningful consultation with Tribes and to provide consistent policies for Federal agencies. A Tribe asked that Interagency Consultation Policy and Agreement would specify the process and frequency of consultation, the involvement of relevant agencies, and the sharing of information and expertise related to the protection and repatriation of Native cultural heritage. A Tribe asked that the Department follow the Interagency Consultation Policy and Agreement to ensure meaningful consultation with Indian Tribes, to address frequency of consultation, involvement of agencies, and expertise related to protection and repatriation of cultural heritage.

*Response:* The Department is grateful for the breadth and variety of feedback received about the contents of interagency consultation agreements. The STOP Act program will maintain a robust consultation function and use of such an agreement may be practical. The scope of work for the Interagency Working Group, set forth at proposed subpart F, includes coordination of policy-making processes to facilitate repatriation. The Department's goal is to establish broad regulatory authority, in alignment with statutory authority, to allow for potential use of an interagency consultation agreement as these commenters have proposed.

*15. Comment:* A Tribe asked that any interagency agreements include shared jurisdiction or deputization between Tribal Historic Preservation Officers (THPO) and the Department.

*Response:* This comment is beyond the scope of these regulations; however, the Department has conferred with the Department of Justice about the substance of this comment.

*16. Comment:* A collective of Tribes commented that the Department of Commerce should immediately amend the Commerce Control List to include ''cultural item'' as defined by 18 U.S.C. 1170 and 25 U.S.C. 3001 *et seq.,* and ''archaeological resource'' as defined at 16 U.S.C. 470ee.

*Response:* The Department has conferred with the Department of Commerce about the substance of this comment.

*17. Comment:* A Native Hawaiian organization asked that the Interagency Working Group prioritize work on programs and policies to require that museums better establish the provenance of objects within their collections. The Native Hawaiian organization requests that the Department of State call for a closer examination of existing provenance records at international institutions for cultural objects and human remains that would be subject to NAGPRA in domestic institutions as part of this agreement. The Native Hawaiian organization notes that these updates may implicate updates to the NAGPRA Program.

*Response:* The Department will relay this request to the Interagency Working Group upon its formal establishment. The Department has conferred with the Department of State and the National NAGPRA Program about the balance of this comment.

### *C. Framing Question Three: What should or should not be included in the draft regulations?*

*18. Comment:* Several Tribes and Tribal organizations and a Native Hawaiian organization reiterated that cultural resources have been stolen from their homes for many years, resulting in long lasting and devastating harm.

*Response:* The Department is grateful for this comment and bore it in mind

throughout the drafting of the proposed rule.

*19. Comment:* Several Tribes and Tribal organizations and a Native Hawaiian organization expressed a desire that implementation occur immediately or as soon as possible, and that the Department takes perspective of all Tribes into account and consults as much as possible in the process. One Tribe noted the need to consider what can be done immediately, given that there are items being trafficked currently and encouraged the Department to ''chew gum and walk at the same time.''

*Response:* The Department appreciates the need to move quickly, and this is one consideration for the Department issuing a proposed rule rather than an interim rule at this time. The Department looks forward to consulting with Tribes on this proposed rule and on implementation of the STOP Act as set forth in the proposed rule.

*20. Comment:* One organization and two Tribes provided recommendations and suggested language to be included in the purpose section of the regulations. One organization recommended parallel language to the Department's regulations implementing the Native American Graves Protection and Repatriation Act. Another Tribe recommended the regulations include information on the STOP Act, its passage, and a description of its provisions.

*Response:* The Department appreciates this feedback. The Department has incorporated the Tribal suggestion to the degree possible to the Introduction as set forth in proposed § 11941.1.

*21. Comment:* One Tribe commented about the need for sections on fines and penalties to hold auction houses accountable. The same Tribe explained its desire for a mechanism for Tribes to receive the names, addresses, and information about where the items are going so that the items do not go underground. This will aid Tribes in learning the history of the item and how it moved into commerce. The Tribe commented that this process should be triggered when items are taken outside of reservation boundaries and would require sellers to remove items from the auction block.

*Response:* The proposed schedule and process for civil penalties and fines appears at proposed § 1194.205. With regard to the mechanism requested, the text of the STOP Act does not provide authority for the Department to obtain information about an item after the sale of that item has been completed. This means the Department's regulations implementing the STOP Act consider primarily the detention and recovery of items prior to export, and do not opine on collection of information about items that have been exported.

*22. Comment:* One Tribal organization asked that enforcement of the STOP Act commence immediately, even though regulations were still forthcoming. A Tribe emphasized that heavy criminal charges would represent a strong incentive to disincentivize the illicit trade of Native artifacts.

*Response:* The STOP Act was signed into law in December 2022. The law increased criminal penalties for stealing and illegally trafficking in Tribal cultural property. The increased criminal penalties are effective immediately, despite the need for regulations to implement other parts of the STOP Act. Additionally, prosecutors may continue to use other existing Federal criminal laws or Federal civil forfeiture proceedings, as appropriate, to disincentivize the illicit trade of native artifacts.

*23. Comment:* Two Tribes and one Tribal organization asked that the Department ensure that a process to revoke wrongly issued export certificates is part of any proposed rule. This is because revocation would be important under treaties and other countries' laws to prevent defendants from presenting evidence in domestic prosecutions for illegal trafficking. The same Tribal organization asked that export certifications contain language that they do not affirmatively establish an item's legality.

*Response:* The Department appreciates this feedback. Procedures for revocation of an export certification appear at proposed § 1194.106. The Department anticipates consulting with Tribes and Native Hawaiian organizations on the contents of certification applications, which may include issues related to the legality of an item for which a certification is sought.

*24. Comment:* Two Tribes asked that the proposed rule include processes for the Department to assess civil penalties against individuals attempting to export items without an export certification. A Tribal collective asked that the Department implement the civil penalties, and related appeals section, as an interim rule. The same Tribal collective, another Tribal organization, and a Tribe asked that civil penalties be uniformly applied and sufficient to completely remove any financial incentive to illegally export, attempt to export, or otherwise transport any item requiring export certification.

*Response:* The Department appreciates this feedback. Procedures for assessment of civil penalties appear at proposed § 1194.205. The Department is issuing a proposed rule rather than an interim rule at this time.

*25. Comment:* A collective of Tribes asked that the Department be sure that Tribes and Native Hawaiian organizations receive adequate notice of attempted export of objects prohibited from exportation.

*Response:* The Department appreciates this feedback. The Department anticipates providing notice using current mechanisms for consultation notices, including contact lists directed to THPOs. The Department welcomes methods to improve its consultation processes.

*26. Comment:* A Tribe comments that an item attempted to be exported without an export certification should be promptly returned to an Indian Tribe rather than through a museum.

*Response:* The Department agrees. In the event of seizure of an item, return of the item to a Tribe will be affected pursuant to NAGPRA or ARPA under proposed § 1194.206.

*27. Comment:* A Tribe and a Tribal organization asked that appeals processes be assigned to the Department's Office of Hearing and Appeals for adjudication.

*Response:* The Department appreciates this feedback. The Department has incorporated the Tribal suggestion to the Tribal Authorization as set forth in proposed subpart D.

*28. Comment:* Two Tribes and two Tribal organizations provided recommendations on the contents of definitions of the terms ''Any other Federal law or treaty,'' ''consultation,'' ''cultural affiliation,'' ''tangible cultural heritage,'' ''repatriation,'' ''voluntary return,'' ''credible evidence,'' and ''Indian lands.''

*Response:* The Department is grateful for this comment and the Department sought to incorporate as much of this feedback as possible in the proposed definitions section at proposed § 1194.2.

*29. Comment:* A Tribe asked how the Department will address potential conflicts between claimants of lineal descendent priority versus Tribal priority, as established by NAGPRA.

*Response:* The Department's regulations implementing the STOP Act consider primarily the detention and recovery of items prior to export, and do not opine on the implementation of NAGPRA. Even if this comment addressed a matter germane to the STOP Act regulations, the Department generally is not able to provide pre-

decisional guidance or to opine on competing claims in the hypothetical.

*30. Comment:* Several Tribes and a Tribal organization expressed thoughts about the criteria and contents of an export certification application and permit. These included, among others, establishing criteria for granting export certification permits to individuals or organizations with demonstrated expertise and a legitimate need to handle and export cultural items, requiring exporters to exercise reasonable care in verifying the legal origin and compliance of cultural items, and consulting with Indian Tribes about the export certification application.

*Response:* The Department appreciates this feedback. The Department will develop the form by which an applicant Requests an Export Certification in consultation with interested Tribes.

*31. Comment:* Three Tribes and one Tribal consortium asked for a high degree of detail about how Tribes may access and view the database of export certification applications. One Tribe asked for the ability to limit sensitive information in databases. One Tribe expressed concern about how the database would operate with respect to FOIA. An individual expressed concern about the database and asked for a focus on process instead. Another Tribe asked for the ability to flag particular items in the database that a Tribe identifies as sensitive or missing and circulating in the marketplace. An additional Tribe asked for the ability to flag items that a Tribe has learned are in circulation at present.

*Response:* The Department has endeavored to include as much detail as is possible about the database of export certification applications in the regulations. The Act's FOIA exemption is codified in regulation at proposed § 1194.107(b), and Tribes may request removal of any application from the database. At this proposed stage, all data to be included in the database is categorized similarly and no identifiers are proposed. The Department anticipates generating more information, including possible trainings, on the database of export certification applications following publication of a final rule.

*32. Comment:* A Tribal consortium asked for a receipt template for Tribes to issue to purchasers that would exempt an item from these regulations.

*Response:* The Department has incorporated the Tribal suggestion to the Tribal Authorization as set forth in proposed § 1194.109.

*33. Comment:* A Tribe asked that export certification fees not apply to Indian Tribes.

*Response:* The Department has implemented a process for Tribal Authorization as set forth in proposed § 1194.109. Such a Tribal Authorization would exempt an item from the need for an export certification, and the attendant fee.

*34. Comment:* One Tribe asked for a process by which a revocation of an export certification could be affected without harming any DOJ processes.

*Response:* The Department has included a provision in the regulations related to revocation of an export certification. The Department further notes that any administrative revocation of an export certification is, based upon these regulations, an administrative procedure different from actions law enforcement may take as part of an active Federal criminal or civil investigation. The Department will also be closely coordinating with the Department of Justice in implementing the STOP Act.

*35. Comment:* Two Tribes and an organization asked for a presumption that if an item is cultural heritage or fits the category of archaeological resource under ARPA, that item is held and not provided an Export Certification until further evidence is shown that the exporter has a right of possession.

*Response:* The Department has proposed that an applicant for Export Certification must demonstrate the right of possession as part of the application process.

*36. Comment:* A Tribe asked that protection for items under the STOP Act include both objects of matrimony and patrimony and that Tribes be the only ones determining which items are deserving of protection. Another Tribe asked that Tribal consultation inform which items are categorized as cultural items under the STOP Act.

*Response:* The Department agrees. The STOP Act applies to all ''cultural items'' as that term is defined in the Native American Graves Protection and Repatriation Act (NAGPRA) (including objects of cultural patrimony) and the proposed rule contemplates alerting Tribes for any request for an export certification and, to the degree possible, treating as determinative Tribal input on the application.

*37. Comment:* A Tribe and two Tribal consortia asked for development of public education campaigns to encourage the purchase of contemporary Native art and emphasize the illegality of taking certain artifacts. A Tribe asked for the Department of State to conduct public awareness campaigns about Tribal repatriation efforts. A Tribe asked for incentives for international dealers and buyers to repatriate items.

*Response:* The Department does not propose an educational campaign nor an incentive program as part of the proposed regulatory text. The Department will explore these ideas as possible tools following publication of a final rule.

*38. Comment:* Three Tribes and a Tribal organization commented that the Department should not create an exhaustive list of items protected under the STOP Act.

*Response:* The Department agrees. The Department intends to publish a description of characteristics typical of Items Requiring Export Certification rather than a list of items, as set forth in proposed § 1194.101.

*39. Comment:* A Tribe and a Tribal organization asked that the **Federal Register** Notice be created in coordination with Indian Tribes. Both commenters suggested that this Notice be a live document and be updated over time. Both commenters asked that the Notice include practical assistance respectful to the fluidity of cultural items and be specific enough to notify exporters, customs officers and others encountering potentially sensitive items.

*Response:* The Department has incorporated the Tribal suggestion into the **Federal Register** Notice regarding which items may require an export certification as set forth in proposed § 1194.101.

*40. Comment:* A Tribe asked for the ability to request an *in camera* hearing in any administrative appeal or penalty phase associated with a violation of the STOP Act to shield from the public items subject to these proceedings, because many cultural items can only be seen and handled by particular individuals. The Tribe explained that this will protect the items from further harm. Another Tribe commented that in its religion, sensitive items are only able to be touched and seen by certain people, and such items must be treated with respect when they are brought back.

*Response:* The Department appreciates this feedback. In the administrative appeals provision of the proposed regulations, at proposed § 1194.302, there is a mechanism for Tribes or Native Hawaiian organizations to provide sealed communications concerning the application for an export certification or detention. In the event of a hearing, the proposed regulations incorporate applicable rules from 43 CFR part 4, at proposed § 1194.303. Part 4, in turn, contemplates certain

proceedings occurring under seal or *in camera.*

*41. Comment:* One Tribe asked for a single point of contact for all Native cultural heritage protection within the Department through which Tribes could access appropriate Federal agencies. A Tribal organization underscores that such Tribal liaisons should be equipped to provide trainings to Tribes about testing cultural heritage items for dangerous chemicals and assisting in the handling, moving, packing, and shipping of items internationally repatriated. The Tribal organization noted that Tribal cultural heritage items, including human remains, have often been subjected to chemicals harmful to humans by collectors or institutions for preservation and that can harm Tribal members that repatriate, handle, or reintegrate cultural heritage items for ceremonial use. The Tribal organization also asked that liaisons coordinate with Federal agencies and domestic institutions to ship fragile Tribal cultural heritage items safely and carefully.

*Response:* The Department appreciates this feedback. Through the Interagency Working Group, the Department has endeavored to identify and centrally place the most relevant points of contact from the Department, as well as from the Departments of State, Justice, and Homeland Security. The Department welcomes feedback on the appropriateness of this solution.

*42. Comment:* Two Tribes and a Tribal organization commented that the Department should provide more information on training materials that will be provided to Federal staff and officials. The Tribal organization asks if Tribes may reach out to the Department for technical assistance in developing training materials. The Tribes ask that Tribes be heavily involved in designing trainings.

*Response:* The Department anticipates providing more information about training following a final rule implementing the STOP Act.

*43. Comment:* Three Tribes asked for flow charts in the regulation to explain processes in the regulatory text. A Tribal consortium asked for a step-by-step guide for Federal officials within agencies to use in the event of a trafficking incident.

*Response:* The Department does not propose any flow charts as part of the proposed regulatory text, either for Tribal, private, or Federal use. The Department will explore such flow charts as informational tools following publication of a final rule.

*44. Comment:* Five Tribes and two Tribal organizations asked for guidance on the Tribal Working Group. Specific areas of inquiry included the process for nominations, a request for mandatory, regular meeting times, inclusion of compensation for the Tribal Working Group members, a mandatory process to implement judicial proceedings, and a requirement for timely responses from agencies.

*Response:* The regulations governing the Native Working Group appear at proposed subpart G. These include guidance on nominations and eligibility. The Department declined to include mandatory meetings for the Native Working Group to promote maximum flexibility for this group. The Department is unable to compensate members of the Native Working Group based upon the language of the STOP Act. The Native Working Group may make a request that the Department of Justice initiate judicial proceedings, as set forth in proposed § 1194.603(c) and (d), and Native Working Group requests for assistance and information are set forth in proposed § 1194.603(e).

*45. Comment:* One organization urged the Department to consult on the form of the export certification application. One Tribe asked that the regulations describe the minimum needed to apply for a certification, and also asked for a process or system where Tribes can learn about international or domestic auction yards where their items may be implicated. A Tribe and a Tribal organization asked that publication of characteristics typical of cultural heritage be general in nature and not require photographs or an exact description unless a Tribe consents to provide that information. The same commenters expressed that any descriptions should be more onerous than the Convention on Cultural Property Implementation Act, 19 U.S.C. 2601 *et seq.*

*Response:* A draft of the application form is attached to this proposed rule; the Department invites comments on the form from interested Tribes and Native Hawaiian organizations. The form specifically requests the purpose and timeframe of the proposed export. The Department does not have a definitive list of possible auction houses. Consultation on the form will enable Tribes to provide direct feedback on inclusions of photographs and nature of descriptions required.

*46. Comment:* One Tribe asks that the regulations provide a mechanism for Tribes to review export certification applications.

*Response:* Under the proposed regulations, the Department will notify the impacted Tribes and Native Hawaiian organizations when an application is submitted and uploaded into the database and again once the Department finds that the application is complete.

*47. Comment:* One Tribe asks that the Departments of State and Justice consult with and take direction from Tribes on repatriation efforts, especially as it pertains to legal efforts for violations of Federal law and engaging with foreign countries and institutions with a history of holding exported Tribal cultural heritage items.

*Response:* The Department appreciates this feedback and has included guidance on consultation in a number of areas in the proposed rule.

*48. Comment:* One Tribal organization asks that where dispute resolution systems exist to minimize burdens for Tribes and review committees, Tribes be proactively included at the outset. Ideally, this would include training and curriculum to stakeholders to promote the types of items to look for, and to teach officers how to return sacred objects or objects of patrimony.

*Response:* The Department appreciates this feedback. The Department has included guidance on consultation in a number of areas in the proposed rule.

*49. Comment:* A Tribe asks that the database follow the ''Do No Harm'' principle and that Tribes should have access to the system to remove or correct information since the information may be confidential, culturally sensitive, sacred, or secret information to a Tribe.

*Response:* The Department appreciates this feedback. The proposed rule clarifies that information provided to the Department will be protected to the degree possible in accordance with applicable law, and that a Tribe or Native Hawaiian organization may request the deletion of material from the database.

*50. Comment:* One Tribe asks that the Department focus enforcement efforts on private dealers and brokers rather than placing burdens onto Tribes when facing repatriation.

*Response:* The Department appreciates this feedback. The Department has endeavored to craft the proposed rule in such a way that it will prevent illegal exportations, while allowing Tribes to authorize exportation at their discretion and facilitate the voluntary return of tangible cultural heritage.

*51. Comment:* One Tribe asks that the Department create a specific tax form and associated paperwork for tax deductive gifts for those who voluntarily return Tribal cultural items.

*Response:* The Department anticipates providing tax documentation to an individual who successfully completes a voluntary return, as set forth in proposed § 1194.403. In doing so, the Department must comply with IRS rules and will work with the IRS on what documentation is needed.

*52. Comment:* A Tribal organization asks that the United States make a worldwide announcement about the voluntary return provision and provide for acknowledgement of voluntary returns.

*Response:* The Department has consulted with the Department of State about potential methods and mechanisms to provide notice to international entities. The Department has not proposed a uniform approach to publicizing voluntary returns because the Department understands that some Tribes may not wish to share information about their objects of patrimony returning home.

*53. Comment:* One Commenter asked if the STOP Act will exempt or address how the Marine Mammal Protection Act (MMPA) challenges cultural practices.

*Response:* The Department is grateful for this comment. Generally, the STOP Act and the MMPA exist in parallel and neither law exempts nor preempts the application of the other.

*54. Comment:* One Commenter referenced Hawai'i state law and how it identifies objects of patrimony and protects certain categories of objects.

*Response:* The Department is grateful for this comment and has considered it in the drafting of the proposed rule.

*55. Comment:* One Commenter requested that the Interagency Working Group look to Office of Native Hawaiian Relations (ONHR) to provide information about Native Hawaiian organizations. The commenter also referenced including an authentication system that ensures NHOs meet the regulatory definition for consultations they are engaged in.

*Response:* The Department anticipates calling upon ONHR's expertise as the Interagency Working Group commences its work.

*D. Other Comments*

*57. Comment:* Multiple Tribes expressed support for the STOP Act and prompt implementation of the regulations.

*Response:* The Department appreciates this feedback and is pleased to offer this proposed rule for additional Tribal feedback.

*58. Comment:* Three Tribes and two Tribal organizations noted that implementation of the STOP Act requires funding for Tribal Historic Preservation Offices (THPO) to ensure capacity to implement the STOP Act and to have staff to track items. One Tribe noted that the Tribe did not have enough funding to get patrimony back or to bid for it, in the worst-case scenario. Another Tribe noted the need for funds for Tribes to implement, identify, and store items subject to the STOP Act, including travel to locations of items, securing means of safe return, and ongoing storage and safekeeping of items after return.

*Response:* The Department notes that funding is authorized in the statutory text of the STOP Act. However, that funding is not appropriated. If and when funds are appropriated, the Department will explore best ways to implement in line with these comments.

*59. Comment:* One Tribal organization and one Tribe encouraged regulatory language to utilize more than NAGPRA and ARPA where the STOP Act references ''other applicable law.'' The commentors cite Tribal law, the Lacey Act, applicable Executive Orders, the Antiquities Act, and the Endangered Species Act.

*Response:* The Department concurs with Tribes that these and other in-effect laws comprise the ''other applicable law'' referenced in the STOP Act. However, the Department declines to include a particularized list because all laws in effect may apply depending on a particular factual pattern that arises.

*60. Comment:* A Tribe asked for monitoring of international institutions likely to house or traffic Tribal cultural heritage items, and that information gained from monitoring be made available to Tribes. The same Tribe asked that State officials be directed to monitor international auctions and sales.

*Response:* The Department's authority under the STOP Act does not provide a mechanism for the Department to direct monitoring of institutions, either by Federal or State authorities.

*61. Comment:* A Tribe expressed questions on the Indian Arts and Crafts Act and whether there might be space for that Act and the STOP Act to work together.

*Response:* The Department notes that the text of the STOP Act allows for an agreement with a foreign country ''to expand the market for the products of Indian art and craftsmanship in accordance with section 2 of the Act of August 27, 1935.'' Outside of this statutory reference, the Department has not included references to the Indian Arts and Crafts Act in the text of the proposed rule.

*62. Comment:* A Tribe asked what would happen if a foreign government, entity, or individual is uncooperative, and what recourse the United States has to ensure strong enforcement to persuade uncooperative institutions or governments.

*Response:* The STOP Act, and its implementing regulations, apply primarily to items that a putative exporter seeks to take out of the United States prior to their exit from the country. The STOP Act does not contain mechanisms to persuade or obligate international governments or institutions to repatriate items.

*63. Comment:* A Tribal organization asked that the implementing regulations include an intellectual property provision because there continues to be harm to Tribes from the misappropriation, misuse, and exploitation of traditional knowledge, genetic resources associated with traditional knowledge, and traditional cultural expressions because of the lack of protection within the United States' intellectual property system.

*Response:* The Department's authority under the STOP Act does not provide a mechanism for the Department to propose an intellectual property provision in this proposed rule.

*64. Comment:* A Tribal organization asked that the United States, through the Department, call on countries to participate in a concerted international effort with necessary concrete measures and implement bilateral agreements to obligate countries to monitor imports and facilitate repatriations.

*Response:* The STOP Act confirms the authority of the President to request agreements with foreign countries to discourage commerce in and collection of certain items, encourage voluntary return of tangible cultural heritage, and expand markets for products of Indian art and craftsmanship. The Department of State approves the negotiation and conclusion of all international agreements to which the United States will become a party. The STOP Act does not contain mechanisms to persuade or obligate international governments or institutions to repatriate items. However, the existence of the STOP Act, including implementing regulations, may be influential under international mechanisms, such as the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

*65. Comment:* One Tribe shared that the application of ARPA was complex on the Tribe's allotted lands, resulting in a scenario where a landholder moved forward with excavation with no permit

because ARPA did not apply to Tribal lands and because no Tribal law regulated the excavation. The Tribe wanted the Department to consider this example of complex situations in Indian Country to inform drafting of the proposed regulation.

*Response:* The Department is grateful to the Tribe for sharing this story as it exemplifies the complex legal issues that manifest in Indian country. ARPA does apply on trust and restricted Indian land. The application for an Export Certification requires presentation of an ARPA permit authorizing export of the resource or attestation that ARPA does not apply.

*66. Comment:* A Tribal organization asked whether the Department would consult on a draft before a proposed rule, or whether the next draft would be a proposed rulemaking.

*Response:* The Department is issuing a proposed rule rather than an interim rule at this time.

*67. Comment:* One commenter expressed concern with the ''most appropriate claimant'' language used in the STOP Act. The commenter asked to envision alternative approaches.

*Response:* The Department appreciates this concern. As required, these implementing regulations have been drafted consistent with the STOP Act's express language and Congress' intent in enacting the statute.

*68. Comment:* A Native Hawaiian commenter asked what would happen if a museum in Europe voluntarily returned an item, and whether that item would return to its community or to the national museum. The same commenter asked who determined the item's ultimate resting place.

*Response:* The proposed regulations contemplate that the voluntary return of an item would occur as agreed by the individual or organization wishing to return the item and the appropriate Indian Tribe or Native Hawaiian organization.

*69. Comment:* A Native Hawaiian commenter asked if the STOP Act addressed how items are stored or displayed. Another commenter asked if the STOP Act protected items found on public or private lands.

*Response:* Manner of storage of items, and items from private lands outside the exterior boundaries of a reservation are outside the scope of the STOP Act and this regulation. The definitions of archaeological resource and cultural item includes resources and items from Federal land.

*70. Comment:* One commenter expressed concern with the Federal Government's role in identifying who could be criminalized and therefore who may be seen as a legitimate practitioner, particularly with regard to the Native Hawaiian Community.

*Response:* The Department appreciates this concern and will endeavor to follow its obligations under the statute.

*71. Comment:* Two commenters reiterated that Native Hawaiian organizations are different from Indian Tribes, and requested the Department avoid making one look like the other.

*Response:* The Department agrees that Native Hawaiian organizations are different than Indian Tribes and will continue to strive to ensure that its regulations and guidance reflect that difference.

*72. Comment:* One commenter asked that the proposed rule include ''the provision of technical assistance if NHOs lack sufficient resource[s].''

*Response:* The Department appreciates this concern and has included a broad offer of technical assistance in the proposed rule.

*73. Comment:* Two commenters expressed concern about traditional divisions between the political and the spiritual.

*Response:* The Department appreciates this concern and has considered it in drafting the proposed rule.

*74. Comment:* One commenter asked the Department to amend the definition of Native Hawaiian organization in the STOP Act regulations to include any organization that has Native Hawaiians in substantive and policymaking positions within the organization. Another commenter asked that specific organizations not be listed in applicable definitions.

*Response:* The Department appreciate these concerns. However, the definition provided in the proposed STOP Act regulations aligns with the terminology utilized in the recently amended NAGPRA regulations.

*75. Comment:* One commenter asked how NHOs may be recognized. Several other commenters provided comments about recognition of NHOs and the Secretary's list of recognized NHOs.

*Response:* Recognition of NHOs is outside the scope of the Act and this regulation. The Department respectfully refers the inquirer to ONHR, which is well positioned to provide information about applicable processes.

## III. Subpart-by-Subpart Summary of the Proposed Rule

This section summarizes the seven subparts of the proposed rule.

### *A. General Provisions*

Subpart A includes an introductory section setting forth the purpose of the regulations, definitions for terms in the regulations, and provisions concerning filing of documents and severability. The definitions are mostly from the Act or, as directed in the Act, from the regulations implementing NAGPRA at 43 CFR part 10 or the Department's uniform regulations implementing the Archaeological Resources Protection Act (ARPA) at 43 CFR part 7. The Department proposes to add Native American human remains to the Act's definition of ''items prohibited from exportation.'' This is consistent with the provision later in the proposed rule that the Secretary will not issue an export certification for native American human remains. The only major change to the NAGPRA and ARPA definitions is that proposed for ''repatriation.'' Under NAGPRA that term refers to the transfer of possession or control of a cultural item or human remains, but not necessarily physical custody. One of the purposes of the STOP Act, however, is to return tangible cultural heritage to the physical custody of the Indian Tribe or Native Hawaiian organization. This section also includes a placeholder definition for the ''Office,'' the entity within the Department of the Interior that will be delegated the responsibility for implementing the export certification and other programs under the Act. As noted above, as of this notice, the Department has not yet established that entity. This definition will be replaced with one for that entity once the Department establishes it.

As noted, the Department is also proposing a provision concerning severability. In enacting the Act, Congress created several different ways to stop the export of cultural items and archaeological resources and facilitate the repatriation of tangible cultural heritage. While this rule is intended to create systematic processes for those methods, if a court holds any provision of one part of this rule invalid, it should not impact the other parts of the rule. For example, a decision finding invalid a portion of subpart B should not impact subpart C, because the detention, forfeiture, and repatriation of items not having a necessary export certification would not be affected by a problem in the process for obtaining a certification. Similarly, a decision finding invalid part of the export certification process should not impact the process for voluntary return of tangible cultural heritage or the provisions for the Native Working Group. Any decision finding any provisions in this rule to be invalid would not impact the remaining provisions, which would remain in force. The intent of this rule is to stop

exports and facilitate repatriation as a whole, but the rule is not an interdependent whole—other provisions of the rule would implement that intent even if a court declared certain provisions invalid.

*B. Export Certification System*

The Act directs the Department to establish a system to issue export certifications, which are required to export cultural items and archaeological resources. In deference to the cultural sensitivity for Indian Tribes and Native Hawaiian organizations surrounding Native American human remains and recognition of the common law rule that human remains cannot be owned, the Department is proposing that it will not issue an export certification for the export of Native American human remains.

The proposed export certification process begins with the submission of an application and supporting documents, together with the application fee. Because of the broad variety of such items and variations in the cultural importance of such items to Indian Tribes and Native Hawaiian organizations, the Department is proposing to require a separate application and certification for each item proposed to be exported. A draft application is included with this proposed rule; we invite comment on its contents. To make the Department's review and the subsequent review and consultation with the relevant Indian Tribes and Native Hawaiian organizations as efficient as possible (given the extremely tight decision-making deadlines in the Act), the Department is proposing to require submission of supplemental documents in addition to the application. Such supplemental documents are designed to establish that the item is not an item prohibited from export and to give the Department and the Indian Tribe or Native Hawaiian organization sufficient information to decide what Indian Tribe or Native Hawaiian organization is culturally affiliated with the item and whether the Secretary should issue an export certification.

After the exporter has filed the application and all supporting documents, the Department will upload the application and supporting documents into the Export Certification Database for review by Indian Tribes and Native Hawaiian organizations, with notification to the relevant Tribes and organizations; review the application for completeness; and begin coordination with relevant Federal agencies. Once the Department has determined that the application and all supporting documents are complete, the statutory process and timeframes for consultation and approval or disapproval begins.

At the end of that process, the Department will notify the applicant and any relevant Indian Tribe or Native Hawaiian organization of its determination to issue or deny an export certification. That notification will include notice of the right to administratively appeal that determination under subpart D. Upon the expiration of the period for appeal, or the final exhaustion of administrative remedies, the Department will issue the Export Certification or decline to issue it. That decision may be further appealed to a United States District Court. If the Department issues an Export Certification, the exporter must provide U.S. Customs and Border Protection (CBP) with a copy of the Certification by following the process in these regulations.

The proposed regulations also provide for an Indian Tribe or Native Hawaiian organization to issue, at its sole discretion, a Tribal Authorization that is equivalent to an Export Certification.

*C. Procedures for Detention, Forfeiture, Repatriation*

The Act provides for detention by CBP, and forfeiture, and repatriation by the Department of (1) any item that may be an Item Prohibited from Exportation that is exported, attempted to be exported, or otherwise transported from the United States; or (2) any item that may be an Item Requiring Export Certification that is exported, attempted to be exported, or otherwise transported from the United States without an Export Certification or Tribal Authorization. Proposed procedures for such actions are in subpart C of the proposed rule. Under the proposed procedures, CBP will detain any such item and contact the Department. The Department will then inform CBP whether the item is within the scope of the Act and should continue to be detained. If the Department advises CBP that the item is within the scope of the Act and should be detained, CBP will continue to detain the item and provide a detention form to the exporter together with a notice the Department provides to CBP of its right to appeal the detention under subpart D of this part. The Department, within 10 days of detention, will retrieve the detained item from the CBP Port of detention and execute the appropriate CBP Chain of Custody form. The Department is responsible for storage of the item in an appropriate manner based on consultation with the relevant Indian Tribe or Native Hawaiian organization.

Upon the expiration of the period for appeal, or the final exhaustion of administrative remedies, the Department may refer the item to an appropriate Federal agency or U.S. Attorney's Office for forfeiture proceedings, or the Department may follow abandonment procedures. If the exporter abandons the item, the Department will repatriate the item to (1) the Indian Tribe or Native Hawaiian organization from whose Tribal Land the item was removed or who is culturally affiliated with the item, for cultural items under NAGPRA; or (2) the Indian Tribe from whose Indian Land the item was removed, for archaeological resources under ARPA. Similarly, after an administrative declaration of forfeiture or a final order of forfeiture in a judicial proceeding, the Department may, consistent with applicable law and regulations governing the remission and mitigation of forfeitures, seek the item and repatriate it to (1) the Indian Tribe or Native Hawaiian organization from whose Tribal Land the item was removed or who is culturally affiliated with the item, for cultural items under NAGPRA; or (2) the Indian Tribe from whose Indian Land the item was removed, for archaeological resources under ARPA.

*D. Administrative Appeals*

The Act provides that the Department afford an exporter the opportunity for a hearing concerning certain actions in the export certification and detention processes. As proposed in subpart D, that hearing would be before the Departmental Cases Hearings Division in the Department's Office of Hearings and Appeals, followed by an appeal to the Interior Board of Indian Appeals. Consistent with the exemption under the Act from the Freedom of Information Act, all proceedings before DCHD or the IBIA would be under seal. The proposed regulations provide that the hearing and appeals process must be exhausted before any appeal to a United States District Court.

*E. Voluntary Return of Tangible Cultural Heritage*

The Act tasks the Departments of the Interior and State with creating a process for the voluntary return of tangible cultural heritage to Indian Tribes and Native Hawaiian organizations. That proposed process is in subpart E of the proposed rule. The process begins with the individual or organization wishing to return the items submitting a simple list of the items to

the Department, with certain information concerning the items, to the extent that the individual or organization has that information. The Department will then conduct the consultation required for it to determine which Indian Tribe(s) or Native Hawaiian organization(s) would potentially be culturally affiliated with the items. Once the Department makes that determination, it will supply contact information and the list to the parties, and will provide assistance, as needed, to the parties to arrange for the return. The Departments of Homeland Security and State will facilitate both foreign and domestic transportation of the items, and at the request of the Indian Tribe or Native Hawaiian organization, the Interagency Working Group will explore funding mechanisms or use of in-kind resources to assist the Indian Tribe or Native Hawaiian organization. The goal of this process is for the Federal government to facilitate the return, not to obstruct or delay it. As noted by the Act, this process does not apply to a return of an object subject to NAGPRA by a museum as that term is defined in NAGPRA.

*F. Interagency Working Group*

The Act formalizes an existing informal Interagency Working Group of staff from the Departments of Justice, State, Homeland Security, and the Interior. This subpart sets out the purpose and duties of that group.

*G. Native Working Group*

The Act also creates a Native Working Group to provide recommendations to Federal agencies on certain areas in implementing the Act. Subpart G of the proposed rule sets out a proposed process for the Secretary to choose the members of the Native Working Group. Under that process, the Native Working Group would consist of thirteen members—one from each of the BIA's twelve regions, plus one representing Native Hawaiian organizations. The members would be nominated by Indian Tribes and Native Hawaiian organizations. Any Tribe or organization could nominate someone as a member of the Working Group, even if that Tribe or organization is not in the same region or State as the nominee. The proposed rule also provides for consideration by the Federal Government of requests from the Native Working Group for agency actions, with specific processes by the Departments of Justice and State, and for the Native Working Group to request information and assistance from Federal agencies, committees, and working groups.

## IV. Procedural Requirements

*A. Regulatory Planning and Review (E.O. 12866, 14094 and E.O. 13563)*

Executive Order (E.O.) 12866, as amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is significant.

E.O. 14094 amends E.O. 12866 and reaffirms the principles of E.O. 12866 and E.O. 13563 and states that that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and lease burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The DOI has developed this rule in a manner consistent with these requirements.

In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at *https://www.regulations.gov* by searching for ''RIN 1076–AF78.''

*B. Regulatory Analysis*

1. Regulatory Flexibility Act

The Department certifies that this document would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). For the final rule stage, DOI will prepare a final analysis using the public comments received. For the proposed rule stage, DOI welcomes additional data regarding anticipated compliance costs, and impacts to the annual revenues, for small entities.

The following table lists small business size standards, matched to industries described in the North American Industry Classification System (NAICS), as modified by the OMB, effective January 1, 2022, and published March 17, 2023 at *https://www.sba.gov/document/support-table-size-standards:*

| NAICS code | NAICS industry description | Size standards in millions of dollars | Size standards in number of employees |
|---|---|---|---|
| 458310 | Jewelry Retailers | $20.5 | |
| 459130 | Sewing, Needlework, and Piece Goods Retailers | 34.0 | |
| 459420 | Gift, Novelty, and Souvenir Retailers | 13.5 | |
| 459920 | Art Dealers | 16.5 | |

DOI's preliminary threshold analysis included the small entity communities (and industries) for retailers and dealers listed in the above table. The proposed regulations would not have a significant economic impact on these small entities. During Tribal consultations held in fall 2023 on its draft proposed rule, DOI received feedback from stakeholders in these industries but did not receive any information or comments specific to the development of this preliminary threshold analysis. Consequently, DOI has developed a list of questions located at the end of this section to obtain more information from these small entity communities (and industries) for retailers and dealers to aid in further developing this analysis.

The rule DOI proposes creates a minimal burden on select market participants who voluntarily opt to participate in stopping the export of cultural items, and aid in facilitating the international repatriation of cultural items prohibited from being trafficked by the NAGPRA, and archeological resources prohibited from being trafficked by the ARPA. The burden on

a participant includes the administrative fee DOI will assess and potentially an appraisal the IRS would require for cultural items that participants claim as a tax-deductible gift if they have a monetary value of $5,000.00 or more. The proposed regulations would not have an impact on a substantial number of these small entities. DOI's threshold analysis identified:

- no increase to regulatory compliance costs;
- no decreases to annual revenue;
- no increases to the risk of short-term or long-term insolvency; and
- no disproportional impacts to small businesses.

INITIAL/THRESHOLD REGULATORY FLEXIBILITY ANALYSIS

| NAICS code | NAICS industry description | Regulatory compliance costs | Decrease to annual revenue |
|---|---|---|---|
| 458310 ..... | Jewelry Retailers ..... | $0.00 | $0.00 |
| 459130 ..... | Sewing, Needlework, and Piece Goods Retailers ..... | 0.00 | 0.00 |
| 459420 ..... | Gift, Novelty, and Souvenir Retailers ..... | 0.00 | 0.00 |
| 459920 ..... | Art Dealers ..... | 0.00 | 0.00 |

2. Regulatory Impact Analysis

Alternatives

As this rule is required by the STOP Act, the Department considered no other alternatives to the proposed rule.

Burdens, Benefits and Costs

The Department is proposing new regulations to establish an export certification system, set forth procedures for detention of items subject to the rule and repatriation of those items, establish a framework for voluntary return of items subject to the rule, and establish interagency and Native working groups. The Preamble discusses the rationale for all the changes, which we assume will have no major economic effects, small business impacts, or distributional effects. Overall, the rule is expected to prevent the export of Native American cultural items that are held in violation of current Federal laws for sale in foreign countries; to repatriate such items from individuals and organizations having such items; and to improve coordination between Federal agencies, Indian Tribes, and Native Hawaiian organizations (NHOs) seeking to prevent the export and sale of such items.

This regulation will benefit Tribes, NHOs, and individuals who have their patrimony returned, and reduce future illegal trade in patrimony. This will also benefit buyers and sellers of items that qualify for certification, who can be confident of the legality of holding, trading, and owning these items.

Costs related to this regulation may include the time and fees potential exporters spend to obtain certification, higher prices for purchasers of these items (whether certified or not), and the time and expense required for Tribes and NHOs to participate in certification. There may also be costs for purchasers who make a voluntary return of items, and for Tribes and NHOs to receive and curate returned items. Under the Act, the Secretary may assess reasonable fees to process export certification applications and may collect fees to the extent and in the amounts provided in advance in appropriations Acts.

Distributional effects could depend on how fees collected from exporters are used. Distributional effects may be minimal if the fee is set solely to offset the Government costs of administering the program. Under proposed Section 1194.107(e), ''if an Indian Tribe or Native Hawaiian organization lacks sufficient resources to access the database or respond to agency communications in a timely manner, the Secretary, in consultation with Indian Tribes and Native Hawaiian organizations, will provide technical assistance to facilitate that access or response, as applicable.'' Thus, the Secretary will be able to lessen any distributional effects on Tribes and NHOs.

DOI currently lacks information to describe the baseline, or state of the world in the absence of the regulation. Some priority learning questions where we seek information include:

- What data or estimates do we have to describe the ''without-regulation'' baseline?
  - How many items are currently exported that will be subject to the regulation?
  - How many firms and individuals are currently engaged in this export?
- What will change as a result of the regulation?
  - Which groups will experience costs and benefits?
  - How can we quantify and value those costs and benefits?
  - What are time and monetary costs of complying with the regulation for the individuals and groups involved?
- What are the likely effects for exporters applying for certification?
  - What are likely scenarios for the proportion of compliant and non-compliant exporters?
- What are the likely effects for purchasers completing a voluntary return?
- What are the roles of Tribes and NHOs in verifying certifications?
- What is the role of Federal government staff?

*C. Unfunded Mandates Reform Act of 1995*

This rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector because this rule affects only putative exporters and their related businesses. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*D. Takings (E.O. 12630)*

This rule would not affect a taking of private property or otherwise have taking implications under E.O. 12630. A takings implication assessment is not required.

*E. Federalism (E.O. 13132)*

Under the criteria in section 1 of E.O. 13132, this rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

*F. Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of E.O. 12988. Specifically, this rule: (a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to

minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*G. Consultation With Indian Tribes (E.O. 13175)*

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have hosted extensive consultation with federally recognized Indian Tribes in preparation of this proposed rule, including through a Dear Tribal Leader letter delivered to every federally recognized Tribe in the country, and through three consultation sessions held on May 9, 13, and 23, 2022.

*H. Paperwork Reduction Act*

This proposed rule contains new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The Department is seeking approval of a new information collection, as follows.

*Brief Description of Collection:* The Act requires the Department to promulgate regulations to implement the Native Working Group; export certification application and issuance procedures; and secure central Federal database information system for the purpose of making export certification applications available to Indian Tribes and Native Hawaiian organizations. We estimate that the annual cost to the Federal Government to administer this information collection is $3,000,000.

*Title:* Export Certification System, 25 CFR 1194.

*OMB Control Number:* 1076–NEW.

*Form Number:* Export Certification Application.

*Type of Review:* New collection.

*Respondents/Affected Public:* Individuals, Private Sector, Government.

*Total Estimated Number of Annual Respondents:* 122.

*Total Estimated Number of Annual Responses:* 122.

*Estimated Completion Time per Response:* Varies from 2 to 18 hours.

*Total Estimated Number of Annual Burden Hours:* 2,504.

*Respondents' Obligation:* Required to obtain a benefit.

*Frequency of Response:* On occasion.

*Total Estimated Annual Non-Hour Burden Cost:* $50,044.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to *consultation@bia.gov.* Please reference OMB Control Number 1076–NEW in the subject line of your comments.

*I. National Environmental Policy Act (NEPA)*

Under NEPA, categories of Federal actions that normally do not significantly impact the human environment may be categorically excluded from the requirement to prepare an environmental assessment or impact statement. (40 CFR 1501.4) Under the Department, regulations that are administrative or procedural are categorially excluded from NEPA analysis because they normally do not significantly impact the human environment. (43 CFR 46.210(i)) This rule is administrative and procedural in nature. Consequently, it is categorically excluded from the NEPA requirement to prepare a detailed environmental analysis. Further, the Department also determined that the rule would not involve any of the extraordinary circumstances under a categorical exclusion that would necessitate environmental analysis. (43 CFR 46.215.)

*J. Energy Effects (E.O. 13211)*

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

*K. Clarity of This Regulation*

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(l)(B)), and 13563 (section l(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, and so forth.

*L. Public Availability of Comments*

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.

*M. Pay-As-You-Go Act of 2010*

Public Law 117–258: There is authorized to be appropriated to carry out this Act $3,000,000 for each of fiscal years 2022 through 2027.

*N. Privacy Act of 1974, System of Records*

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. 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.

This proposed rule contains recordkeeping requirements subject to the Privacy Act. The Department will publish in the **Federal Register** a description denoting the existence and character of system of record, and the routine uses of the system.

**List of Subjects in 25 CFR Part 1194**

Administrative practice and procedure, Alaska, Hawaiian Natives, Historic preservation, Human remains, Indians, Indians—claims, Indians—law.

■ For the reasons set forth in the preamble above, the Department of the Interior, Assistant Secretary—Indian Affairs, proposes to add 25 CFR part 1194 to read as follows:

## PART 1194—SAFEGUARD TRIBAL OBJECTS OF PATRIMONY

Sec.



**Authority:** 16 U.S.C. 470aaa–470aaa11; 25 U.S.C. 9, 25 U.S.C. 3001–3013; 25 U.S.C. 3071; 25 U.S.C. 3078.

### Subpart A—General Provisions

#### § 1194.1 What is the purpose of this part?

In stopping the export of cultural items and archaeological resources and facilitating the repatriation of tangible cultural heritage, the Safeguard Tribal Objects of Patrimony (STOP) Act, Public Law 117–258, codified at 25 U.S.C. 3071, *et seq.,* recognizes the inherent rights of Indian Tribes and Native Hawaiian organizations in their own cultural heritage, wherever their cultural heritage is located. Consistent with the STOP Act's express language and Congress' intent in enacting the statute, these regulations require the Secretary and others to make decisions for the benefit of Indian Tribes and Native Hawaiian organizations, through consultation and collaboration with them. In implementing this systematic process, the Secretary must defer and give preference to the expertise, customs, traditions, and Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations, as Indian Tribes and Native Hawaiian organizations understand them.

#### § 1194.2 How are key terms defined in the part?

*Act* means the Safeguard Tribal Objects of Patrimony Act, Public Law No. 117–258 (136 Stat. 2372) as codified at 25 U.S.C. 3071 *et seq.*

*Archaeological resource* means any material remains of past human life or activities which are of archaeological interest as described in uniform regulations for the Archaeological Resources Protection Act pursuant to 16 U.S.C. 470bb, 43 CFR 7.3; are Native American in origin; and are at least 100 years of age.

*Business day* means Monday through Friday, excluding federally recognized holidays; other days that the applicable office of the Federal Government is closed to the public; and holidays or other days when the Indian Tribe or Native Hawaiian organization that could be culturally affiliated with the relevant item is closed to the public.

*CBP* means the Secretary of the U.S. Department of Homeland Security, acting through the Commissioner of U.S. Customs and Border Protection.

*Consultation* or *Consult* means the exchange of information, open discussion, and joint deliberations made between all parties in good-faith and in order to:

(1) Seek, discuss, and consider the views of all parties;

(2) Strive for consensus, agreement, or mutually acceptable alternatives; and

(3) Enable meaningful consideration of the Native American traditional knowledge, including oral history, of lineal descendants, Indian Tribes, and Native Hawaiian organizations.

*Cultural affiliation* means there is a reasonable connection between human remains or cultural items and an Indian Tribe or Native Hawaiian organization based on a relationship of shared group identity. Cultural affiliation may be clearly identified by the information available or reasonably identified by the geographical location or acquisition history of the human remains or cultural items.

*Cultural item* means a funerary object, sacred object, or object of cultural

patrimony according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

*Detention* means the holding for further investigation of cultural items or archaeological resources and any associated property that is neither immediately released nor seized but is temporarily held by CBP.

*Export certification* means the authorization issued by the Office allowing an exporter to export an item requiring an export certification.

*Funerary object* means any object reasonably believed to have been placed intentionally with or near human remains. A funerary object is any object connected, either at the time of death or later, to a death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. This term does not include any object returned or distributed to living persons according to traditional custom after a death rite or ceremony. Funerary objects are either associated funerary objects or unassociated funerary objects.

(1) *Associated funerary object* means any funerary object related to human remains that were removed and the location of the human remains is known. Any object made exclusively for burial purposes or to contain human remains is always an associated funerary object regardless of the physical location or existence of any related human remains.

(2) *Unassociated funerary object* means any funerary object that is not an associated funerary object and is identified by a preponderance of the evidence as one or more of the following:

(i) Related to human remains but the human remains were not removed, or the location of the human remains is unknown,

(ii) Related to specific individuals or families,

(iii) Removed from a specific burial site of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization, or

(iv) Removed from a specific area where a burial site of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization is known to have existed, but the burial site is no longer extant.

*Human remains* means any physical part of the body of a Native American individual. This term does not include human remains to which a museum or Federal agency can prove it has a right of possession.

(1) Human remains reasonably believed to be comingled with other materials (such as soil or faunal remains) may be treated as human remains.

(2) Human remains incorporated into a funerary object, sacred object, or object of cultural patrimony are considered part of the cultural item rather than human remains.

(3) Human remains incorporated into an object or item that is not a funerary object, sacred object, or object of cultural patrimony are considered human remains.

*Indian land* means lands of Indian Tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian Tribe or Indian individual.

*Indian Tribe* means any Tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)), recognized as eligible for the special programs and services provided by the United States Government to Indians because of their status as Indians by its inclusion on the list of recognized Indian Tribes published by the Secretary of the Interior under the Act of November 2, 1994 (25 U.S.C. 5131).

*Item prohibited from exportation* means—

(1) A cultural item prohibited from being trafficked, including through sale, purchase, use for profit, or transport for sale or profit, by—

(i) Section 1170 of title 18, United States Code, as added by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); or

(ii) Any other Federal law or treaty;

(2) An archaeological resource prohibited from being trafficked, including through sale, purchase, exchange, transport, receipt (including as a gift), or offer to sell, purchase, or exchange, including in interstate or foreign commerce, by—

(i) Section 6(b) and (c) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ee); or

(ii) Any other Federal law or treaty; and

(3) Native American human remains.

*Item requiring export certification* means a cultural item and an archaeological resource, but does not include any item or resource for which an Indian Tribe or Native Hawaiian organization with a cultural affiliation with the item has provided a Tribal Authorization.

*Native American* means of, or relating to, a Tribe, people, or culture that is indigenous to the United States. To be considered Native American under this part, human remains or cultural items must bear some relationship to a Tribe, people, or culture indigenous to the United States.

(1) A Tribe is an Indian Tribe.

(2) A people comprise the entire body of persons who constitute a community, Tribe, nation, or other group by virtue of a common culture, history, religion, language, race, ethnicity, or similar feature. The Native Hawaiian Community is a ''people.''

(3) A culture comprises the characteristic features of everyday existence shared by people in a place or time.

*Native American traditional knowledge* means knowledge, philosophies, beliefs, traditions, skills, and practices that are developed, embedded, and often safeguarded by or confidential to individual Native Americans, Indian Tribes, or the Native Hawaiian Community. Native American traditional knowledge contextualizes relationships between and among people, the places they inhabit, and the broader world around them, covering a wide variety of information, including, but not limited to, cultural, ecological, linguistic, religious, scientific, societal, spiritual, and technical knowledge. Native American traditional knowledge may be, but is not required to be, developed, sustained, and passed through time, often forming part of a cultural or spiritual identity. Native American traditional knowledge is expert opinion. Other terms such as Indigenous Knowledge, Traditional Knowledge(s), Traditional Ecological Knowledge, Tribal Ecological Knowledge, Native Science, Indigenous Science, and others, are sometimes used to describe this knowledge system.

*Native Hawaiian organization* means any organization that:

(1) Serves and represents the interests of Native Hawaiians, who are descendants of the indigenous people who, before 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai'i;

(2) Has as a primary and stated purpose the provision of services to Native Hawaiians; and

(3) Has expertise in Native Hawaiian affairs, and includes but is not limited to:

(i) The Office of Hawaiian Affairs established by the constitution of the State of Hawai'i,

(ii) Native Hawaiian organizations (including 'ohana) who are registered with the Secretary of the Interior's Office of Native Hawaiian Relations, and

(iii) Hawaiian Homes Commission Act (HHCA) Beneficiary Associations and Homestead Associations as defined under 43 CFR 47.10.

*Object of cultural patrimony* means an object that has ongoing historical, traditional, or cultural importance central to a Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization. An object of cultural patrimony may have been entrusted to a caretaker, along with the authority to confer that responsibility to another caretaker. The object must be reasonably identified as being of such importance central to the group that it:

(1) Cannot or could not be alienated, appropriated, or conveyed by any person, including its caretaker, regardless of whether the person is a member of the group, and

(2) Must have been considered inalienable by the group at the time the object was separated from the group.

*Office* means the Office in the Department of the Interior that the Secretary has designated as responsible for exercising the duties of the Secretary under the Act.

*Repatriation* means return of cultural items, archaeological resources, or tangible cultural heritage to a culturally affiliated Indian Tribe or Native Hawaiian organization.

*Right of possession* means possession or control obtained with the voluntary consent of a person or group that had authority of alienation. Right of possession is given through the original acquisition of:

(1) An unassociated funerary object, a sacred object, or an object of cultural patrimony from an Indian Tribe or Native Hawaiian organization with the voluntary consent of a person or group with authority to alienate the object; or

(2) An associated funerary object that was exhumed, removed, or otherwise obtained with full knowledge and consent of the next of kin or, when no next of kin is ascertainable, the official governing body of the appropriate Indian Tribe or Native Hawaiian organization.

*Sacred object* means a specific ceremonial object needed by a traditional religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. While many items might be imbued with sacredness in a culture, this term is specifically limited to an object needed for the observance or renewal of a Native American religious ceremony.

*Secretary* means the Secretary of the Interior.

*Tangible cultural heritage* means—

(1) Native American human remains; or

(2) Culturally, historically, or archaeologically significant objects, resources, patrimony, or other items that are affiliated with a Native American culture.

*Tribal authorization* means the authorization issued by a culturally affiliated Indian Tribe or Native Hawaiian organization, at the sole discretion of the Tribe or organization, stating that an item does not require an Export Certification from the Secretary.

*Tribal land* means

(1) All lands within the exterior boundaries of any Indian reservation;

(2) All dependent Indian communities; and

(3) Any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86–3.

#### § 1194.3 What are the timeframes and methods of delivery of documents under this part?

(a) Whenever this part requires or allows the exporter to file a document on or before a certain date, the exporter is responsible for submitting that document so as to reach the Government office designated for receipt by the time specified. The exporter may use the U.S. Postal Office (USPS), a commercial carrier, or electronic or facsimile transmission. The Office will consider the document filed on the date on which the document is received by the Government office designated for receipt. Acceptable evidence to establish the time of receipt by the Government office includes any official USPS receipt, commercial carrier signature log, time/date stamp placed by the Government on the document, other documentary evidence of receipt maintained by that Government office, or oral testimony or statements of Government personnel.

(b) Whenever this part requires or allows the Government to issue or file a document on or before a certain date, the document will be considered to be issued or filed on the date on which the document was placed in the USPS system, delivered to a commercial carrier, or sent by electronic or facsimile transmission. Acceptable evidence to establish the time of filing or issuance by the Government includes any official USPS sender's receipt, commercial carrier receipt log, and time/date stamp placed by the government office on the document, other documentary evidence of receipt maintained by that office, or oral testimony or statements of Government personnel.

#### § 1194.4 How does severability apply under this regulation?

If a court holds any provisions of the regulations in this part or their applicability to any person or circumstances invalid, the remainder of the regulations and their applicability to other people or circumstances will not be affected.

## Subpart B—Export Certification System

#### § 1194.101 What is the purpose of the Federal Register notice under this part?

The Secretary shall publish in the **Federal Register**, after consultation with Indian Tribes and Native Hawaiian organizations, an announcement that provides fair notice to exporters and other persons regarding which items require an export certification under this section, and:

(a) Includes a description of characteristics typical of items requiring export certification and definitions for ''archeological resource'' and ''cultural item'';

(b) Describes the provenance requirements associated with the trafficking prohibition of 18 U.S.C. 1170 and 16 U.S.C. 470ee(b)–(c), and describes the characteristics of items prohibited from exportation;

(c) Includes the definitions of Indian Tribe, Native American, and Native Hawaiian organization in § 1194.2 and a description of how those terms apply to archaeological resources and cultural items subject to these regulations; and

(d) Includes a description of characteristics typical of items that do not qualify as items requiring export certification and therefore do not require an export certification under this section, including clarification that:

(1) An item made solely for commercial purposes is presumed to not qualify as an item requiring export certification, unless an Indian Tribe or Native Hawaiian organization challenges that presumption during the process for obtaining an export certification under § 1194.102;

(2) A Tribal authorization may be used as evidence to demonstrate that an

item would not qualify as an Item Requiring Export Certification; and

(e) Information on consulting with Indian Tribes and Native Hawaiian organizations. Such information would include information on how to contact Indian Tribes and Native Hawaiian organizations and the possibility, in the sole discretion of the Indian Tribe or Native Hawaiian organization, of obtaining a Tribal Authorization.

**§ 1194.102 When do I need an export certification?**

(a) Any person attempting to export an item that may be an item requiring export certification must apply to the Office for an export certification covering that item before transporting or shipping the item to any foreign country.

(b) Each item to be transported requires a separate application, and the Office will process each application separately.

(c) No item requiring export certification may be exported from the United States without first having obtained an export certification in accordance with this subpart. The Office will not issue an export certification for Native American human remains.

(d) Exporters may apply for an export certification by filing the application described in § 1194.103 with all required supporting documentation.

(e) The Office will process the application using the procedure in § 1194.104 of this part, and will assess exporters who submit an application the fee in § 1194.108 of this part.

**§ 1194.103 What is the process for applying for an export certification?**

(a) Who may apply:

(1) An exporter seeking to export an item that may be an item requiring export certification from the United States must submit to the Office an export certification application.

(2) An Indian Tribe or a Native Hawaiian organization with an interest in a particular item requiring export certification may submit to the Office an export certification application.

(b) How to apply:

(1) Requests for an export certification shall be made on an export certification application. The application must be accompanied by the fee required under § 1194.108.

(2) In addition to completing the application under § 1194.103(b)(1), an application to the Office must include:

(i) Description and pictures (if culturally appropriate) of the item requiring export certification;

(ii) All available information regarding the provenance of the item requiring export certification;

(iii) The presence of any potentially hazardous substances used to treat the item requiring export certification, if known;

(iv) An attestation that, to the best of the knowledge and belief of the exporter, the exporter is not attempting to export an item prohibited from exportation;

(v) Substantial evidence of consultation with possibly culturally affiliated Indian Tribes or Native Hawaiian organizations, including, but not limited to, written correspondence between the exporter and the leader of the Indian Tribe or Native Hawaiian organization and agreement from the leader of the Indian Tribe or Native Hawaiian organization that the Office should issue an export certification;

(vi) Evidence, for an archaeological resource, of a permit under section 4 of the Archaeological Resources Protection Act, 16 U.S.C. 470cc, that authorizes export or that a permit is not necessary;

(vii) Evidence, for Native American cultural items, of a disposition statement (43 CFR 10.7(b) or (c)(5)); a repatriation statement (43 CFR 10.9(g)); or that a disposition statement or repatriation statement is not necessary, with written confirmation from the Indian Tribe or Native Hawaiian organization with authority to alienate the item requiring export certification that the exporter has a right of possession of the item requiring export certification or the Indian Tribe or Native Hawaiian organization has relinquished title or control of the item requiring export certification in accordance with section 3 of NAGPRA;

(viii) If the item was excavated or removed, evidence concerning the ownership of the land that the item was removed from at the time the item was removed;

(ix) Evidence adequate to show that the Indian Tribes or Native Hawaiian organizations are culturally affiliated with the item under 43 CFR 10.3; and

(x) The purpose and timeframe for the proposed exportation of the item.

(3) The exporter must submit all documents supporting the application in the format(s) required for upload into the export certification database established by § 1194.107. The Office will publish the requirements for upload on its website.

(4) When the Office receives an export certification application and supporting documents, the Office will immediately include the application and supporting documents in the export certification database established by § 1194.107. Any further documents that the exporter submits to support an incomplete application under § 1194.104 will be added to the database upon receipt by the Office.

**§ 1194.104 What is the process for the Office to review an export certification?**

(a) Upon receipt of an export certification application, the Office shall review the application for completeness in compliance with § 1194.103 of this part. That review will include coordination with relevant Federal agencies to identify whether there are active Federal investigations into the trafficking of cultural items or archaeological resources by the applicant. The Office will also notify the relevant Indian Tribes and Native Hawaiian organizations of the receipt of the application.

(b) Within 20 business days of receipt, the Office will notify the exporter by mail or overnight carrier whether the application meets the criteria of § 1194.103.

(c) If the application package is not complete, the Office's notification will identify the missing information or documents required for a complete package.

(d) Upon a determination that the export certification application is complete, the Office will notify the relevant Indian Tribes and Native Hawaiian organizations the following business day that the application is complete.

(e) After receiving the notification from the Office under § 1194.104(d), the relevant Indian Tribes and Native Hawaiian organizations will have 9 business days to review the application and supporting documents.

(f) If an Indian Tribe or Native Hawaiian organization notifies the Office that the item requiring export certification may not be eligible for an export certification, the Office will have 7 business days to review the application and supporting documents. If no Indian Tribe or Native Hawaiian organization so notifies the Office, the Office will have 1 business day to review the application and supporting documents.

(g) With notice to the exporter, the Office may extend the review of an application and supporting documents for up to 30 business days if credible evidence is provided that the item requiring export certification may not be eligible for an export certification.

**§ 1194.105 What is the process for the Office to approve an Export Certification?**

(a) Following completion of the process under § 1194.104(a) through (f), and any extension under § 1194.104(g), the Office will make a determination to approve or deny the export certification

application. The Office will notify the applicant and any relevant Indian Tribe or Native Hawaiian organization of the determination and the right to administratively appeal the determination under subpart D of this part. Upon the expiration of the period for appeal, or the final exhaustion of administrative remedies, the Secretary will issue the export certification or decline to issue it.

(b) The exporter must provide CBP with a copy of the export certification within 48 hours before presentation of the item to CBP at the border by uploading the electronic export information (including the export certification) or successor to the CBP Automated Commercial System or successor system.

**§ 1194.106 What is the process for the Secretary to revoke an export certification?**

(a) If the Office receives credible evidence indicating that an item that received an export certification is not eligible for an export certification, then the Secretary, after consultation with relevant Indian Tribes and Native Hawaiian organizations, may immediately revoke a previously issued export certification.

(b) Any revocation will be effective immediately, notwithstanding any administrative appeal under subpart D of this part.

**§ 1194.107 What is the export certification database?**

(a) The Office will enter all Applications for export certification and supporting documents in a secure database information system for the purpose of making export certification applications available to Indian Tribes, Native Hawaiian organizations, and other Federal agencies, including the Departments of Homeland Security, Justice, and State. Access to the database will be limited to users within Indian Tribes, Native Hawaiian organizations, and relevant Federal agencies.

(b) Under the Act, the following information will be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552:

(1) Information that a representative of an Indian Tribe or Native Hawaiian organization—

(i) Submits to a Federal agency pursuant to the Act, an amendment made by the Act, or these regulations; and

(ii) Designates as sensitive or private according to Native American custom, law, culture, or religion; or

(2) Information that any person submits to a Federal agency pursuant to the Act or an amendment made by the Act or these regulations that relates to an item for which an Export Certification is denied under this Act.

(c) All information in the database other than that under § 1194.107(b) will be treated by the Secretary as controlled unclassified information and will be protected in accordance with applicable law.

(d) If an Indian Tribe or Native Hawaiian organization requests that the Office delete an application and supporting documents or any portion thereof from the database, the Office will immediately do so. The review of the Application will continue off-line.

(e) If an Indian Tribe or Native Hawaiian organization lacks sufficient resources to access the database or respond to agency communications in a timely manner, the Office, in consultation with Indian Tribes and Native Hawaiian organizations, will provide technical assistance to facilitate that access or response, as applicable.

**§ 1194.108 When are export certification fees assessed?**

(a) As of [EFFECTIVE DATE OF FINAL RULE], the fee for applying for an export certification is $500.00 per application. Federal, Indian Tribe, State, and local government agencies and Native Hawaiian organizations are exempt from the processing fee.

(b) The fee will be paid when the application is submitted, and is not refundable. The Office will keep the fee as a service charge even if the Secretary does not issue an Export Certification or the applicant withdraws the application.

(c) The application fee will be adjusted annually according to the change in the implicit price deflator for gross domestic product (published by the Department of Commerce) since the previous adjustment and will subsequently be posted on the Office website before October 1 each year. Revised fees are effective each year on October 1. Because the fee adjustments are simply based on a mathematical formula, the adjustments will not be subject to notice and comment.

**§ 1194.109 Under what circumstances may a Tribal authorization be issued?**

(a) In some circumstances, and at the sole discretion of the Indian Tribe or Native Hawaiian organization, an Indian Tribe or Native Hawaiian organization may issue a Tribal authorization that may be used as evidence to demonstrate a particular item does not qualify as an item requiring export certification.

(1) The Tribal authorization will be in a letter signed by the Tribal leader or a duly adopted Tribal resolution, Tribal ordinance, or other, similar act of the Tribal government or Native Hawaiian organization.

(2) The Tribe or Native Hawaiian organization must provide a copy of the Tribal Authorization to the Office.

(3) The Office may publish a template for Indian Tribes or Native Hawaiian organizations to use for the Tribal authorization.

(b) The exporter must provide CBP with a copy of the Tribal authorization within 48 hours before presentation of the item to CBP at the border by uploading the electronic export information (including the Tribal authorization) or successor to the CBP automated commercial system or successor system.

**§ 1194.110 How does the Paperwork Reduction Act affect this part?**

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned control number 1076–XXXX. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## Subpart C—Procedures for Detention, Forfeiture, Repatriation, and Return

**§ 1194.201 When can CBP detain certain items?**

(a) The Act authorizes CBP to detain certain items specified in § 1194.201(b), and through this regulation, the Secretary requests that CBP do so in accordance with the procedures specified below.

(b) CBP will detain, using procedures under this section:

(1) Any item that may be an item prohibited from exportation that is exported, attempted to be exported, or otherwise transported from the United States; or

(2) Any item that may be an item requiring export certification that is exported, attempted to be exported, or otherwise transported from the United States without an export certification or Tribal authorization.

(c) Upon discovery of an item specified in § 1194.201(b), CBP will contact the Office within 24 hours for the Office to determine whether the item may be lawfully exported in accordance with the Act and these regulations.

(d) Upon the request of the Office, CBP may provide additional

information such as photographs of the item to assist the Office in determining whether the item falls within the scope of the Act.

(e) The Office will provide to CBP a written statement within five calendar days of initial CBP contact stating whether the item falls within the scope of the Act, whether the item requires an Export Certification, and whether the Secretary has issued an export certification or an Indian Tribe or Native Hawaiian organization has issued a Tribal authorization for the item. The statement will be accompanied by a notification of the appeal procedures in subpart D of this part for CBP to provide to the exporter. The Office may provide the statement and notification to the exporter by email.

(f) If the Office provides the written statement under § 1194.201(e), CBP will detain the item.

(g) If the Office fails to timely provide the written statement under § 1194.201(e), and assuming no other legal restrictions apply, CBP will provide notice to the exporter that the item is being released back to the exporter.

(h) The exporter will have five calendar days following the issuance of the notice under § 1194.201(g) to arrange retrieval of the detained item. If, after five calendar days, no arrangement has been made, the item will be deemed abandoned and surrendered to the Office.

(i) If the exporter voluntarily abandons the detained good(s) or the goods are deemed abandoned under paragraph (h) of this section, the shipment will be surrendered to the Office for repatriation under § 1194.206. Such voluntary return may be eligible for the safe harbor from prosecution under § 1194.204.

(j) Detained item(s) will be held in a secure location at the port consistent with current CBP regulations and policy, until they are turned over to the Office for disposition.

### § 1194.202 How does CBP deliver items to the Office?

(a) Within 48 hours after the Office notifies CBP under § 1194.201 of this part that an item is subject to detention, CBP will record the detention on a CBP Form 6051D or equivalent detention form. CBP will provide a copy of that form to the exporter with the notification of appeal procedures provided by the Office under § 1194.201. Once the item has been formally detained by CBP, CBP will notify the Office that the item is available for the Office to retrieve.

(b) The Office will retrieve the item in-person within five days after the notification under § 1194.202(a).

(c) The Office will also notify the exporter within five days that it has custody of the detained items. The Office will also provide a notification to the exporter for purposes of appealing the detention under subpart D of this part.

(d) The Office will hold any items retrieved from CBP in a secure location in a manner based on consultation with the appropriate Indian Tribe or Native Hawaiian organization.

(e) Within 60 days after the Office retrieves an item detained under § 1194.201(b)(2) to the Office, and in consultation with appropriate Indian Tribes and Native Hawaiian organizations, the Office will determine whether the item is an Item Prohibited from Exportation.

(f) If the Office determines under § 1194.202(e) that the item is an Item Prohibited from Exportation subject to forfeiture, the exporter may appeal that determination under subpart D of this part.

### § 1194.203 What is the process for forfeiture proceedings?

Property seized for violations of the Act and subject to forfeiture may be forfeited, depending upon the nature of the property, through civil administrative procedures, civil judicial procedures, or criminal forfeiture proceedings. Upon the expiration of the period for appeal of detention under § 1194.202(f), or the final exhaustion of Department administrative remedies, the Office may refer the item to an appropriate Federal agency or U.S. Attorney's Office for forfeiture proceedings under the appropriate administrative or judicial authorities. The Office will retain the item in its custody unless the agency or U.S. Attorney's Office needs the item for its investigation.

### § 1194.204 Does safe harbor apply to this regulation?

(a) If the exporter voluntarily returns the item or directs that the item be returned to the appropriate Indian Tribe or Native Hawaiian organization, in accordance with § 1194.201(i) of this part prior to the commencement of an active Federal investigation into the trafficking of the item or into the trafficking of cultural items or archeological resources by the applicant, the exporter shall not be prosecuted for a violation of the Act with respect to the item.

(b) For purposes of § 1194.204(a), the following actions shall not be considered to be actions that commence an active Federal investigation:

(1) The submission by the exporter of an export certification application for the item under § 1194.103;

(2) The detention of the item by CBP under § 1194.201;

(3) The retrieval of the detained item by the Office from CBP under § 1194.202; or

(4) The seizure by the Office of the item under § 1194.202.

### § 1194.205 What are civil penalties for violations of this regulation?

(a) If the item is an item prohibited from exportation, the base penalty amount is $800.

(b) If the item is an item requiring export certification, the base penalty amount is $8,000.

(1) The Act authorizes the assessment of civil penalties for violations of the Act, subject to annual adjustments based on inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74).

(2) The base penalty amount may be increased after considering:

(i) The ceremonial or cultural value of the item requiring export certification involved, as identified by any aggrieved Indian Tribe or Native Hawaiian organization;

(ii) The archaeological, historical, or commercial value of the item requiring export certification involved;

(iii) The economic and non-economic damages suffered by any aggrieved Indian Tribe or Native Hawaiian organization, including expenditures by the aggrieved party to compel the exporter to comply with the Act or this regulation;

(iv) The number of prior violations by the exporter that have occurred;

(v) The cost of storing and repatriating the item, or

(vi) Any other appropriate factor justifying an increase.

### § 1194.206 How is an item repatriated or returned?

(a) If an item is deemed abandoned under § 1194.201(h) or (i), the Office will expeditiously repatriate the item prohibited from exportation to:

(1) the Indian Tribe or Native Hawaiian organization from whose Tribal land the item was removed or who is culturally affiliated with the item, for cultural items under NAGPRA; or

(2) the Indian Tribe from whose Indian land the item was removed, for archaeological resources under ARPA.

(b) After an administrative declaration of forfeiture or a final order of forfeiture

in a judicial proceeding, the Department may, consistent with applicable law and regulations governing the remission and mitigation of forfeitures, seek the item prohibited from exportation and repatriate it to:

(1) The Indian Tribe or Native Hawaiian organization from whose Tribal land the item was removed or who is culturally affiliated with the item, for cultural items under NAGPRA; or

(2) The Indian Tribe from whose Indian land the item was removed, for archaeological resources under ARPA.

(c) The Office will return the item requiring export certification to the exporter if:

(1) The Office does not make the required determination by the deadline under § 1194.202(e);

(2) The Office determines under § 1194.15(e) that the item is not an Item Prohibited from Exportation;

(3) The exporter is successful in the appeal under § 1194.202(f).

(d) The Office will issue a letter or other document authorizing the return of the property. This letter or other document will be delivered personally or sent by registered or certified mail, return receipt requested, and will identify the owner or consignee, the seized property, and, if appropriate, the custodian of the seized property. It will also provide that, upon presentation of the letter or other document and proper identification, and the signing of a receipt provided by the Office, the seized property is authorized to be released, provided it is properly marked in accordance with applicable State or Federal requirements.

(e) The return of an item under § 1194.206(d) does not mean that the item is eligible for an export certification, nor does it substitute for an export certification. To export the item, the exporter must apply for, and receive an export certification under subpart B of this part.

## Subpart D—Administrative Appeals

### § 1194.301 What is the purpose of this section?

Any exporter wishing to appeal the Office's denial of an export certification application under § 1194.105 or detention of an item requiring export certification under § 1194.202 part must follow the procedures in this regulation. The provisions of 25 CFR part 2 do not apply to decisions under this regulation. No decision, which at the time of its rendition is subject to appeal under this subpart, shall be considered final so as to constitute agency action subject to judicial review. The decision being appealed shall not be effective during the pendency of the appeal.

### § 1194.302 How do I request a hearing?

(a) To begin an appeal under this subpart, the exporter must file a written request for a hearing under § 1194.302(b). The request for hearing and any document filed thereafter with the Departmental Cases Hearings Division (DCHD) under this section are subject to the rules that govern the method and effective date of filing and service under the subparts applicable to DCHD in 43 CFR part 4. If the exporter does not file a written request for a hearing in 45 days from the date of the denial or detention, the exporter waives the right to request a hearing and has failed to exhaust administrative remedies.

(b) The exporter must file the written request for a hearing with the DCHD, Office of Hearings and Appeals (OHA), U.S. Department of the Interior, at the mailing address specified in the OHA Standing Orders on Contact Information, or by electronic means under the terms specified in the OHA Standing Orders on Electronic Transmissions. A copy of the request must be served on the Solicitor of the Department of the Interior at the address specified in the OHA Standing Orders on Contact Information and on any culturally affiliated Indian Tribe or Native Hawaiian organization using the contact information in the **Federal Register** notice published by the Secretary under § 1194.101. The Standing Orders are available on the Department of the Interior OHA's website at *https://www.doi.gov/oha.*

(c) The request for a hearing must:

(1) Include a copy of the denial of the export certification application or the notice of detention;

(2) State the relief sought by the exporter; and

(3) Include the basis for challenging the facts used to deny the application or detain the Item.

(d) Upon receiving a request for a hearing, DCHD will assign an administrative law judge to the case and promptly give notice of the assignment to the exporter, the Office of the Solicitor, and any culturally affiliated Indian Tribe or Native Hawaiian organization. Thereafter, each filing must be addressed to the administrative law judge and a copy served on each opposing party or its counsel.

(1) Subject to the provisions of 43 CFR 1.3, an exporter may appear by authorized representative or by counsel and may participate fully in the proceedings. If the exporter does not appear and the administrative law judge determines that this absence is without good cause, the administrative law judge may, at the judge's discretion, determine that the exporter has waived the right to a hearing and consents to the making of a decision on the record.

(2) The Department of the Interior counsel is designated by the Office of the Solicitor of the Department of the Interior. No later than 20 days after receipt of its copy of the written request for hearing, Departmental counsel must file with the DCHD an entry of appearance on behalf of the Office and the following:

(i) Any Application for Export Certification with all supporting documents. The Application and supporting documents will be filed under seal and available only to the administrative law judge. Alternatively, the Office may provide the administrative law judge with read-only access to the appropriate records in the database under § 1194.107;

(ii) Any written communications between the Office and the exporter concerning the application;

(iii) Any written communications between the Office and culturally affiliated Indian Tribes or Native Hawaiian organizations concerning the application or detention. Such communications will be filed under seal and treated as confidential information available to the exporter only under a protective order;

(iv) A written description of any item requiring export certification that has been detained. The description may include photographs of the item, but only with the consent of the culturally affiliated Indian Tribe or Native Hawaiian organization. The description and any photographs will be filed under seal and treated as confidential information available to the exporter only under a protective order; and

(v) Any other information considered by the Office in reaching the decision being challenged.

(3) Any Indian Tribe or Native Hawaiian organization that is culturally affiliated with the item that has been detained or the item requiring export certification is a required party to the hearing and any appeal.

### § 1194.303 What are the hearing procedures?

(a) To the extent they are not inconsistent with this section, the rules in the subparts applicable to DCHD in 43 CFR part 4 apply to the hearing process.

(b) The administrative law judge has all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process, and to render a

decision under 5 U.S.C. 554 through 557.

(c) The administrative law judge will render a written decision. The decision must set forth the findings of fact and conclusions of law, and the reasons and basis for them.

(d) The administrative law judge's decision shall be the final administrative decision of the Secretary and will take effect 31 days from the date of the decision unless the exporter or the Indian Tribe or Native Hawaiian organization files a notice of appeal as described in § 1194.302. If the exporter does not file a notice of appeal 30 days from the date of the administrative law judge's decision, the exporter has failed to exhaust administrative remedies.

#### § 1194.304 How do I appeal a decision?

(a) The exporter or culturally affiliated Indian Tribe or Native Hawaiian organization seeking review of the decision of the administrative law judge must file a written notice of appeal no later than 30 days after the date of the decision. The notice of appeal must be filed with the Interior Board of Indian Appeals (IBIA), Office of Hearings and Appeals (OHA), U.S. Department of the Interior, at the mailing address specified in the OHA Standing Orders on Contact Information, or by electronic means under the terms specified in the OHA Standing Orders on Electronic Transmission. The Standing Orders are available on the Department of the Interior OHA's website at *https://www.doi.gov/oha.* The notice of appeal must be accompanied by proof of service on the administrative law judge and each opposing party. The notice of appeal and any document filed thereafter with the IBIA are subject to the rules that govern the method and effective date of filing under 43 CFR 4.310.

(b) To the extent they are not inconsistent with this section, the provisions of 43 CFR part 4, subpart D, apply to the appeal process.

(c) The IBIA's decision will be in writing and takes effect as the final administrative decision of the Secretary on the date that the IBIA's decision is rendered, unless otherwise specified in the decision.

(d) OHA decisions in proceedings instituted under this subpart are posted on OHA's website.

(e) The final administrative decision of the Secretary will be final agency action for purposes of 5 U.S.C. 704, only if the exporter has exhausted all administrative remedies under this subpart.

## Subpart E—Voluntary Return of Tangible Cultural Heritage

#### § 1194.401 What is the purpose of this section?

An individual or organization may return tangible cultural heritage under this part. The goal of this subpart is to facilitate the return of cultural items and Native American human remains to Indian Tribes and Native Hawaiian organizations. If the voluntary return is of an item subject to NAGPRA by a museum as that term is defined in NAGPRA, the return of that item will follow the process under section 7 of NAGPRA (25 U.S.C. 3005) rather than the process in this regulation.

#### § 1194.402 When is consultation initiated?

(a) An individual or organization that is seeking to voluntarily return tangible cultural heritage under this subpart must compile a simple itemized list and description of any tangible cultural heritage. The simple itemized list must include, to the extent that the individual or organization has the required information:

(1) The geographical location (provenance) by county or State where the tangible cultural heritage was removed;

(2) The acquisition history (provenance) of the tangible cultural heritage;

(3) Other information available for identifying a culturally affiliated Indian Tribe or Native Hawaiian organization; and

(4) The presence of any potentially hazardous substances used to treat the tangible cultural heritage, if known.

(b) The individual or organization should submit this list to the Office. In consultation with Indian Tribes, Native Hawaiian organizations, and the Native Working Group convened under subpart G of this part, the Office will determine what Indian Tribe or Native Hawaiian organization is potentially culturally affiliated with the tangible cultural heritage, and provide its contact information to the individual or organization. The Office will also provide the contact information of the individual or organization to the identified Indian Tribe or Native Hawaiian organization with the list compiled under § 1194.402(a).

#### § 1194.403 What is the process for consultation and return of items under this regulation?

(a) After the Office transmits the contact information under § 1194.402, the individual or organization and the Indian Tribe or Native Hawaiian organization will contact each other and arrange for consultation and return of the tangible cultural heritage.

(b) At the request of the Indian Tribe or Native Hawaiian organization, the Departments of Homeland Security and State will facilitate the transportation and importation of the tangible cultural heritage.

(c) At the request of the Indian Tribe or Native Hawaiian organization, the Interagency Working Group convened under subpart F of this part will explore funding mechanisms to pay the expenses of the Indian Tribe or Native Hawaiian organization for the return of tangible cultural heritage. Assistance to the Indian Tribe or Native Hawaiian organization could also be in the form of in-kind resources.

(d) Upon a successful voluntary return, and with the consent of the Indian Tribe or Native Hawaiian organization, the Office will provide the individual or organization with tax documentation for a charitable gift to the Indian Tribe or Native Hawaiian organization that may be tax deductible if the requirements under 26 U.S.C. 170 and 26 CFR part 1 are satisfied.

## Subpart F—Interagency Working Group

#### § 1194.501 What is the Interagency Working Group?

The Office will convene the Interagency Working Group to coordinate the policy-making process with respect to facilitation of the repatriation to Indian Tribes and Native Hawaiian organizations of items that have been illegally removed or trafficked in violation of applicable law; protection of tangible cultural heritage, cultural items, Native American human remains, and archaeological resources still owned or controlled by Indian Tribes and Native Hawaiian organizations; and support for improvements in implementation of NAGPRA, ARPA, and other relevant Federal law.

#### § 1194.502 What is the membership of Interagency Working Group?

The Departments of Justice, State, and Homeland Security shall each designate a responsible office and individual to serve on the Interagency Working Group. The Office will represent the Secretary of the Interior on the Working Group.

#### § 1194.503 What are the duties of the Interagency Working Group?

The Interagency Working Group will aid in implementation of the Act by, including but not limited to, facilitating the voluntary return of tangible cultural heritage, attempting to prevent

international sales of items that are prohibited from being trafficked under Federal law, and collaborating with the Native Working Group, the NAGPRA Review Committee, and the Cultural Heritage Coordinating Committee.

## Subpart G—Native Working Group

### § 1194.601 What is the relationship between the Office and the Native Working Group?

The Office will provide administrative support to the Native Working Group.

### § 1194.602 What is the membership of the Native Working Group?

(a) The Native Working Group is composed of representatives of Indian Tribes and Native Hawaiian organizations with relevant expertise.

(b) There are thirteen members of the Native Working Group: one representing Indian Tribes in each Bureau of Indian Affairs Region, and one representing Native Hawaiian organizations.

(c) The members of the Native Working Group are appointed by the Secretary for an initial term of four years. A member may be reappointed for a term of two years.

(d) Any Indian Tribe or Native Hawaiian organization may nominate a person from a particular BIA Region or Hawai'i for membership, even if that Indian Tribe or Native Hawaiian organization is not in that Region or in Hawai'i. The Office will recommend a list of candidates to the Secretary, in coordination with the Interagency Working Group convened under subpart F of this part.

### § 1194.603 What are the duties of the Native Working Group?

(a) The Native Working Group may provide recommendations for Federal agency action regarding:

(1) The voluntary return of tangible cultural heritage by collectors, dealers, and other individuals and non-Federal organizations that hold such tangible cultural heritage; and

(2) The elimination of illegal commerce of cultural items and archaeological resources in the United States and foreign markets.

(b) Such recommendations shall be considered fully by affected agencies, but shall not be binding upon any affected agency.

(c) The Office of Tribal Justice shall represent the Department of Justice with regard to relevant matters before the Native Working Group including receiving formal requests to initiate agency actions and to provide information and assistance to the Native Working Group. Requests to initiate litigation will be directed by the Office of Tribal Justice to the appropriate litigation component within the Department of Justice.

(d) Upon request from the Native Working Group, the Department of State, in coordination with the Department of Justice when judicial proceedings are initiated either domestically or abroad, may initiate dialog through U.S. missions abroad, in coordination with the Department of State's Cultural Heritage Center, with appropriate foreign government offices.

(e) The Native Working Group may also request information or assistance from:

(1) The Department of the Interior;

(2) The Department of Justice;

(3) The Department of Homeland Security;

(4) The Department of State;

(5) The Review Committee established under section 8(a) of NAGPRA;

(6) The Cultural Heritage Coordinating Committee established pursuant to section 2 of the Protect and Preserve International Cultural Property Act; or

(7) Any other relevant Federal agency, committee, or working group.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2024–24332 Filed 10–24–24; 8:45 am]

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–118264–23]**

**RIN 1545–BR27**

## Energy Efficient Home Improvement Credit

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations regarding the energy efficient home improvement credit as modified by the Inflation Reduction Act of 2022 (IRA). The proposed regulations would affect manufacturers of specified property who want to become qualified manufacturers and eligible taxpayers who place in service certain home improvement property. The proposed regulations would provide rules for manufacturers of specified property to register to be qualified manufacturers and satisfy certain other requirements, and rules for taxpayers to calculate the credit.

**DATES:** Written or electronic comments must be received by December 24, 2024. A public hearing on these proposed regulations is scheduled to be held on January 21, 2025, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by December 24, 2024. If no outlines are received by December 24, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on January 17, 2025. The public hearing will be made accessible to people with disabilities. Requests for special assistance during the hearing must be received by January 16, 2025.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–118264–23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG–118264–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, contact the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317–6853 (not a toll-free number). Concerning submissions of comments and requests for a public hearing, contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by email at *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Authority

This notice of proposed rulemaking contains proposed amendments to the Income Tax Regulations (26 CFR part 1) that would implement section 25C of the Internal Revenue Code (Code), as amended by section 13301 of Public Law 117–169, 136 Stat. 1818, 1941 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). The proposed additions are issued by the Secretary of the Treasury

or her delegate (Secretary) under the authority granted under sections 25C(b)(6)(B) and (h)(3), and 7805(a) of the Code (proposed regulations).

Section 25C(b)(6)(B) provides a specific delegation of authority related to the substantiation requirement for home energy audits: ''No credit shall be allowed under this section by reason of subsection (a)(3) unless the taxpayer includes with the taxpayer's return of tax such information or documentation as the Secretary may require.'' Section 25C(h)(3), as applicable to property placed in service after December 31, 2024, provides specific delegations of authority to the Secretary related to the product identification number requirement that must be satisfied by qualified manufacturers, including the authority to enter into an agreement with a manufacturer that provides ''that such manufacturer will . . . assign a product identification number to each item of specified property produced by such manufacturer utilizing a methodology that will ensure that such number (including any alphanumeric) is unique to each such item (by utilizing numbers or letters which are unique to such manufacturer or by such other method as the Secretary may provide), . . . label such item with such number in such manner as the Secretary may provide, and . . . make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) of the product identification numbers so assigned and including such information as the Secretary may require with respect to the item of specified property to which such number was so assigned.'' Finally, section 7805(a) authorizes the Secretary to prescribe all needful rules and regulations for the enforcement of the Code.

## Background

### I. IRA Amendments to Section 25C

Congress originally enacted section 25C of the Code in section 1333(a) of the Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594, 1026 (August 8, 2005), to provide a ''nonbusiness energy property credit'' for the purchase and installation of certain energy efficient improvements in a taxpayer's principal residence. Congress has amended section 25C several times, most recently by section 13301 of the IRA, which renamed this provision the ''energy efficient home improvement credit.''

Former section 25C expired with respect to any property placed in service after December 31, 2021. Section 13301(i) of the IRA provides that except as otherwise provided in section 13301(i)(2) and (3), the IRA amendments to section 25C apply to property placed in service after December 31, 2022. Section 13301(i)(2) of the IRA provides that the amendments made by section 13301(a) of the IRA apply to property placed in service after December 31, 2021. Section 13301(a) of the IRA extended the credit allowed under section 25C with respect to any property placed in service through December 31, 2032. Section 13301(i)(3) of the IRA provides that the amendments made by section 13301(g) of the IRA apply to property placed in service after December 31, 2024. Section 13301(g) of the IRA amended section 25C by redesignating former subsection (h) as subsection (i) and inserting a new subsection (h) (described in part I.C. of this Background).

Section 25C, as amended by section 13301(b) and (f) of the IRA, allows an individual taxpayer (taxpayer) a credit for the taxable year (section 25C credit) equal to 30 percent of the total amount paid or incurred by the taxpayer during such taxable year for qualified energy efficiency improvements installed during such taxable year, residential energy property expenditures, and home energy audits.

#### *A. Credit Amount and Limitations*

As amended by section 13301(c) of the IRA, the amount of the section 25C credit generally is limited under section 25C(b)(1) to $1,200 with respect to any taxpayer for any taxable year. Within this $1,200 limitation, section 25C(b) sets forth further annual limitations for certain categories of improvements. Section 25C(b)(2) provides that the credit allowed under section 25C(a)(2) is limited to $600 with respect to any taxpayer for any taxable year with respect to any item of qualified energy property. Section 25C(b)(3) provides that the credit allowed under section 25C(a)(1) with respect to any taxpayer for any taxable year is limited to $600 in the aggregate with respect to all exterior windows and skylights. Section 25C(b)(4) provides that the credit allowed under section 25C(a)(1) with respect to any taxpayer for any taxable year is limited to $250 in the case of any exterior door and $500 in the aggregate with respect to all exterior doors. Section 25C(b)(6) limits the credit allowed under section 25C(a)(3) for a home energy audit to $150.

Additionally, notwithstanding the general $1,200 annual limitation (and its internal limitations), section 25C(b)(5) provides that the credit allowed under section 25C(a)(2) with respect to any taxpayer for any taxable year is limited to $2,000 in the aggregate with respect to amounts paid or incurred for an electric or natural gas heat pump water heater described in section 25C(d)(2)(A)(i), an electric or natural gas heat pump described in section 25C(d)(2)(A)(ii), and a biomass stove or boiler described in section 25C(d)(2)(B).

Therefore, a taxpayer could claim a total section 25C credit of $3,200, if the taxpayer has sufficient expenditures in categories of property (or a home energy audit) subject to the $1,200 limitation and in categories of property subject to the $2,000 limitation.

#### *B. Overview of Qualified Energy Efficiency Improvements and Residential Energy Property Expenditures*

Section 25C(c)(1) provides that the term ''qualified energy efficiency improvements'' means any ''energy efficient building envelope component'' if such component is installed in or on a dwelling unit located in the United States and owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121 of the Code), the original use of such component commences with the taxpayer, and such component reasonably can be expected to remain in use for at least 5 years. Section 25C(c)(2) provides that the term ''energy efficient building envelope component'' means a building envelope component that meets certain energy efficiency requirements. Section 25C(c)(3) provides that the term ''building envelope component'' means any insulation material or system, including air sealing material or system, which is specifically and primarily designed to reduce the heat loss or gain of a dwelling unit when installed in or on such dwelling unit, exterior windows (including skylights), and exterior doors.

Section 25C(d)(1) provides that the term ''residential energy property expenditures'' means expenditures made by the taxpayer for ''qualified energy property'' that is installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer, and that is originally placed in service by the taxpayer. Section 25C(d)(1) also provides that residential energy property expenditures include expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property. Section 25C(d)(2) provides that the term ''qualified energy property'' means several categories of property that satisfy certain energy efficiency standards and other requirements.

*C. Qualified Product Identification Number; Qualified Manufacturers; Specified Property*

Section 25C(h) provides that no section 25C credit is allowed with respect to any item of specified property (as further described in part II.D. of this Background) that is placed in service after December 31, 2024, unless the item of specified property is produced by a ''qualified manufacturer'' (QM) and the taxpayer includes the ''qualified product identification number'' (PIN) of the item of specified property on the tax return for the taxable year (PIN requirements). Section 25C(h)(2) provides that the term ''qualified product identification number'' means, with respect to any item of specified property, the product identification number assigned to such item by the QM pursuant to the methodology referred to in section 25C(h)(3).

Section 25C(h)(3) provides that the term ''qualified manufacturer'' means any manufacturer of specified property that enters into an agreement with the Secretary that provides that such manufacturer will: (1) assign a product identification number to each item of specified property produced by such manufacturer, using a methodology that will ensure that such number (including any alphanumeric) is unique to each such item, by using numbers or letters unique to such manufacturer or by such other method as the Secretary may provide (PIN assignment requirement); (2) label such item with such product identification number in such manner as the Secretary may provide (PIN labeling requirement); and (3) make periodic written reports to the Secretary (at such times and in such manner as the Secretary may provide) of the product identification numbers so assigned and including such information as the Secretary may require with respect to the items of specified property to which such product identification numbers were so assigned (periodic written report requirement). The PIN assignment requirement, the PIN labeling requirement, and the periodic written report requirement are collectively referred to as the ''QM PIN requirements'' in this preamble.

The proposed regulations aim to provide certainty to manufacturers that want to become QMs and taxpayers who want to claim the section 25C credit, to provide flexibility to manufacturers complying with the QM PIN requirements and taxpayers including PINs on their tax returns, and to facilitate effective administrability of these requirements by the IRS.

*D. Specified Property*

Section 25C(h)(4) provides that the term ''specified property'' means any qualified energy property and any property described in section 25C(c)(3)(B) (exterior windows, including skylights) or (C) (exterior doors).

Section 25C(d)(2) provides that the term ''qualified energy property'' means any of the following:

(A) Any of the following that meet or exceed the highest efficiency tier (not including any advanced tier) established by the Consortium for Energy Efficiency that is in effect as of the beginning of the calendar year in which the property is placed in service: (i) an electric or natural gas heat pump water heater, (ii) an electric or natural gas heat pump, (iii) a central air conditioner, (iv) a natural gas, propane, or oil water heater, and (v) a natural gas, propane, or oil furnace or hot water boiler.

(B) A biomass stove or boiler that (i) uses the burning of biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit, and (ii) has a thermal efficiency rating of at least 75 percent (measured by the higher heating value of the fuel).

(C) Any oil furnace or hot water boiler that (i) is placed in service after December 31, 2022, and before January 1, 2027, and (I) meets or exceeds 2021 Energy Star certified efficiency criteria, and (II) is rated by the manufacturer for use with fuel blends at least 20 percent of the volume of which consists of an eligible fuel (defined in section 25C(d)(3)) (eligible fuel), or (ii) is placed in service after December 31, 2026, and (I) achieves an annual fuel utilization efficiency rate of not less than 90, and (II) is rated by the manufacturer for use with fuel blends at least 50 percent of the volume of which consists of an eligible fuel.

(D) Any improvement to, or replacement of, a panelboard, sub-panelboard, branch circuits, or feeders that (i) is installed in a manner consistent with the National Electric Code, (ii) has a load capacity of not less than 200 amps, (iii) is installed in conjunction with (I) any qualified energy efficiency improvements, or (II) any qualified energy property described in section 25C(d)(2)(A) through (C) for which a credit is allowed under section 25C for expenditures with respect to such property, and (iv) enables the installation and use of any qualified energy efficiency improvements or any qualified energy property described in section 25C(d)(2)(A) through (C) for which a credit is allowed under section 25C for expenditures with respect to such property.

**II. Prior Guidance and Requests for Comments**

*A. Notice 2022–48*

On October 24, 2022, the Treasury Department and the IRS published Notice 2022–48, 2022–43 I.R.B. 316, which included requests for comments on the amendments to section 25C by section 13301 of the IRA. Specific to section 25C(h), Notice 2022–48 requested comments on what the Treasury Department and the IRS should consider (1) in determining the manner of agreements between the IRS and a QM, (2) in developing a methodology to ensure that each PIN is unique to each item of specified property, (3) in prescribing the manner by which specified property must be labeled with a unique PIN, and (4) in developing the requirements for QM periodic written reports.

*B. Notice 2023–59*

On August 21, 2023, the Treasury Department and the IRS published Notice 2023–59, 2023–34 I.R.B. 564, which provided, in part, requirements related to home energy audits under section 25C(a)(3) intended to be included in forthcoming proposed regulations. Section 1 of Notice 2023–59 provided that until the issuance of the forthcoming proposed regulations, taxpayers may rely on the rules described in sections 3 through 6 of Notice 2023–59. As discussed further in part II of the Explanation of Provisions section of this preamble, taxpayers may continue to rely on the rules described in section 3 through 6 of Notice 2023–59 after the issuance of the proposed regulations to satisfy the substantiation requirement of section 25C(b)(6)(B).

*C. Notice 2024–13*

On January 9, 2024, the Treasury Department and the IRS published Notice 2024–13, 2024–05 I.R.B. 618. Notice 2024–13 discussed comments related to the PIN requirements received in response to Notice 2022–48.

Some commenters to Notice 2022–48 suggested using existing numbering systems to satisfy the QM PIN requirements. For example, commenters suggested that manufacturers could use existing product serial numbers to satisfy the PIN assignment requirement. Manufacturers routinely assign serial numbers to specific items, which purportedly achieves the specificity suggested by the statutory text. However, as Notice 2024–13 explained,

the systems that manufacturers employ to assign serial numbers are insufficient for the QM PIN requirements because they are not uniform by product or manufacturer in length, format, or in other respects. These differences would create processing challenges for the IRS and could cause confusion for consumers claiming the section 25C credit. Additionally, some manufacturers change their serial numbers for products over time.

Some commenters to Notice 2022–48 suggested that manufacturers could employ stock-keeping unit numbers (SKUs) to satisfy the QM PIN requirements. However, as Notice 2024–13 explained, SKUs generally reflect the product line of a merchant or manufacturer but are not specific to the unique items of property themselves. Accordingly, serial numbers and SKUs would not constitute satisfactory PINs for the QM PIN requirements.

Similarly, certain categories of products, such as exterior windows, skylights, and exterior doors currently do not have unique serial numbers for each such product manufactured but instead are assigned numbers that identify multiple windows, skylights, or doors as belonging to a specific product line of such items.

Other commenters to Notice 2022–48 suggested using product line numbers or universal product codes (UPCs) to satisfy the QM PIN requirements. Regarding product line numbers, some commenters pointed to the National Fenestration Rating Council's (NFRC) Certified Product Directory for exterior windows, doors, and skylights. However, as explained in Notice 2024–13, because the NFRC system assigns the same number to multiple (or all) items in a specific product line, these numbers would not provide the specificity needed to satisfy the QM PIN requirements. Similarly, UPCs are a multi-character code assigned to products by manufacturers. Manufacturers and others employ UPCs for tracking and selling inventory. Like the NFRC numbers, however, UPCs generally are assigned per product type, and not per specific item. While UPCs can vary based on product differences, they too would not provide the specificity required by the statute. In addition, because many products would bear the same UPC or NFRC number, these numbering conventions would not satisfy the purposes of section 25C(h), which aims to prevent duplicate or fraudulent claims for the section 25C credit for the same item of specified property.

Notice 2024–13 outlined a proposed PIN system that would require manufacturers to register with the IRS as QMs and to assign 17-digit PINs (made up of four parts, discussed further in part IV.B. of the Explanation of Provisions of this preamble) to specified property. Under Notice 2024–13, QMs also would be required to label their products with a unique individual PIN, furnish the PINs (directly or indirectly) to consumers to report on their tax returns when claiming a section 25C credit, and file with the IRS periodic lists of PINs assigned by the QM.

Finally, Notice 2024–13 requested comments on several questions to help inform the development of rules governing the QM PIN requirements. Notice 2024–13 asked manufacturers to detail the different items of specified property that they produce and whether they maintain a universal system for assigning unique identification numbers to items of property. The notice also requested comments on a proposed PIN assignment system.

All comments to Notice 2024–13 have been considered in developing the proposed regulations.

## III. Revenue Procedure 2024–31

The proposed regulations would provide general guidance on the section 25C credit, including what property qualifies for the section 25C credit and what limitations apply. The proposed regulations would also provide a safe harbor for certain property that is installed in conjunction with, and enables the installation and use of, other property (see the discussion of enabling property and enabled property in part I.A. of the Explanation of Provisions section of this preamble).

In addition to the proposed regulations, the Treasury Department and the IRS are issuing Revenue Procedure 2024–31, which provides the procedures that manufacturers must follow to become QMs and requirements to comply with the QM PIN requirements. See part IV of the Explanation of Provisions section of this preamble for further discussion of Revenue Procedure 2024–31.

## Explanation of Provisions

### I. Overview

Proposed § 1.25C–1(a) would provide an overview of the proposed regulations. Proposed § 1.25C–1(b) would provide definitions that apply for purposes of section 25C and the proposed regulations. While most of the definitions would mirror those in the statute, proposed § 1.25C–1(b) also would provide definitions of additional key terms. These terms are described in this section.

#### *A. Enabling and Enabled Property*

Proposed § 1.25C–1(b)(5) and (6) would introduce and define the terms ''enabled property'' and ''enabling property,'' which are derived from section 25C(d)(2)(D)(iv). Qualified energy property under section 25C(d)(2)(D) includes any improvement to, or replacement of, a panelboard, sub-panelboard, branch circuits, or feeders, that, among other requirements, is installed in conjunction with any qualified energy efficiency improvements or any other type of qualified energy property for which a section 25C credit is allowed, and enables the installation and use of such property. To simplify these rules, the proposed regulations would refer to such improvement to, or replacement of, a panelboard, sub-panelboard, branch circuits, or feeders under section 25C(d)(2)(D) as ''enabling property,'' and the property the enabling property is installed in conjunction with as ''enabled property.''

#### *B. Energy Star and International Energy Conservation Code Standard*

Section 25C(c)(2)(A), (B), and (d)(2)(C)(i)(I) refer to ''Energy Star,'' and section 25C(c)(2)(C) refers to the ''International Energy Conservation Code standard.'' Under section 25C(c)(2)(A), exterior windows and skylights are not qualified energy efficiency improvements unless they meet Energy Star certified most efficient certification requirements. Under section 25C(c)(2)(B), exterior doors are not qualified energy efficiency improvements unless they meet applicable Energy Star certified requirements. Under section 25C(d)(2)(C)(i)(I), oil furnaces and hot water boilers are not qualified energy property unless they meet or exceed 2021 Energy Star certified efficiency criteria. Under section 25C(c)(2)(C), building envelope components other than exterior windows, skylights, and exterior doors are not qualified energy efficiency improvements unless they meet the prescriptive criteria for such components established by the most recent International Energy Conservation Code standard in effect as of the beginning of the calendar year that is 2 years prior to the calendar year in which such component is placed in service.

Proposed § 1.25C–1(b)(8) and (11) would define Energy Star and the International Energy Conservation Code standard. Energy Star is a labeling and rating program administered by the U.S. Environmental Protection Agency (EPA) that helps consumers identify energy-

efficient property. Taxpayers can find out more about Energy Star, including the specific climate zones, at *https://www.energystar.gov.*

The term ''International Energy Conservation Code standard'' as used in section 25C(c)(2)(C) refers to the version of the International Energy Conservation Code in effect for a particular year. The International Energy Conservation Code is a building code established by the International Code Council that sets minimum conservation requirements for new buildings. The version in effect as of the beginning of the calendar year 2 years prior to the 2023 calendar year (*i.e.,* the first year to which the IRA amendments to section 25C apply) would be the 2021 version. The 2021 and later versions of the International Energy Conservation Code can be found at *https://iccsafe.org* (select ''Codes'' at the top of the home page). Subsequent versions of the International Energy Conservation Code will take effect two years after their publication and following a positive determination from the U.S. Secretary of Energy, which can be found at *https://www.energycodes.gov/determinations.*

*C. Biomass Stove or Boiler; Higher Heating Value of the Fuel*

Section 25C(d)(2)(B) provides that qualified energy property includes a biomass stove or boiler that (i) uses the burning of biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit, and (ii) has a thermal efficiency rating of at least 75 percent (measured by the higher heating value of the fuel). Proposed § 1.25C–1(b)(17) would describe a biomass stove or boiler under the definition of qualified energy property exactly as provided in section 25C(d)(2)(B), but with the addition of ''as determined by the U.S. Environmental Protection Agency for wood stoves.'' This addition would explain how a taxpayer must determine the thermal efficiency rating under section 25C(d)(2)(B)(ii). The EPA maintains an online database that provides information regarding the thermal efficiency of wood stoves. Adopting this source as a means of determining the thermal efficiency rating of biomass stoves or boilers would provide uniformity and simplicity for such measurements.

*D. Placed in Service, Originally Placed in Service and Original Use*

Section 25C includes the terms ''placed in service,'' ''originally placed in service,'' and ''original use.''

Under section 25C(c)(2)(C), building envelope components other than exterior windows, skylights, and exterior doors are not qualified energy efficiency improvements unless they meet the prescriptive criteria for such components established by the most recent International Energy Conservation Code standard in effect as of the beginning of the calendar year that is 2 years prior to the calendar year in which such components are placed in service. Whether certain types of property are qualified energy property under section 25C(d)(2)(A) and (C) depends in part on when such property is placed in service. The PIN requirements under section 25C(h) apply to specified property placed in service after December 31, 2024. More broadly, the IRA extended the section 25C credit with respect to any property placed in service through December 31, 2032.

Under section 25C(d)(1)(B), residential energy property expenditures must be for qualified energy property originally placed in service by the taxpayer. Under section 25C(c)(1)(B), the original use of any energy efficient building envelope component must commence with the taxpayer.

In considering the definition of the term ''placed in service'' under section 25C, two sets of rules were considered. First, § 1.167(a)–10(b) generally provides that the period for depreciation of an asset begins when the asset is placed in service and ends when the asset is retired from service. Section 1.167(a)–11 provides general depreciation rules based on class lives and asset depreciation ranges for property placed in service after December 31, 1970. Many of the depreciation rules in § 1.167(a)–11 apply when the property is ''first placed in service.'' Section 1.167(a)–11(e)(1) defines the term ''first placed in service,'' in part, as the time the property is ''first placed in a condition or state of readiness and availability for a specifically assigned function,'' including in a personal activity. Section 1.167(a)–11(e)(1) provides that the provisions of § 1.46–3(d)(1)(ii) and (2), relating to the investment credit, generally apply for the purpose of determining the date on which property is ''placed in service.'' Section 1.46–3(d)(1)(ii) and (2) provides, in part, that property is considered placed in service in the taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function, including in a personal activity.

Second, recently published regulations under section 25E (relating to previously-owned clean vehicles) and section 30D (relating to new clean vehicles) define ''placed in service'' as the date the taxpayer takes possession of the vehicle. See §§ 1.25E–1(b)(10) and 1.30D–2(b)(36). This possession-based standard is not appropriate for the definition of placed in service for purposes of the section 25C credit. Defining ''placed in service'' as the date the taxpayer takes possession of qualified energy efficiency improvements or qualified energy property (together, section 25C property) is contrary to the intent of section 25C, because the energy efficiency of a dwelling unit cannot be improved until the section 25C property is installed. Accordingly, proposed § 1.25C–1(b)(15) would adopt the definition of placed in service in § 1.46–3(d)(1)(ii) as the date on which the section 25C property is placed in a condition or state of readiness and availability for its specifically assigned function.

The determination of whether property is in a condition or state of readiness and availability for its specifically designed function is factual and has been the subject of many administrative rulings and court cases concerning other Code sections. Because installing section 25C property usually will result in the property being ready and available for its specifically assigned function, it is anticipated that installation and placed in service will be synonymous in most cases. Nonetheless, comments are requested on potential circumstances under which installation of section 25C property may be insufficient to consider it placed in service.

Regarding the requirement that qualified energy property be ''originally placed in service'' by the taxpayer for purposes of residential energy property expenditures under section 25C(d)(1)(B), § 1.167(a)–11(e)(1) clarifies that the term ''first placed in service'' refers to the time the property is first placed in service by the taxpayer, not to the first time the property is placed in service. In contrast, section 25C uses the terms ''originally placed in service'' and ''original use.'' Section 25C property can only be ''originally'' placed in service, or ''originally'' used, once; thus, such property must be new. Accordingly, proposed § 1.25C–1(b)(13) would define ''originally placed in service'' to refer to the first time property is placed in service, whether or not by the taxpayer, and ''original use'' to refer to the first use to which the property is put or will be put, whether or not that use

corresponds or will correspond to the use of property by the taxpayer.

The definitions of the terms ''originally placed in service'' and ''original use'' in the proposed regulations are intended to require that section 25C property be new and not used. These definitions would provide simplicity and clarity for taxpayers and manufacturers.

The Treasury Department and the IRS request comments on the definitions in the proposed regulations.

**II. General Rules**

Proposed § 1.25C–2 would provide general rules regarding the section 25C credit, including how to calculate the credit, what limitations apply, and the effect of certain cross-referenced Code sections on the credit.

Proposed § 1.25C–2(a) would provide the general rule that, subject to certain limitations and rules, section 25C allows a taxpayer a credit for the taxable year equal to 30 percent of the total amount paid or incurred by the taxpayer during such taxable year for qualified energy efficiency improvements installed during such taxable year, residential energy property expenditures, and home energy audits.

Proposed § 1.25C–2(b) would provide limitations on the amount of the section 25C credit. Consistent with section 25C(b)(1), proposed § 1.25C–2(b)(1) would provide that the section 25C credit generally is limited to $1,200 with respect to any taxpayer for any taxable year. Consistent with section 25C(b)(2), (3), and (4), the proposed regulations would provide additional annual limits for certain categories of property within this $1,200 limit. Proposed § 1.25C–2(b)(2)(i) would provide that the credit allowed under section 25C(a)(2) is limited to $600 with respect to any taxpayer for any taxable year with respect to any item of qualified energy property. Proposed § 1.25C–2(b)(3) and (4) would provide that the credit allowed under section 25C(a)(1) with respect to any taxpayer for any taxable year is limited to $600 in the aggregate with respect to all exterior doors and skylights, $250 in the case of any exterior door, and $500 in the aggregate with respect to all exterior doors. Consistent with section 25C(b)(6), proposed § 1.25C–2(b)(5) would provide that the credit allowed under section 25C(a)(3) for a home energy audit is limited to $150. Concerning the substantiation requirement of section 25C(b)(6)(B), taxpayers may continue to rely on the rules described in section 3 through 6 of Notice 2023–59.

Consistent with section 25C(b)(5), and notwithstanding the general $1,200 annual limitation (and its internal, lower limitations), proposed § 1.25C–2(b)(2)(ii) would provide that the credit allowed under section 25C(a)(2) with respect to any taxpayer for any taxable year is limited to $2,000 in the aggregate with respect to amounts paid or incurred for an electric or natural gas heat pump water heater described in section 25C(d)(2)(A)(i), an electric or natural gas heat pump described in section 25C(d)(2)(A)(ii), and a biomass stove or boiler described in section 25C(d)(2)(B).

Proposed § 1.25C–2(c) would provide examples that illustrate the operations of proposed § 1.25C–2(a) and (b).

Proposed § 1.25C–2(d) would provide rules consistent with section 25C(f)(1), which provides that rules similar to the rules in section 25D(e)(4) through (8) apply for purposes of section 25C. Proposed § 1.25C–2(d) would provide that, consistent with sections 25C(f)(1) and 25D(e)(8)(A), a taxpayer's expenditure for an item of property would be treated as made when the original installation of the item is completed.

Proposed § 1.25C–2(e)(1) would provide rules consistent with sections 25C(f)(1) and 25D(e)(8) regarding expenditures made in connection with the reconstruction of or an addition to a dwelling unit. In general, such expenditures would be treated as paid or incurred when the taxpayer's use of the reconstructed or post-addition dwelling unit begins. These rules also would require taxpayers to maintain records that itemize the amount paid or incurred for each item of section 25C property in connection with the reconstruction or addition.

Proposed § 1.25C–2(e)(1) would not allow expenditures made in connection with the original construction of a dwelling unit to be eligible for the section 25C credit. Section 25C allows a credit for improving a dwelling unit by adding section 25C property to it or preparing a home energy audit with respect to the dwelling unit. The dwelling unit must be owned and used by the taxpayer as the principal residence under section 25C(a)(1), owned or used by the taxpayer as the principal residence under section 25C(a)(3), or used by the taxpayer as a residence under section 25C(a)(2). Section 25C property must be installed in or on a dwelling unit under section 25C(c)(1)(A) or installed on or in connection with a dwelling unit under section 25C(d)(1)(A). Section 25C property must be originally placed in service under section 25C(d)(1)(B) or originally used by the taxpayer under section 25C(c)(1)(B). The language used in these provisions to refer to the dwelling unit supports the Treasury Department and the IRS's view that the best reading of section 25C is to allow a credit only for improvements to an existing dwelling unit. Section 25C property must be installed on or in (or in connection with) the taxpayer's ''residence,'' and a dwelling unit cannot be a taxpayer's residence until the taxpayer resides in it. As the final requirement for section 25C property, the taxpayer must originally place in service or originally use section 25C property; the taxpayer is the person who owns or uses the dwelling unit, which in most cases would not be the person who originally constructed the dwelling unit. This interpretation is consistent with the description of former section 25C by the Joint Committee on Taxation in Description Of Energy Tax Changes Made By Public Law 117–169, which refers to the section 25C credit being available ''for the purchase of qualified energy efficiency improvements to existing homes.'' JCX–5–23, 36 (April 17, 2023). This interpretation is also consistent with prior guidance provided by the IRS. See Notice 2013–70, 2013–47 I.R.B. 528 (''A taxpayer can claim the § 25C credit only for qualifying expenditures incurred for an existing home or for an addition or renovation to an existing home, and not for a newly constructed home''); Notice 2009–53, 2009–25 I.R.B. 1095, 1097 (''[T]he [section 25C] credit is only available for existing homes.''). Comments are requested on the proposed exclusion of expenditures made in connection with the original construction of a dwelling unit for purposes of the section 25C credit.

Proposed § 1.25C–2(f) would provide rules governing joint occupancy of a dwelling unit, tenant-stockholders in cooperative housing, and members of a condominium management association. Section 25C(f)(2)(A) generally provides that any expenditure otherwise qualifying as an expenditure under section 25C will not be treated as failing to so qualify merely because such expenditure was made with respect to two or more dwelling units. Consistent with sections 25C(f)(1) and 25D(e)(4), proposed § 1.25C–2(f)(1) would provide that, in the case of any dwelling unit that is jointly occupied and used during the calendar year as a principal residence by two or more taxpayers, the expenditures allocated to any taxpayer for the taxable year in which such calendar year ends is the amount paid or incurred by such taxpayer for section 25C property with respect to such

dwelling unit during such calendar year.

Consistent with sections 25C(f)(1) and 25D(e)(5), proposed § 1.25C–2(f)(2) would provide that in the case of a taxpayer who is an individual tenant-stockholder in a cooperative housing corporation, for purposes of the section 25C credit, such taxpayer would be treated as having paid or incurred the taxpayer's proportionate share of any amounts paid or incurred by such corporation for section 25C property. Non-individual tenant-stockholders may not claim the section 25C credit. Proposed § 1.25C–2(f)(2) looks to section 216(b)(3) to determine each tenant-stockholder's proportionate share, which generally would be the proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation (including any stock held by the corporation).

Consistent with sections 25C(f)(1) and 25D(e)(6), proposed § 1.25C–2(f)(3) would provide that a taxpayer who is a member of a condominium management association with respect to a condominium dwelling unit owned by the taxpayer would be treated as having paid or incurred the taxpayer's proportionate share of the condominium management association's expenditures for section 25C property. Proposed § 1.25C–2(f)(3) would provide a reasonableness standard to determine each individual's proportionate share. While section 25D uses the term ''proportionate share'' for both cooperatives and condominiums, the definition of ''proportionate share'' in section 216(b)(3) that applies to cooperative housing corporations cannot apply to condominiums because they do not have shares of stock to determine proportionate shares. Sections 25C, 25D, and 528 do not otherwise define proportionate share for condominiums.

The Treasury Department and the IRS recognize that condominiums are governed largely by boards of directors (or similar bodies) that are subject to State and local laws, and generally operate according to organizational documents. Accordingly, proposed § 1.25C–2(f)(3) would provide that an individual dwelling unit owner's proportionate share of condominium expenses is determined using any reasonable and consistent method. The proposed regulations would further require that the condominium's governing body must develop reasonable procedures to notify individuals of their allocable shares of these expenditures, and of the PINs associated with the specified property. The Treasury Department and the IRS request comments on the definition of proportionate share for condominiums.

Finally, proposed § 1.25C–2(g) would provide, consistent with sections 25C(f)(1) and 25D(e)(7), that if less than 80 percent of the use of an item of property is for nonbusiness purposes, only that portion of the expenditures with respect to such item that is properly allocable to use for nonbusiness purposes can be taken into account for purposes of calculating the section 25C credit.

## III. Special Rules

Proposed § 1.25C–3 would provide a special rule regarding enabling property and the requirement that it be installed in conjunction with, and enable the installation and use of, enabled property under section 25C(d)(2)(D)(iii) and (iv). The Treasury Department and the IRS understand that there may be circumstances where enabling and enabled property cannot be installed in the same taxable year. For example, a taxpayer or third-party installer may not know of the need for an upgrade to a panelboard at the time that enabled property is installed. Alternatively, the installer may not have enabling property available when the enabled property is installed (but the enabled property is otherwise functional).

Proposed § 1.25C–3 would provide a general rule and a safe harbor. Proposed § 1.25C–3(b)(1) would provide that enabling property would be considered to have been installed in conjunction with enabled property if it was installed in the same taxable year as the enabled property was installed. Proposed § 1.25C–3(b)(2) would provide a safe harbor providing that if enabling property and enabled property are installed in consecutive taxable years, then the taxpayer may treat the enabling property and the enabled property as installed in the same taxable year (deemed taxable year), provided that the deemed taxable year is the later of the taxable year in which the enabling property or the enabled property was installed, regardless of which is installed first. The safe harbor would allow flexibility for taxpayers while adhering to the statutory requirement that enabling property enable the installation and use of, enabled property.

If a taxpayer chooses not to apply the safe harbor, and the taxpayer, for example, installs the enabled property in the first taxable year and the enabling property in the second taxable year, then the taxpayer might still be eligible for the section 25C credit with respect to the enabled property installed in the first taxable year. However, the taxpayer would not be eligible for the section 25C credit with respect to the enabling property installed in the second taxable year because it could not enable the installation and use of the enabled property under section 25C(d)(2)(D)(iv) and would not meet the general rule of proposed § 1.25C–3(b)(1).

The safe harbor would impose no burden on taxpayers because no additional reporting requirements are required for its use. However, in order to be entitled to the section 25C credit, taxpayers who rely on the safe harbor must meet all other applicable requirements of section 25C and the proposed regulations, including the requirement to provide PINs for both enabling property and enabled property, as provided in section 25C(h), Revenue Procedure 2024–31 (discussed in part IV of this Explanation of Provisions), and any other applicable guidance.

The Treasury Department and the IRS request comments on the safe harbor under proposed § 1.25C–3(b)(2).

## IV. QMs and PIN Requirements

Proposed § 1.25C–4 would provide rules regarding the PIN requirements under section 25C(h) that apply to specified property placed in service after December 31, 2024. Most of the requirements pertain to QMs. Under section 25C(h)(1)(B), a taxpayer's sole obligation with respect to a PIN is to include the PIN of any item of specified property placed in service after December 31, 2024, on the taxpayer's tax return for the taxable year (Taxpayer PIN requirement).

The proposed regulations would refer manufacturers to Revenue Procedure 2024–31, for procedures on how to register and apply to become a QM and how to comply with the QM PIN requirements. The procedures of Revenue Procedure 2024–31 were derived in part from comments received in response to Notice 2024–13.

### *A. Manufacturer Registration*

Notice 2024–13 proposed that manufacturers would need to register with the IRS to become QMs but did not describe a registration process. The Treasury Department and the IRS received no comments about the need for manufacturers to register with the IRS or the process for such registration.

#### 1. General Rules and Registration Process

Proposed § 1.25C–4(a) would provide the general rule, pursuant to section 25C(h)(1), that no section 25C credit is allowed with respect to any item of

specified property placed in service after December 31, 2024, unless such item is produced by a QM and the taxpayer includes the PIN of such item on the return of tax for the taxable year. Proposed 1.25C–4(a) also would summarize the remaining paragraphs in the section, which would provide rules for manufacturers of specified property to meet the QM PIN requirements.

Proposed § 1.25C–4(b)(1) would provide, pursuant to section 25C(h)(3), that for a manufacturer of specified property to become a QM, the manufacturer must, in accordance with § 1.25C–4(b) and guidance published in the Internal Revenue Bulletin, register with the IRS and enter into an agreement with the IRS, certifying under penalties of perjury that the manufacturer will meet the QM PIN requirements. Revenue Procedure 2024–31 provides that this registration and agreement process is conducted through the IRS Energy Credits Online Portal.

Proposed § 1.25C–4(b)(2) would clarify that only manufacturers producing specified property at the time of registration may register with the IRS to become QMs. Allowing manufacturers that are not producing specified property at the time of registration could create confusion for taxpayers and would impose administrative burdens on the IRS.

2. Special Registration Rule for 2025

Multiple commenters to Notice 2024–13 expressed a need for additional time for manufacturers to comply with the registration and QM PIN requirements effective for property placed in service after December 31, 2024. In response to these requests, Revenue Procedure 2024–31 allows manufacturers of specified property until April 30, 2025, to submit their QM Registration Application and Agreement (as defined in the revenue procedure). Under Revenue Procedure 2024–31, any manufacturer that submits its QM Registration Application and Agreement by April 30, 2025, will be deemed to have been a QM as of December 31, 2024, provided such QM Registration Application and Agreement is validated by the IRS (as described in the revenue procedure). Accordingly, for a manufacturer that meets the requirements of the Special Registration Rule for 2025, any specified property produced by such manufacturer on or after January 1, 2025, and on or before April 30, 2025, will be deemed to have been produced by a QM.

3. Rule for Multiple Manufacturers

One commenter to Notice 2024–13 requested clarification as to which manufacturer would bear the responsibility to register with the IRS and meet the QM PIN requirements if more than one manufacturer participates in the production of the same product that is specified property, or if under a private labeling arrangement, one manufacturer labels and sells the same product of specified property that was produced by a third party. Proposed § 1.25C–4(b)(2) would provide that if there are multiple manufacturers in the chain of production of the same product of specified property, only one manufacturer may be the QM with respect to such product. Proposed § 1.25C–4(b)(2) would require that, absent an agreement otherwise, where more than one manufacturer participates in the production of the same product that is specified property, only the manufacturer whose production results in the product becoming specified property must register with the IRS to become a QM with respect to such property. Proposed § 1.25C–4(b)(2) would provide manufacturers working together to produce the same product of specified property the flexibility to negotiate which among them would bear responsibility as a QM with respect to such property. Revenue Procedure 2024–31 contains procedures corresponding to proposed § 1.25C–4(b)(2). The Treasury Department and the IRS request comments on proposed § 1.25C–4(b)(2) and how the rules should apply to products with multiple manufacturers.

4. Special Rules for Manufacturers of Enabling Property and Certain Manufacturers of Heat Pumps

Revenue Procedure 2024–31 provides certain exceptions to the QM PIN requirements with respect to enabling property and the indoor units of heat pumps. Despite those exceptions, which are discussed later in this preamble, a manufacturer of such products (even if it only produces no other type of specified property other than one or both of such products) must register using the IRS Energy Credits Online Portal and enter into an agreement with the IRS to become a QM.

5. Validation and Rejection of QM Registration Application and Agreement; Revocation and Suspension of QM Registration Status; Administrative Review

Proposed § 1.25C–4(b)(3) and (4) would provide that the IRS will validate and may reject a QM Registration Application and Agreement, taking into account a manufacturer's North American Industry Classification System (NAICS) code, and may revoke or suspend a QM's registration status for failure to comply with the QM PIN requirements. Proposed § 1.25C–4(b)(3) and (4) would provide that if the IRS rejects a QM Registration Application and Agreement, or revokes or suspends a QM's registration status, then the manufacturer will be afforded administrative review, but any such rejection, revocation, or suspension would not be reviewable by the IRS Independent Office of Appeals. Revenue Procedure 2024–31 contains procedures corresponding to proposed § 1.25C–4(b)(3) and (4).

6. Voluntary Discontinuance of QM Status

One commenter to Notice 2024–13 suggested that the guidance provide that a manufacturer registered as a QM is not required to remain a QM if it determines that compliance with the QM PIN requirements is too burdensome or otherwise unsuitable. Similarly, another commenter to Notice 2024–13 requested that the regulations permit manufacturers to register as QMs at any time of their choosing and to discontinue participation in the QM program or the assignment, labeling, or reporting of PINs at any time.

Proposed § 1.25C–4(b)(5) would allow a QM to discontinue its QM registration status by following the procedures provided in guidance published in the Internal Revenue Bulletin. Revenue Procedure 2024–31 provides procedures corresponding to proposed § 1.25C–4(b)(5), including for the date on which the QM's status is discontinued. A QM that discontinues its QM registration status will no longer be included on the list of QMs published by the IRS, and the IRS will publicize QMs that have discontinued their QM status.

*B. PIN Assignment Requirement*

Notice 2024–13 proposed a PIN assignment system that would have required QMs to assign to each item of specified property a 17-digit PIN consisting of four parts: (1) a unique ''QM Number'' specific to the QM, (2) a ''Product Number'' specific to the product line of specified property, (3) a number reflecting the year of manufacture, and (4) an ''Item number'' unique to each item of specified property.

1. General Rule

Several commenters generally addressed the proposed PIN assignment system from Notice 2024–13. Some commenters expressed concerns that the system would be burdensome for

manufacturers and taxpayers. These commenters asserted that it would be difficult and costly for manufacturers to assign PINs and ensure that consumers receive the PINs, because in many cases there would be one or more intermediaries, such as retailers and contractors, between manufacturers and consumers. These commenters also noted that it could be burdensome for consumers to determine a product's PIN and then retain it to include on their tax returns. According to these commenters, the PIN assignment system proposed in Notice 2024–13 would increase manufacturers' production costs, and consequently increase the cost of specified property, thereby deterring consumers from acquiring the energy efficient products that the section 25C credit aims to promote.

Some commenters asserted that the specifics of the PIN assignment system proposed in Notice 2024–13 would not be workable. Commenters asserted that it would be impractical for manufacturers to adopt this system, particularly those that already have in place longstanding and varied numbering systems for their product lines and individual items. Another commenter recommended that manufacturers of exterior windows and doors be exempt from QM PIN requirements because they produce larger quantities of such items than manufacturers of other types of specified property.

Several commenters suggested allowing manufacturers to employ existing numbering systems, such as serial numbers, NFRC numbers, or SKUs. One commenter asserted that using existing serial numbers would not lead to significant duplication. This commenter further stated that even though window and door manufacturers do not employ serial numbers, the assignment rules should still permit manufacturers of other specified property to employ existing serial numbers. Another commenter suggested that the IRS create a template application on which manufacturers could provide details about their existing serial numbering systems, so that a product's model number and serial number could together constitute its PIN.

The Treasury Department and the IRS acknowledge that the PIN assignment requirement presents certain compliance challenges for manufacturers and taxpayers. However, section 25C(h) requires unique PINs as an integral safeguard to assure that taxpayers entitled to claim the section 25C credit can do so efficiently, without concern that such claim will be rejected by the IRS for a duplicative or otherwise incorrect PIN. The unique PINs also reduce the risk to the fisc by preventing multiple claims for the section 25C credit for the same item of specified property.

In addition, the variety of existing product numbering systems warrants a uniform PIN assignment system. A manufacturer's serial numbers may be unique to individual items of property it produces, but different manufacturers use different forms of serial numbers. While manufacturers generally assign the same SKU to all items within a product line, the SKU would not be unique to each item within such line.

Proposed § 1.25C–4(c) would require a QM to assign PINs unique to each item of specified property it produces, using the PIN Assignment System described in guidance published in the Internal Revenue Bulletin. Revenue Procedure 2024–31 requires a system similar to the one described in Notice 2024–13 in that QMs must assign a 17-character PIN unique to each item of specified property. In response to commenter requests, to reduce complexity and burdens, the 17-character PIN in Revenue Procedure 2024–31 consists of three components, not the four proposed in Notice 2024–13: (1) a four-character ''QM Code'' that is specific to the QM and is assigned by the IRS once the QM's registration is validated, (2) a one-character ''Product Code'' that represents category of specified property and, if applicable, its relevant geographic climate zone, that is published by the IRS, and (3) a twelve-digit ''Item Number'' that is assigned by the QM that is unique to each item of specified property. For the Item Number, a QM may choose any twelve alphanumeric characters (including the common digits 0 to 9 and capital letters A to Z, other than I or O, but not special characters such as *, &, @, etc.), provided that the result is a unique Item Number, and provided that the Item number does not employ leading zeroes. A QM may use its own SKUs or serial numbers (or parts thereof) in the Item Number, provided that the Item Number is unique to each item of specified property. Revenue Procedure 2024–31 encourages QMs to employ nonsequential characters.

A commenter questioned why the letters I and O should not be allowed in PINs. The similarity of the letters I and O to the numbers one and zero could lead taxpayers to make mistakes when including a PIN on their tax returns or cause the IRS's processing systems to misread a PIN that a taxpayer submits, and cause the IRS to incorrectly disallow (or allow) a credit. Accordingly, Revenue Procedure 2024–31 does not allow the use of the letters I and O in PINs.

The PIN Assignment System set forth in Revenue Procedure 2024–31 ensures that each unique item of specified property will have a unique PIN, and that each PIN will employ the same format and the same number of characters. This uniformity is necessary for the IRS to process taxpayer claims for the section 25C credit efficiently.

While the Treasury Department and the IRS appreciate the concerns raised by the commenters, exterior windows and exterior doors cannot be exempted from the QM PIN requirements because section 25C expressly requires PINs to be assigned to exterior windows and exterior doors. However, the PIN Assignment System allows for a variety of digits in the Item Number such that a large volume of specified property can be accommodated.

One commenter asserted that it would be overly burdensome for manufacturers to assign PINs to products that manufacturers intend to export. The Treasury Department and the IRS agree that PINs only need to be assigned to products placed in service in the United States, because the definition of specified property itself includes requirements that can only be met in the United States, and because the section 25C credit is only allowed with respect to dwelling units located in the United States. The definitions of the products that comprise specified property (qualified energy property and exterior windows and exterior doors) each include requirements that can only be met in the United States. Qualified energy property under section 25C(d)(2)(A) must meet or exceed the highest efficiency tier established by the Consortium for Energy Efficiency, the requirements for which are based in part on United States climate zones. Qualified energy property under section 25C(d)(2)(B) must heat a dwelling unit located in the United States. Qualified energy property under section 25C(d)(2)(C) must be rated for use with fuel blends including eligible fuel under section 25C(d)(3), which under section 40 is limited to fuel produced and used in the United States and under section 40A excludes, in part, fuel produced outside the United States for use outside the United States. Qualified energy property under section 25C(d)(2)(D) comprises qualified energy efficiency improvements (which must be installed in the United States under section 25C(c)(1)(A)) and qualified energy property under section 25C(d)(2)(A) through (C), described in this paragraph, and must enable the installation and use

of property installed in the United States under section 25C(d)(2)(d)(iv). Finally, exterior windows (including skylights) and exterior doors, as qualified energy efficiency improvements, must be installed in the United States under section 25C(c)(1)(A). Exterior windows and skylights also must meet Energy Star most efficient certification requirements under section 25C(c)(2)(A), and exterior doors must meet applicable Energy Star requirements under section 25C(c)(2)(B), each of which is based in part on United States climate zones. Accordingly, the definition of specified property in proposed § 1.25C–2(b)(25) would provide that any property placed in service outside of the United States is not specified property.

Revenue Procedure 2024–31 also contains procedures regarding the time for assigning PINs to specified property. For property produced on or after January 1, 2026, the QM must assign a 17-digit PIN to the specific property while it is in the QM's possession. This timing rule will assist QMs in meeting the requirement to timely provide the PIN to the taxpayer. For items of specified property produced before January 1, 2026, the QM may, but is not required to, assign a 17-digit PIN to specified property after the property has left the QM's possession, provided that the rules regarding the time to provide the PIN are satisfied (see the discussion later).

2. Transition Relief for Specified Property Placed in Service During the 2025 Calendar Year

Commenters to Notice 2024–13 expressed concern that manufacturers (as well as distributors, contractors, and consumers) could not implement the proposed PIN assignment system before the PIN requirements take effect on January 1, 2025. They requested that the IRS adopt a transition rule that would delay or relax the PIN assignment requirement for at least the 2025 calendar year.

The Treasury Department and the IRS agree that transition relief is appropriate. Accordingly, for all specified property placed in service in the 2025 calendar year, Revenue Procedure 2024–31 provides that a QM can satisfy the PIN assignment requirement by furnishing its four-character ''QM Code'' to consumers, who can satisfy the Taxpayer PIN requirement by including the QM Code on their tax returns. Thus, for specified property placed in service during calendar year 2025, taxpayers may claim the section 25C credit based on the QM Code in lieu of the PIN for such specified property. This transition relief affords QMs an additional year to implement the full PIN Assignment System.

3. Special Rules for Enabling Property and Certain Heat Pumps

Two commenters to Notice 2024–13 asserted that the PIN assignment requirement would present unique challenges and burdens to manufacturers of enabling property described in section 25C(d)(2)(D), such as panelboards. These commenters noted that enabling property is eligible for the section 25C credit only if it is installed ''in conjunction with'' property that is itself eligible for the credit (enabled property, discussed previously). The commenters maintained that because, in most cases, taxpayers do not install the enabling property in conjunction with enabled property, it would saddle manufacturers of enabling properties with a disproportionate cost and burden to assign a PIN to each item of enabling property, without knowing if this was necessary. The commenters noted that because enabling property often costs significantly less than enabled property, full compliance with the QM PIN requirements would have a higher cost per item relative to other categories of specified property. Commenters also noted similar issues for manufacturers of heat pumps, which generally have two units—an indoor and an outdoor unit—with little likelihood one such unit could qualify for the section 25C credit without the other unit being installed.

The Treasury Department and the IRS agree that relief is appropriate to address these two concerns. Accordingly, Revenue Procedure 2024–31 addresses these issues. Regarding enabling property, section 4.01(5) of Revenue Procedure 2024–31 provides that a QM can satisfy the PIN assignment requirement with its QM Code in lieu of its PIN, instead of meeting the 17-digit PIN requirements, regardless of when the enabling property is placed in service. For taxpayers claiming the section 25C credit with respect to enabling property, the IRS will accept the QM Code in lieu of the PIN for the enabling property. QMs that produce enabling property must meet all other QM PIN requirements, including using the 17-digit PIN for enabled property placed in service on or after January 1, 2026.

Regarding heat pumps, section 5.05 of Revenue Procedure 2024–31 provides that only the outdoor unit of a heat pump must be assigned a PIN. A QM that produces heat pumps must meet all other applicable QM PIN requirements. For example, if a manufacture only produces indoor units of a heat pump, it must still register as a QM.

4. Additional Comments to Notice 2024–13

Some commenters suggested that a trade association of manufacturers of certain categories of specified property could create a product directory of specified properties that its members produce. They further suggested that the trade association could carry out all of the QM PIN requirements (assignment, labeling and reporting) on behalf of its members. Nothing in Revenue Procedure 2024–31 prohibits, and nothing in the proposed regulations would prohibit, a trade association from doing so. However, each manufacturer member must register to be a QM, and the PINs must follow all of the requirements provided in Revenue Procedure 2024–31.

One commenter asked how manufacturers should assign PINs to products made up of a combination of product lines. The PIN Assignment System described in Revenue Procedure 2024–31 does not require QMs to reference a product's product line in its PIN. The Product Code character in the PIN Assignment System represents the category of specified property. The Product Code is assigned by the QM in accordance with a list of Product Codes on *https://www.irs.gov*, on the IRS Energy Credits Online Portal, or in future published guidance. A QM has discretion to reference one product line, multiple product lines, or no product lines in the Item Number of a PIN with respect to a product that combines more than one product line.

Another commenter suggested that the proposed regulations allow manufacturers to use the proposed PIN system for products that do not qualify for the section 25C credit. According to this commenter, such a rule could allow manufacturers to obtain more value from the PIN system, which could potentially mitigate their compliance costs arising from the QM PIN requirements. Nothing in these proposed regulations or Revenue Procedure 2024–31 prohibits a manufacturer from assigning PINs using the requirements described in Revenue Procedure 2024–31 to products that do not qualify for the section 25C credit, particularly because QMs have flexibility in assigning Item Numbers. However, QMs should only report to the IRS the PINs for those products that are eligible for the section 25C credit. QMs may not advise or otherwise suggest to consumers that the PINs for products

that do not meet the requirements under section 25C render those products eligible for the section 25C credit.

One commenter suggested that manufacturers should have the option of using a PIN that is longer than 17 characters to accommodate production runs that may exceed this limit. The Treasury Department and the IRS have considered the number of possible QMs and the number of possible products that are specified property. The system must be developed to last for many years. Based on available information, the 17 digits in the PIN Assignment System should suffice.

*C. PIN Labeling Requirement; Time To Make the PIN Available*

Commenters to Notice 2024–13 asked that manufacturers be given flexibility in complying with the PIN labeling requirement. Several commenters requested that guidance not require QMs to affix PINs physically to items of specified property, as this would involve significant costs. Another commenter suggested that guidance require QMs to ensure that taxpayers can easily locate and report a product's PIN. This commenter specifically suggested requiring manufacturers to clearly label the PIN as the ''Section 25C Energy Efficient Home Improvement Tax Credit PIN.''

One commenter noted that many biomass appliances already have EPA labeling requirements and that it could be difficult to add a PIN to such labels. Another commenter pointed out that manufacturers may already have produced specified property that will be placed in service in 2025, and that it may be too late to affix PINs to these products. Finally, a commenter suggested allowing QMs to furnish PINs through their websites.

Having considered these comments, the Treasury Department and the IRS propose to allow QMs maximum flexibility in meeting the PIN labeling requirement and providing PINs to consumers to ensure that taxpayers have the information needed to claim the section 25C credit. Proposed § 1.25C–4(d) would direct manufacturers to guidance published in the Internal Revenue Bulletin. Revenue Procedure 2024–31 provides that manufacturers generally may choose the method by which to label products. QMs would not be required to affix PINs physically to items of specified property, provided that QMs make such PINs available to taxpayers within the required time frame. Revenue Procedure 2024–31 allows QMs to meet the PIN labeling requirement in various ways, such as by including PINs on documents inside a product's packaging, or furnishing PINs to consumers through QM websites. In accordance with the special requirement for enabling property, Revenue Procedure 2024–31 provides that a QM can meet the PIN labeling requirement for enabling property by providing its QM Code to consumers. In accordance with the special requirement for heat pumps, Revenue Procedure 2024–31 provides that QMs are not required to label the indoor unit of a heat pump.

Revenue Procedure 2024–31 also provides flexible procedures regarding when a QM must make PINs available to consumers. For specified property placed in service on or after January 1, 2025, and before January 1, 2026, in order to comply with the PIN labeling requirement, a QM must provide its QM Code to taxpayers who purchase items of specified property by no later than the date—(i) when the taxpayer places the specified property in service, (ii) when the taxpayer requests a PIN from the QM, or (iii) when the manufacturer becomes a QM, whichever is latest. This is in accord with the requirements for registration and PIN assignment for specified property placed in service in calendar year 2025. For specified property placed in service on or after January 1, 2026, in order to comply with the PIN labeling requirement, a QM must make its PINs available to taxpayer no later than the date when the taxpayer either places the specified property in service, or requests a PIN from the QM, whichever is later. For any specified property produced in calendar year 2025 and placed in service on or after January 1, 2026, and to which only a QM Code has been assigned, the QM must make the full 17-digit PIN available to the taxpayer upon request by the taxpayer. Revenue Procedure 2024–31 also provides that a QM may not establish prerequisites to a taxpayer obtaining a PIN unless such prerequisite is required to verify the taxpayer's purchase of the specified property. For example, a QM cannot require taxpayers to sign up for promotional emails as a condition of obtaining a PIN for specified property they purchase. These PIN delivery rules provide flexibility for QMs to determine which method of delivery works best for their business while ensuring that taxpayers have access to PINs when needed.

*D. Periodic Written Report Requirement*

Section 25C(h)(3)(C) provides the Secretary with authority to require QMs to provide periodic reporting of PINs assigned to specified property and other information that the Secretary may require with respect to such property.

1. QM Reports

Proposed § 1.25C–4(e) would direct QMs to guidance published in the Internal Revenue Bulletin regarding the format and timing of the periodic written report. Revenue Procedure 2024–31 provides that to meet the periodic written report requirement, a QM must submit periodic reports (QM Reports) electronically, using a template on the IRS Energy Credits Online Portal. Each QM Report must be signed under penalties of perjury, and include general information such as the QM's name and address, and information about each item of specified property for which a PIN was assigned, including such items month and year of manufacture.

For purposes of a QM Report, Revenue Procedure 2024–31 defines the year of manufacture as the year in which the property becomes specified property for purposes of the section 25C credit. This definition is intended for the convenience of QMs and to assist in determining whether certain energy efficiency standards imposed by section 25C have been met. This definition also comports with the rule for multiple manufacturers under proposed § 1.25C–4(b)(2). Nothing in Revenue Procedure 2024–31 regarding the year of manufacture applies to Code sections other than section 25C. The Treasury Department and the IRS request comments on the definition of year of manufacture in Revenue Procedure 2024–31.

In accordance with the transition relief provided for calendar year 2025, Revenue Procedure 2024–31 provides that for specified property placed in service on or after January 1, 2025, and before January 1, 2026, a QM Report need only include the QM Code provided to taxpayers, instead of the full 17-digit PIN.

In accordance with the special rules for manufacturers of enabling property and certain manufacturers of heat pumps, Revenue Procedure 2024–31 provides that QMs are not required to file QM Reports with respect to enabling property or indoor units of heat pumps.

2. Time To File QM Reports

Notice 2024–13 did not propose a rule for the required frequency of QM Reports. A commenter to Notice 2024–13 suggested that guidance require QMs to file QM Reports annually. The Treasury Department and the IRS recognize that the regular submission of QM Reports could pose a potential burden to some QMs, particularly for specified property placed in service on or after January 1, 2025, and before January 1, 2026. However, the Treasury

Department and the IRS have determined that annual QM Reports would not be frequent enough to give the IRS time to address errors and to effectively administer the section 25C credit.

Therefore, Revenue Procedure 2024–31 provides transition relief and requires that for items of specified property that leave a QM's control and enter the stream of commerce on or after January 1, 2025, and before January 1, 2026, only one QM Report is required, and it must be submitted by January 15, 2026. For specified property placed in service on or after January 1, 2026, Revenue Procedure 2024–31 requires a QM to file QM Reports on a quarterly basis, specifically by the fifteenth day of the calendar month following the end of the calendar quarter in which an item of specified property leaves the QM's control and enters the stream of commerce (January 15, April 15, July 15, and October 15). A QM may choose to submit QM Reports more frequently than once per quarter.

Revenue Procedure 2024–31 also provides procedures for updating or rescinding QM Reports, which must be done through the IRS Energy Credits Online Portal as soon as possible after the original submission.

*E. Lessees of a Dwelling Unit*

A lessee may not claim the section 25C credit for qualified energy efficiency improvements, as a lessee uses but does not own a dwelling unit. A lessee of a dwelling unit may claim the section 25C credit for residential energy property expenditures, provided that the dwelling unit is used as a residence by the lessee. A lessee may claim the section 25C credit for a home energy audit, provided that the dwelling unit is used by the lessee as the lessee's principal residence.

*F. Additional Comments Received*

Two commenters to Notice 2024–13 suggested that a public database of specified products and their PINs would present privacy concerns. One commenter also suggested that the IRS treat manufacturer data and PIN information as confidential business information. The Treasury Department and the IRS understand these concerns, but want to ensure that consumers have some information as they search for products that are specified property. A QM Code assigned to a manufacturer by the IRS does not constitute confidential business information and its publication should not pose any inherent risk to QMs. Nonetheless, the IRS will publish a list of QMs, which will provide consumers with helpful information in determining which QMs offer products that are specified property, but to ensure privacy for QMs, the IRS will not publish any QM Codes.

One commenter suggested that the IRS create an online directory of products eligible for the credit. The IRS declines to adopt this proposal because the statute already provides guidelines for products that qualify for the credit. However, the IRS will publish a list of Product Codes that sets forth each category of specified property. Some commenters asked whether reporting rules would change due to section 25C having been amended. Form 5695, *Residential Energy Credits,* is being revised to allow reporting of PINs. When available, the revised draft form will be available for comment on *https://www.irs.gov/draftforms.*

**Proposed Applicability Dates**

These regulations are proposed to apply to taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

Taxpayers may rely on the proposed regulations for specified property placed in service prior to the date these regulations are published as final regulations in the **Federal Register,** provided the taxpayer follows the proposed regulations in their entirety, and in a consistent manner.

**Statement of Availability for IRS Documents**

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at *https://www.irs.gov.*

**Special Analyses**

**I. Regulatory Planning and Review—Economic Analysis**

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

**II. Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in the proposed regulations contain reporting, third-party disclosure and recordkeeping requirements that are necessary to ensure that specified property meets the requirements for the energy efficient home improvement credit under section 25C. These collections of information generally would be used by the IRS for tax compliance purposes and by taxpayers to ensure the property qualifies for the credit.

The reporting requirements include that manufacturers register with the IRS to become QMs (as detailed proposed § 1.25C–4(b)) and provide IRS with periodic reports (as detailed in proposed § 1.25C–4(e)). Additionally, in the event a manufacturer is disqualified, the manufacturer will have the opportunity to appeal the IRS determination by requesting an administrative review. The third-party disclosure requirement includes the requirement that manufacturers provide taxpayers with a PIN number that identifies the specified property as qualified under section 25C (as detailed in proposed § 1.25C–4(d)). The likely respondents are businesses and other for-profit entities. The burden for these requirements is as follows:

*Registration:*

*Estimated number of respondents:* 2,100.

*Estimated frequency of responses:* 1.

*Estimated average annual burden per response:* 2 hours.

*Estimated total annual reporting burden:* 4,200 hours.

*Periodic Reporting:*

*Estimated number of respondents:* 2,100.

*Estimated frequency of responses:* 1.

*Estimated average annual burden per response:* 15 minutes (0.25 hours).

*Estimated total annual reporting burden:* 525 hours.

*PIN Labeling:*

*Estimated number of respondents:* 2,100.

*Estimated frequency of responses:* varies*.

* *The IRS anticipates that 1 manufacturer may have multiple products that qualify and will be labeled. For calculation purposes, the IRS is estimating that 1 manufacturer could have 2,000 products that qualify.*

*Estimated average annual burden per response:* 15 minutes (0.25 hours).

*Estimated total annual reporting burden:* 1,050,000 hours.

*Appeals:*

*Estimated number of respondents:* 21.

*Estimated frequency of responses:* 1.

*Estimated average annual burden per response:* 1 hour.

*Estimated total annual reporting burden:* 21 hours.

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act under OMB Control Number 1545–NEW. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to *https://www.reginfo.gov/public/do/PRAMain,* with copies to the IRS. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments,'' and then by using the search function. Submit electronic submissions for the proposed information collection to the IRS via email at *pra.comments@irs.gov* (indicate REG–118264–23 on the Subject line). Comments on the collection of information must be received by December 24, 2024. Comments are specifically requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility; the accuracy of the estimated burden associated with the proposed collection of information; how the quality, utility, and clarity of the information to be collected may be enhanced; how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

## III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA), the Secretary hereby certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the RFA. Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business.

The proposed regulations would affect QMs of specified property and eligible taxpayers who place such property in service during a taxable year. The Treasury Department and the IRS estimate the number of QMs to be 2,100. Data are not readily available on the number of small entities among the QMs, but it is likely that a substantial number may be affected. Although a substantial number of small entities may be affected, the economic impact of the rule is not expected to be significant. Any burden imposed in the proposed regulations on a manufacturer that wants to register as a QM, and any subsequent burden of assigning a PIN, labeling the specified property, and making periodic written reports to the IRS, would be voluntarily assumed by such QM, as manufacturers of specified property are not required to register as QMs under section 25C. Section 25C provides an indirect financial benefit to manufacturers who choose to register as QMs in the form of credits available to eligible taxpayers that subsidize the purchase of specified property manufactured by the QMs. The different credit amounts allowed under section 25C for different types of specified property allow manufacturers considering whether to register as QMs to make an informed decision regarding the potential financial benefit in doing so. The proposed regulations also provide flexibility for QMs in meeting the previously described burdens. Accordingly, the Secretary certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS request comments that provide data, other evidence, or models that provide insight on this issue.

## IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately $198 million. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

## V. Executive Order 13132: Federalism

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

## Comments and Requests for a Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, including their economic impact and any alternative approaches that should be considered during the rulemaking process. In addition, the Treasury Department and the IRS request comments on the specific issues noted in the preamble to the proposed regulations. Any comments submitted, whether electronically or on paper, will be made available at *https://www.regulations.gov* or upon request.

A public hearing has been scheduled for January 21, 2025, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who want to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by December 24, 2024. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outlines of topics to be discussed at the hearing are received by December 24, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the

public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–118264–23 and the language TESTIFY in Person. For example, the subject line may say: Request to TESTIFY in Person at Hearing for REG–118264–23.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–118264–23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–118264–23.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG–118264–23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing in Person for REG–118264–23. Requests to attend the public hearing must be received by 5 p.m. ET on January 17, 2025.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–118264–23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–118264–23. Requests to attend the public hearing must be received by 5 p.m. ET on January 17, 2025.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by at least January 16, 2025.

## Drafting Information

The principal author of the proposed regulations is the Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in the development of the proposed regulations.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order for §§ 1.25C–1 through 1.25C–4 to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

* * * * *

Section 1.25C–1 also issued under 26 U.S.C. 25C(b)(6)(B) and (h)(3).

Section 1.25C–2 also issued under 26 U.S.C. 25C(b)(6)(B), (f)(1), and (h)(3).

Section 1.25C–3 also issued under 26 U.S.C. 25C(h)(3).

Section 1.25C–4 also issued under 26 U.S.C. 25C(h)(3).

* * * * *

■ **Par. 2.** Sections 1.25C–0 through 1.25C–4 are added to read as follows:

Sec.

* * * * *



### § 1.25C–0 Table of contents.

This section lists the major captions contained in §§ 1.25C–1 through 1.25C–4.

(f) Applicability date.

**§ 1.25C–1 Credit for energy efficient home improvements.**

(a) *In general.* With respect to property placed in service after December 31, 2022, and subject to the requirements and limitations set forth in section 25C of the Internal Revenue Code (Code) as implemented by the section 25C regulations (as defined in paragraph (b)(24) of this section), section 25C of the Code allows as a credit against the tax imposed by chapter 1 of the Code for the taxable year 30 percent of certain amounts paid or incurred by an individual taxpayer (taxpayer) during such taxable year for qualified energy efficiency improvements (as defined in paragraph (b)(16) of this section) installed during such taxable year, residential energy property expenditures (as defined in paragraph (b)(20) of this section) (together, section 25C property), and home energy audits (as defined in paragraph (b)(10) of this section). Paragraph (b) of this section provides definitions that apply for purposes of the section 25C credit and the section 25C regulations. Section 1.25C–2 provides general rules and limitations regarding the section 25C credit. Section 1.25C–3 provides special rules regarding the section 25C credit. Section 1.25C–4 provides rules regarding the qualified product identification number (PIN) requirements under section 25C(h) for specified property placed in service after December 31, 2024, and other requirements that manufacturers must satisfy in order for their products to become eligible for the section 25C credit.

(b) *Definitions.* The definitions in this paragraph (b) solely apply for purposes of section 25C of the Code and the section 25C regulations.

(1) *Building envelope component.* The term *building envelope component* means:

(i) Any insulation material or system, including air sealing material or system that is specifically and primarily designed to reduce the heat loss or gain of a dwelling unit when installed in or on such dwelling unit;

(ii) Exterior windows, including skylights; and

(iii) Exterior doors.

(2) *Code.* The term *Code* means the Internal Revenue Code.

(3) *Consortium for Energy Efficiency (CEE).* The term *Consortium for Energy Efficiency* or *CEE* refers to the nonprofit consortium, consisting primarily of utility efficiency program administrators across the United States and Canada, that determines energy performance specification Tiers for HVAC and water heating equipment, including the geographic region where each specification is applicable.

(4) *Dwelling unit.* The term *dwelling unit* includes:

(i) A house, apartment, condominium unit owned by a taxpayer who is a member of a condominium management association with respect to such unit, mobile home, houseboat, or similar property used to provide living accommodations in a building or structure, but not structures or other property appurtenant to such dwelling unit and not that portion of a unit that is used on a transient basis or exclusively as a hotel, motel, inn, or similar establishment,

(ii) A manufactured home that conforms to the Federal Manufactured Home Construction and Safety Standards (24 CFR part 3280), and

(iii) Any property designated as a dwelling unit in guidance.

(5) *Enabled property.* The term *enabled property* means:

(i) Qualified energy efficiency improvements described in section 25C(c)(1) through (4), or

(ii) Qualified energy property described in section 25C(d)(2)(A) through (C) for which a section 25C credit is allowed for expenditures with respect to such property, and

(iii) For which an enabling property (as defined in paragraph (b)(6) of this section) enables the installation and use.

(6) *Enabling property.* The term *enabling property* means property described in section 25C(d)(2)(D) that is any improvement to, or replacement of, a panelboard, sub-panelboard, branch circuits, or feeders that:

(i) Is installed in a manner consistent with the National Electric Code,

(ii) Has a load capacity of not less than 200 amps,

(iii) Is installed in conjunction with any qualified energy efficiency improvements described in section 25C(c)(1) through (4), or any qualified energy property described in section 25C(d)(2)(A) through (C) for which a section 25C credit is allowed for expenditures with respect to such property, and

(iv) Enables the installation and use of any enabled property, as defined in paragraph (b)(5) of this section.

(7) *Energy efficient building envelope component.* The term *energy efficient building envelope component* means a building envelope component, as defined in section 25C(c)(3), that meets:

(i) In the case of an exterior window or skylight, Energy Star certified most efficient certification requirements;

(ii) In the case of an exterior door, applicable Energy Star certified requirements; and

(iii) In the case of any other building envelope component, the prescriptive criteria for such component established by the most recent International Energy Conservation Code standard in effect as of the beginning of the calendar year (as determined by the U.S. Secretary of Energy) that is 2 years prior to the calendar year in which such component is placed in service.

(8) *Energy Star.* The term *Energy Star* refers to the voluntary labeling and rating program administered by the U.S. Environmental Protection Agency that determines the applicable climate zones for exterior windows, skylights, and doors.

(9) *Guidance.* The term *guidance* means guidance published in the Internal Revenue Bulletin. *See* § 601.601 of this chapter.

(10) *Home energy audit.* The term *home energy audit* means an inspection and written report with respect to a dwelling unit located in the United States and owned or used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121 of the Code) that:

(i) Identifies the most significant and cost-effective energy efficiency improvements with respect to such dwelling unit, including an estimate of the energy and cost savings with respect to each such improvement, and

(ii) Is conducted and prepared by a home energy auditor that meets the certification or other requirements specified in the section 25C regulations or guidance.

(11) *International Energy Conservation Code standard.* The term *International Energy Conservation Code standard* refers to the model building codes developed by the International Code Council that sets minimum conservation requirements for new buildings in the United States.

(12) *IRS.* The term *IRS* means the Internal Revenue Service.

(13) *Originally placed in service; Original use.* The term *originally placed in service* refers to the first time the property is placed in service, whether or not by the taxpayer. The term *original use* refers to the first use to which the property is put or will be put, whether or not that use corresponds or will correspond to the use of the property by the taxpayer.

(14) *Paid or incurred.* The term *paid or incurred* has the same meaning as provided in section 7701(a)(25) of the Code.

(15) *Placed in service.* The term *placed in service* refers to the date on

which property that is eligible for the section 25C credit is placed in a condition or state of readiness and availability for its specifically assigned function.

(16) *Qualified energy efficiency improvements.* The term *qualified energy efficiency improvements* means any energy efficient building envelope component, if:

(i) Such component is installed in or on a dwelling unit located in the United States and owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121);

(ii) The original use of such component commences with the taxpayer; and

(iii) Such component reasonably can be expected to remain in use for at least 5 years.

(17) *Qualified energy property.* The term *qualified energy property* means any of the following:

(i) Any of the following that meet or exceed the highest efficiency tier (not including any advanced tier) established by the Consortium for Energy Efficiency (CEE) that is in effect as of the beginning of the calendar year in which the property is placed in service:

(A) An electric or natural gas heat pump water heater;

(B) An electric or natural gas heat pump;

(C) A central air conditioner;

(D) A natural gas, propane, or oil water heater;

(E) A natural gas, propane, or oil furnace or hot water boiler;

(ii) A biomass stove or boiler that:

(A) Uses the burning of biomass fuel to heat a dwelling unit located in the United States and used as a residence by the taxpayer, or to heat water for use in such a dwelling unit, and

(B) Has a thermal efficiency rating of at least 75 percent (measured by the higher heating value of the fuel, as determined by the U.S. Environmental Protection Agency for wood stoves).

(iii) Any oil furnace or hot water boiler that is placed in service after December 31, 2022, and before January 1, 2027, and:

(A) Meets or exceeds 2021 Energy Star certified efficiency criteria, and

(B) Is rated by the manufacturer for use with fuel blends at least 20 percent of the volume of which consists of an eligible fuel, as defined in section 25C(d)(3).

(iv) Any oil furnace or hot water boiler that is placed in service after December 31, 2026, and:

(A) Achieves an annual fuel utilization efficiency rate of not less than 90, and

(B) Is rated by the manufacturer for use with fuel blends at least 50 percent of the volume of which consists of an eligible fuel, as defined in section 25C(d)(3).

(v) Any enabling property.

(18) *Qualified manufacturer.* The term *qualified manufacturer* means any manufacturer of specified property that has entered into an agreement with the IRS as described in section 25C(h)(3) and § 1.25C–4.

(19) *Qualified product identification number (PIN).* The term *qualified product identification number* or *PIN* means, with respect to any item of specified property, the product identification number assigned to such item by the qualified manufacturer pursuant to the methodology referred to in section 25C(h)(3) and described in § 1.25C–4.

(20) *Residential energy property expenditures.* The term *residential energy property expenditures* means expenditures, including expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property, made by the taxpayer for qualified energy property that is:

(i) Installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer; and

(ii) Originally placed in service by the taxpayer.

(21) *Secretary.* The term *Secretary* means the Secretary of the Treasury or her delegate.

(22) *Section 25C credit.* The term *section 25C credit* means the credit allowable to a taxpayer for the taxable year under section 25C(a) and the section 25C regulations.

(23) *Section 25C property.* The term *section 25C property* means qualified energy efficiency improvements as defined under section 25C(c) and residential energy property expenditures as defined under section 25C(d).

(24) *Section 25C regulations.* The term *section 25C regulations* means §§ 1.25C–1 through 1.25C–4.

(25) *Specified property.* The term *specified property* means qualified energy property described in section 25C(d)(2) and paragraph (b)(17) of this section, and exterior windows (including skylights) and exterior doors described in section 25C(c)(3)(B) and (C). Any property placed in service outside of the United States is not specified property.

(c) *Applicability date.* This section applies to taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

**§ 1.25C–2 General rules.**

(a) *General rule.* Subject to the limitations in paragraph (b) of this section, the rules in paragraphs (d) through (h) of this section, and the rules in §§ 1.25C–3 and 1.25C–4, with respect to property placed in service after December 31, 2022, the section 25C credit for the taxable year is an amount equal to 30 percent of the sum of:

(1) The amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year;

(2) The amount of the residential energy property expenditures paid or incurred by the taxpayer during such taxable year; and

(3) The amount paid or incurred by the taxpayer during such taxable year for home energy audits.

(b) *Limitations*—(1) *General limitation.* Except as provided in paragraph (b)(2)(ii) of this section, the section 25C credit allowed with respect to any taxpayer for any taxable year is limited to $1,200.

(2) *Limitation for qualified energy property*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section and in addition to the other limitations provided in this paragraph (b), the credit allowed under section 25C(a)(2) is limited to $600 with respect to any taxpayer for any taxable year with respect to any item of qualified energy property.

(ii) *Limitation for heat pump water heaters, heat pumps, biomass stoves, and biomass boilers.* Notwithstanding the general limitation described in paragraph (b)(1) of this section and the limitation for qualified energy property in paragraph (b)(2)(i) of this section, the credit allowed under section 25C(a)(2) with respect to any taxpayer for any taxable year is limited to $2,000 in the aggregate with respect to amounts paid or incurred for the following property:

(A) An electric or natural gas heat pump water heater described in section 25C(d)(2)(A)(i);

(B) An electric or natural gas heat pump described in section 25C(d)(2)(A)(ii); and

(C) A biomass stove or boiler described in section 25C(d)(2)(B).

(3) *Limitation for exterior windows and skylights.* In addition to the general limitation in paragraph (b)(1) of this section and the other limitations provided in this paragraph (b), the credit allowed under section 25C(a)(1) with respect to any taxpayer for any taxable year is limited to $600 in the

aggregate with respect to all exterior windows and skylights.

(4) *Limitation for exterior doors.* In addition to the general limitation in paragraph (b)(1) of this section and the other limitations provided in this paragraph (b), the credit allowed under section 25C(a)(1) with respect to any taxpayer for any taxable year is limited to $250 in the case of any exterior door and $500 in the aggregate with respect to all exterior doors.

(5) *Limitation for home energy audits.* In addition to the general limitation in paragraph (b)(1) of this section and the other limitations provided in this paragraph (b), the credit allowed under section 25C(a)(3) for a home energy audit is limited to $150.

(c) *Examples.* The following examples demonstrate the rules of paragraphs (a) and (b) of this section.

(1) *Example 1.* In taxable year 2024, Taxpayer A paid $600 for a home energy audit of A's principal residence and purchased three exterior windows at a cost of $800 per window. Before applying the limitations of this section, the credit amount under section 25C(a)(3) for the home energy audit would be $180 ($600 × 0.3), and the credit amount under section 25C(a)(1) for the three exterior windows would be $720 ($800 × 3 × 0.3). The $180 amount is limited to $150 under paragraph (b)(5) of this section. The $720 amount is limited to $600 in the aggregate with respect to all exterior windows under paragraph (b)(3) of this section. Therefore, the total section 25C credit allowable to A, assuming A meets all applicable requirements of section 25C, is limited to $750 ($150 for the home energy audit + $600 for the three exterior windows) for taxable year 2024.

(2) *Example 2.* In taxable year 2024, Taxpayer B paid $800 and $900, respectively, for two exterior doors, and $2,500 for a natural gas hot water boiler. Before applying the limitations of this section, the credit amount under section 25C(a)(1) for the two exterior doors would be $510 (($800 + $900) × 0.3), and the credit amount under section 25C(a)(2) for the natural gas hot water boiler would be $750 ($2,500 × 0.3). The $510 amount is limited to $490 ($240 + $250) under paragraph (b)(4) of this section, allows $240 for the $800 door ($800 × 0.3) but limits the amount for the $900 door ($900 × 0.3 = $270) to $250. The $750 amount is limited to $600 for an item of qualified energy property under paragraph (b)(2)(i) of this section. The $2,000 limit under paragraph (b)(2)(ii) of this section does not apply to natural gas hot water boilers. Therefore, the total section 25C credit allowable to B, assuming B meets all applicable requirements of section 25C, is limited to $1,090 ($490 for the exterior doors + $600 for the natural gas hot water boiler) for taxable year 2024.

(d) *When expenditures are treated as made.* Pursuant to sections 25C(f)(1) and 25D(e)(8)(A), an expenditure for an item of property is treated as made when the original installation of the item is completed.

(e) *Expenditures in connection with reconstruction or addition; Substantiation*—(1) *In general.* Any amount paid or incurred by a taxpayer for section 25C property in connection with the reconstruction of or an addition to a dwelling unit will be treated as paid or incurred when the taxpayer's use of the reconstructed or post-addition dwelling unit begins.

(2) *New construction.* Any amount paid or incurred by a taxpayer in connection with the original construction of a dwelling unit is not an expenditure eligible for the section 25C credit.

(3) *Substantiation.* Taxpayers must maintain records that itemize the amount paid or incurred for each item of section 25C property in connection with the reconstruction or addition described paragraph (e)(1) of this section. Cost segregation studies may not be used as substantiation unless the taxpayer limits the amount claimed as a section 25C credit to the amount paid or incurred by the contractor or subcontractor for the section 25C property added to the dwelling unit as part of such reconstruction or addition.

(f) *Rules for joint occupancy, tenant-stockholders in cooperative housing, and members of a condominium management association*—(1) *Joint occupancy.* Pursuant to section 25C(f)(1) and section 25D(e)(4), in the case of any dwelling unit that is jointly occupied and used during the calendar year as a principal residence by two or more taxpayers, the expenditures allocated to any taxpayer for the taxable year in which such calendar year ends is the amount paid or incurred by such taxpayer for section 25C property with respect to such dwelling unit during such calendar year.

(2) *Tenant-stockholders in cooperative housing corporations*—(i) *In general.* Pursuant to sections 25C(f)(1) and 25D(e)(5), in the case of an taxpayer who is an individual tenant-stockholder (as defined in section 216 of the Code) in a cooperative housing corporation (as defined in section 216), for purposes of the section 25C credit, such taxpayer will be treated as having paid or incurred the taxpayer's proportionate share (as defined in section 216(b)(3)) of any amounts paid or incurred by such corporation for section 25C property. Tenant-stockholders that are not individuals cannot claim the section 25C credit.

(ii) *Example.* X, a cooperative housing corporation, has 10 tenant-stockholders who are all individuals. Each tenant-stockholder owns 1 share of stock. In taxable year 2024, X pays $2,000 for a new exterior door for the building and has no other expenditures eligible for the section 25C credit. Pursuant to paragraph (f)(2)(i) of this section, each tenant-stockholder will be treated as having paid the tenant-stockholder's proportionate share of the expenditure for the exterior door. Under section 216(b)(3), the proportionate share is the proportion that the stock of the cooperative housing corporation owned by the tenant-stockholder is to the total outstanding stock of the corporation (including any stock held by the corporation). Each tenant-stockholder will be treated as having paid $200 ($2,000 × (1 share of stock per tenant-stockholder/10 total shares of stock)) for the exterior door. Assuming all other applicable requirements of section 25C are met, for taxable year 2024, each tenant-stockholder is entitled to a $60 ($200 × 0.3) section 25C credit with respect to the exterior door.

(3) *Condominium management association*—(i) *In general.* Pursuant to sections 25C(f)(1) and 25D(e)(6), in the case of a taxpayer who is a member of a condominium management association with respect to a condominium dwelling unit that the taxpayer owns, such taxpayer will be treated as having paid or incurred the taxpayer's proportionate share of any expenditures of such association for section 25C property. Such proportionate share may be determined using any reasonable method determined by the condominium management association's governing body. Unless otherwise provided in guidance, reasonable methods to determine the proportionate share of such association expenditures include, but are not limited to, looking to State law to determine the proportionate share of association expenditures, determining the proportionate share based on the association's organizational documents as they relate to each owner's responsibility for association expenditures, and determining the proportionate share based on the percentages of total square footage of the condominium's common elements for each individual owner. The governing body must maintain a consistent method for determining the proportionate share of association expenditures, and should maintain

records to document such determinations. The governing body also must develop reasonable procedures to notify individuals of their allocable share of the association expenditures, and of the PINs of the specified property. Nothing in this paragraph negates the individual limitations described in this section.

(ii) *Condominium management association.* For purposes of this paragraph (f)(3), the term *condominium management association* means an organization that meets the requirements of section 528(c)(1) and (2) of the Code with respect to a condominium project substantially all of the units of which are used as residences.

(iii) *Example.* Y, a condominium, has 50 resident owners. In taxable year 2024, Y pays $2,000 for a new exterior door for the building and has no other expenditures eligible for the section 25C credit. The organizational documents for Y include a Declaration that lists each resident's percentage interest in common elements based on the proportion of square footage of each dwelling unit to the total square footage of all dwelling units in the building. The Y Declaration shows that Z, an individual dwelling unit owner in Y, has a 10 percent interest in the common elements. Pursuant to paragraphs (f)(3)(i) and (ii) of this section, the Y Board of Directors can determine that Z's proportionate share of the expenditure for the exterior door is $200 ($2,000 × 0.1). Z will be treated as having paid $200 in taxable year 2024 for the exterior door for purposes of section 25C. Assuming all other applicable requirements of section 25C have been met, Z's section 25C credit for taxable year 2024 with respect to the exterior door will be $60 ($200 × 0.3).

(g) *Allocation for nonbusiness purposes in certain cases.* Pursuant to sections 25C(f)(1) and 25D(e)(7), if less than 80 percent of the use of an item of property is for nonbusiness purposes, only that portion of the expenditures with respect to such item that is properly allocable to use for nonbusiness purposes can be taken into account for purposes of calculating the section 25C credit.

(h) *Applicability date.* This section applies to taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

### § 1.25C–3 Special rules.

(a) *In general.* This section provides special rules regarding the section 25C credit. Except as otherwise provided in this section, the other rules of the section 25C regulations continue to apply.

(b) *Enabling property; Taxable year of installation*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, enabling property is considered to have been installed in conjunction with enabled property if it was installed in the same taxable year as the enabled property was installed.

(2) *Safe harbor.* If enabling property and enabled property are installed in consecutive taxable years, the taxpayer may treat the enabling property and enabled property as installed in the same taxable year (deemed taxable year), provided that the deemed taxable year is the later of the taxable year in which the enabling property was installed or the enabled property was installed. Nothing in this paragraph (b)(2) negates the requirement to provide a PIN for both the enabling and enabled property as required in section 25C(h), § 1.25C–4(a), or guidance.

(3) *Example.* In taxable year 2024, Taxpayer C installs a new panelboard in his principal residence, and in taxable year 2025, C installs a new electric heat pump water heater in his principal residence. If C chooses to apply the safe harbor under paragraph (b)(2) of this section, C may treat both the enabling property (panelboard) and the enabled property (electric heat pump water heater) to have been installed in taxable year 2025, for purposes of the section 25C credit. If C chooses not to apply the safe harbor under paragraph (b)(2) of this section, then the panelboard is determined to have been installed in taxable year 2024, and the electric heat pump water heater is determined to have been installed in taxable year 2025, for purposes of the section 25C credit. Thus, if C chooses not to apply the safe harbor under paragraph (b)(2) of this section, then C cannot claim the section 25C credit with respect to the panelboard.

(c) *Applicability date.* This section applies to taxable years ending after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

### § 1.25C–4 Qualified Product Identification Number Requirements for Specified Property Placed in Service After December 31, 2024.

(a) *In general.* No section 25C credit is allowed with respect to any item of specified property placed in service after December 31, 2024, unless such item is produced by a qualified manufacturer and the taxpayer includes the PIN of such item on the taxpayer's tax return for the taxable year. Paragraph (b) of this section provides rules for a manufacturer of specified property to meet the requirement under section 25C(h)(3) of the Code to register with the IRS and enter into an agreement with the IRS regarding PINs. Paragraph (c) of this section provides rules for a manufacturer of specified property to meet the requirement under section 25C(h)(3)(A) to assign a product identification number unique to each item of specified property they produce (PIN assignment requirement). Paragraph (d) of this section provides rules for a manufacturer of specified property to meet the requirement under section 25C(h)(3)(B) to label each such item of specified property, and rules regarding the timing of providing PINs to taxpayers (PIN labeling requirement). Paragraph (e) of this section provides rules for a manufacturer of specified property to meet the requirement under section 25C(h)(3)(C) to make periodic written reports to the IRS of the PINs assigned, including such other information as the Secretary may require under the section 25C regulations with respect to the items of specified property (periodic written report requirement).

(b) *Qualified manufacturer registration and agreement*—(1) *General rule.* For a manufacturer of specified property to become a qualified manufacturer, the manufacturer must, in accordance with this paragraph (b) and guidance, register with and enter into an agreement with the IRS (QM Registration Application and Agreement), certifying under penalties of perjury that the manufacturer will—

(i) Assign a PIN unique to each item of specified property produced by such manufacturer, using the methodology described in paragraph (c) of this section and in guidance;

(ii) Label each such item of specified property with the unique PIN and furnish the PIN to the consumer who purchases such item, in accordance with the rules provided in paragraph (d) of this section and in guidance;

(iii) Make periodic written reports to the IRS of the PINs assigned and such other information as the Secretary may require with respect to such items of specified property, in accordance with the rules provided in paragraph (e) of this section and in guidance; and

(iv) Provide such other information and certifications that the IRS may require in guidance, on *https://www.irs.gov*, or on the electronic portal used by a manufacturer to register as a qualified manufacturer or to submit periodic written reports.

(2) *Manufacturers that can register to become qualified manufacturers*—(i) *General rule.* Only a manufacturer

producing specified property at the time of registration may register with the IRS to become a qualified manufacturer for purposes of section 25C.

(ii) *Rule for multiple manufacturers.* If more than one manufacturer participates in the production of the same product that is specified property, such manufacturers must follow the rules provided in guidance to determine which among them must register with the IRS to become a qualified manufacturer with respect to such property.

(3) *Validation and administrative review of agreements.* The IRS will validate and may reject a QM Registration Application and Agreement in accordance with guidance. If the IRS rejects a QM Registration Application and Agreement, then the manufacturer may request administrative review by the IRS of such rejection, as provided in guidance. Any IRS rejection of a QM Registration Application and Agreement is not subject to administrative appeal to the IRS Independent Office of Appeals.

(4) *Revocation and suspension.* The IRS may revoke or suspend a manufacturer's qualified manufacturer registration status in the IRS's sole discretion if the IRS concludes that the manufacturer is not adhering to the terms of its QM Registration Application and Agreement. If the IRS revokes or suspends a manufacturer's qualified manufacturer registration status, then the manufacturer may request administrative review by the IRS of the IRS's determination as provided in guidance. Any IRS determination relating to the revocation or suspension of a manufacturer's qualified manufacturer registration status is not subject to administrative appeal to the IRS Independent Office of Appeals.

(5) *Voluntary discontinuance.* A qualified manufacturer may voluntarily discontinue its qualified manufacturer registration status by following the procedures provided in guidance.

(c) *PIN assignment requirement.* Except as provided in guidance, for a manufacturer of specified property to be a qualified manufacturer, the manufacturer must assign a PIN unique to each item of specified property it produces, in accordance with paragraph (b)(1)(i) of this section and using the PIN Assignment System and other rules set forth in guidance.

(d) *PIN Labeling requirement; Time to provide PIN to taxpayers*—(1) *In general.* For a manufacturer of specified property to be a qualified manufacturer, the manufacturer must label each item of specified property it produces with a PIN unique to such item, in accordance with the requirements and rules set forth in guidance. Third-party labeling systems are not allowed, unless allowed by guidance.

(2) *Time to furnish PINs to taxpayers.* Qualified manufacturers must furnish PINs to taxpayers within the time frames set forth in guidance.

(e) *Periodic written report requirement*—(1) *In general.* For a manufacturer of specified property to be a qualified manufacturer, the manufacturer must submit periodic written reports to the IRS. A qualified manufacturer must follow the rules set forth in guidance regarding the required contents of the written reports, the attestation included with the written reports, the required timing and frequency with which to file the written reports, and the format of the written reports.

(2) *Increased frequency of filing written reports.* Notwithstanding guidance regarding the timing and frequency in which to file written reports, qualified manufacturers may submit written reports more frequently than required, provided that the other requirements relating to the written report are satisfied.

(3) *Updating and rescinding written reports.* If a qualified manufacturer wants to update or rescind certain information on a written report for a scrivener's error or missing PIN, the qualified manufacturer must follow the rules provided in guidance.

(f) *Applicability date.* This section applies to taxable years ending after [INSERT DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

**Douglas W. O'Donnell,**

*Deputy Commissioner.*

[FR Doc. 2024–24110 Filed 10–24–24; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2024–0198]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Beaufort, SC

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the Lady's Island (Woods Memorial) Bridge across the Atlantic Intracoastal Waterway (AICW) (Beaufort River), mile 536.0, at Beaufort, SC. South Carolina Department of Transportation (SCDOT) has requested the Coast Guard consider changing the operating schedule to remove the seasonal operating schedule. This proposed action is intended to reduce vehicular traffic congestion and provide a more consistent operating schedule for the bridge. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must reach the Coast Guard on or before December 9, 2024.

**ADDRESSES:** You may submit comments identified by docket number USCG–2024–0198 using Federal Decision Making Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard District; telephone 571–607–5951, email *Jennifer.N.Zercher@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code
SC South Carolina
TD Temporary Deviation
AICW Atlantic Intracoastal Waterway

### II. Background, Purpose and Legal Basis

Lady's Island (Woods Memorial) Bridge across the AICW (Beaufort River), mile 536.0, at Beaufort, SC, is a swing bridge with a 30-foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is found in 33 CFR 117.911(f).

On March 20, 2024, the Coast Guard published a temporary deviation entitled ''Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Beaufort, SC'' in the **Federal Register** (89 FR 19731). That temporary deviation, effective from 12:01 a.m. on

March 25, 2024, through 11:59 p.m. on September 29, 2024, allows Lady's Island (Woods Memorial) Bridge to operate without a seasonal opening schedule. The comment period ended May 20, 2024, with 15 comments received.

The 15 comments received were against the proposed changes. The concerns presented were the need for the seasonal schedule to remain due to the increase in vessel traffic and the environmental conditions mariners experience while transiting in the vicinity of the bridge. The Coast Guard understands the increase in seasonal vessel traffic and also acknowledges an increase in seasonal vehicle traffic. The area is known for moderate currents, however, there is staging areas on either side of the bridge for vessels to maintain station. The requested changes should simplify the current operating schedule, allow for a more consistent and efficient operation of the bridge and provide relief to vehicle traffic congestion while meeting the reasonable needs of navigation.

## III. Discussion of Proposed Rule

Under this proposed rule, the Lady's Island (Woods Memorial) Bridge will operate without a seasonal schedule. The Coast Guard is proposing to remove the seasonal operating schedule during the months of April, May, October, and November. This would reduce vehicular traffic congestion and provide a more consistent operating schedule for the bridge. Vessels that can pass beneath the bridge without an opening may do so at any time. Emergency vessels and tugs with tows can still request an opening at any time.

## IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive orders.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This proposed 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, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge during the designated times and vessels able to pass without an opening may do so at any time.

### *B. Impact on Small Entities*

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rulemaking would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

### *D. Federalism and Indian Tribal Governments*

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has 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 proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this

proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0198 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

## List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; and DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. Amend § 117.911 by revising paragraph (f) to read as follows:

### § 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

* * * * *

(f) *Lady's Island (Woods Memorial) Bridge, across the Beaufort River, mile 536.0, at Beaufort.* The draw shall operate as follows:

(1) Monday through Friday, except Federal holidays:

(i) From 6 a.m. to 9:29 a.m. and 3:31 p.m. to 7 p.m., the draw need not open to navigation; and,

(ii) Between 9:30 a.m. and 3:30 p.m., the draw need open only once an hour on the half hour.

(2) At all other times the draw shall open on signal.

Dated: October 21, 2024.

**Douglas M. Schofield,**

*Rear Admiral, U.S. Coast Guard, Commander, Coast Guard Seventh District.*

[FR Doc. 2024–24847 Filed 10–24–24; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2024–0338; FRL–12118–01–R9]**

## Conditional Approval; Contingency Measure State Implementation Plan for the 2008 Ozone Standard; San Joaquin Valley, California

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to conditionally approve a state implementation plan (SIP) submission under the Clean Air Act (CAA or ''Act'') that addresses the contingency measure requirements for the 2008 ozone national ambient air quality standards (NAAQS or ''standards'') for the San Joaquin Valley ozone nonattainment area. The SIP submission, titled the ''Ozone Contingency Measure State Implementation Plan Revision for the 2008 and 2015 8-hour Ozone Standards'' (''2024 SJV Ozone Contingency Measure Plan,'' ''Contingency Measure Plan,'' or ''Plan'') relies on two ozone contingency measures that the EPA has already approved in separate rulemakings. The proposed approval is conditional because it also relies on commitments by the State air agency and regional air district to supplement the 2024 SJV Ozone Contingency Measure Plan with submission of specific additional contingency measures within one year of the EPA's final conditional approval. The EPA is proposing conditional approval of the SIP submission because the Agency has preliminarily determined that the existing approved contingency measures, the commitments to submit additional contingency measures, and the justification for not adopting contingency measures that would achieve the recommended amount for such measures, meet the applicable requirements for such SIP submissions under the CAA and the EPA's implementation regulations for the San Joaquin Valley for the 2008 ozone NAAQS. The proposed conditional approval, if finalized, would add the 2024 SJV Ozone Contingency Measure Plan to the federally enforceable California SIP.

**DATES:** Written comments must arrive on or before November 25, 2024.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0338 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on

making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Andrew Ledezma, Air Planning Office (ARD–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3985, or by email at *Ledezma.Andrew@epa.gov.*

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

**Table of Contents**



## I. Background for Proposed Action

### *A. The 2008 Ozone National Ambient Air Quality Standards, Designation, Classification, and Plans*

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen ($NO_X$) in the presence of sunlight.[1] These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on-and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment, architectural coatings, and other types of consumer products.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.[2]

Under section 109 of the Clean Air Act (CAA or ''Act''), the EPA has established national ambient air quality standards (NAAQS or ''standards'') for certain pervasive air pollutants, such as ozone. The EPA has previously promulgated NAAQS for ozone in 1979 and 1997.[3] In 2008, the EPA revised and further strengthened the ozone NAAQS by setting the acceptable level of ozone in the ambient air at 0.075 parts per million (ppm), averaged over an 8-hour period.[4] Although the EPA further tightened the 8-hour ozone NAAQS to 0.070 ppm in 2015, this action relates to the requirements for the 2008 ozone NAAQS.[5] [6]

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas throughout the country as attaining or not attaining the NAAQS. In 2012, the EPA designated the San Joaquin Valley as nonattainment for the 2008 ozone standards and classified that area as ''Extreme.'' [7]

In California, the California Air Resources Board (CARB or ''State'') is the state agency responsible for the adoption and submission to the EPA of California SIP revisions, and it has broad authority to establish emissions standards and other requirements for mobile sources. Local and regional air pollution control districts in California are responsible for the regulation of stationary sources and are generally responsible for the development of regional air quality plans. In the San Joaquin Valley, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''District'') is responsible for stationary source regulation, and it also develops and adopts air quality management plans to address CAA planning requirements applicable to that region. Such plans are then submitted to CARB for adoption and submittal to the EPA as revisions to the California SIP.

Under CAA section 110(k), the EPA is charged with evaluation of each SIP revision submitted by states for compliance with applicable CAA requirements and with taking action on each submission. The EPA evaluates SIP submissions and takes action to approve or disapprove them through notice-and-comment rulemaking published in the **Federal Register**. CAA section 110(k)(4) authorizes the EPA to conditionally approve a SIP submission based on a commitment of the State to adopt specific enforceable measures by a date certain, but no later than one year after the date of approval of the SIP submission. Where appropriate, the EPA may act on separate portions of a SIP submission in separate rulemaking actions.

Under the CAA, ozone nonattainment areas classified under subpart 2 as ''Serious'' or above, such as the San Joaquin Valley area for the 2008 ozone NAAQS, must include in their SIPs, among other requirements, contingency measures consistent with CAA sections 172(c)(9) and 182(c)(9). Contingency measures are additional controls or measures to be implemented in the event the area fails to make reasonable further progress (RFP), meet any applicable milestone, or attain the NAAQS by the attainment date. Additional information about the requirements for contingency measures can be found in section II of this document.

### *B. The San Joaquin Valley Ozone Nonattainment Area*

The San Joaquin Valley nonattainment area for the 2008 ozone standards consists of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, and Kings counties, and the western portion of Kern County. The

[1] The State of California refers to reactive organic gases (ROG) in some of its ozone-related submissions. The CAA and the EPA's regulations refer to VOC, rather than ROG, but both terms cover essentially the same set of gases. In this proposed rule, we use the federal term (VOC) to refer to this set of gases.

[2] See ''Fact Sheet—2008 Final Revisions to the National Ambient Air Quality Standards for Ozone'' dated March 2008.

[3] The ozone NAAQS promulgated in 1979 was 0.12 parts per million (ppm) averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). The ozone NAAQS promulgated in 1997 was 0.08 ppm averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).

[4] *See* 73 FR 16436 (March 27, 2008).

[5] Information on the 2015 ozone NAAQS is available at 80 FR 65292 (October 26, 2015).

[6] Although the district's submittal included submissions to address requirements for both the 2008 and 2015 ozone NAAQS, at this time we are taking action on the submittal as it pertains to the 2008 ozone requirements. The EPA plans to act on the submittal with respect to the 2015 ozone requirements at a later date.

[7] *See* 77 FR 30088 (May 21, 2012).

San Joaquin Valley nonattainment area stretches over 250 miles from north to south, averages a width of 80 miles, and encompasses over 23,000 square miles. It is partially enclosed by the Coast Mountain range to the west, the Tehachapi Mountains to the south, and the Sierra Nevada range to the east.[8] The population of the San Joaquin Valley in 2020 was estimated to be more than 4.4 million people and is projected to increase to nearly 5 million people by 2035.[9]

### *C. Previous EPA Actions Related to Contingency Measures for the 2008 Ozone NAAQS in the San Joaquin Valley*

In March 2019, the EPA took final action to approve, or conditionally approve, certain SIP revisions submitted by CARB to meet CAA requirements for the 2008 ozone NAAQS in the San Joaquin Valley, California, ozone nonattainment area.[10] Specifically, the EPA approved the base year emissions inventory, RFP demonstration, and motor vehicle emissions budgets, and we conditionally approved the contingency measure element for the 2008 ozone NAAQS. The approval was conditional because it relied on a commitment by the District to amend the District's Rule 4601 (Architectural Coatings) to include contingency provisions and a commitment by CARB to submit the amended District rule to the EPA within a year of final conditional approval of the contingency measure element for the San Joaquin Valley.[11] We justified a conditional approval of the contingency measure element, even though the contingency measure itself would only achieve a small fraction of the recommended amount of emissions reductions for contingency measures, on two bases: (1) surplus emissions reductions anticipated from already-implemented measures in the milestone years and year after the attainment year and (2) a commitment by the State to achieve additional emissions reductions by the attainment year in the San Joaquin Valley that would reduce the chances for failure to attain the 2008 ozone NAAQS by the applicable attainment date.[12]

Our final conditional approval of the contingency measure element was the subject of a legal challenge and, in a 2021 Ninth Circuit Court of Appeals decision in the *Association of Irritated Residents* v. *EPA* case, the Court remanded the conditional approval action back to the Agency.[13] In so doing, the Court found that, by taking into account the emissions reductions from already-implemented measures to find that the contingency measure would suffice to meet the applicable requirement, the EPA was circumventing the Court's 2016 holding in *Bahr* v. *EPA*.[14] The Court also held that the EPA could not avoid the need for robust contingency measures by assuming that they would not be needed.[15]

In October 2022, in light of the *Association of Irritated Residents* v. *EPA* decision, the EPA took final action to withdraw our previous conditional approval and to partially disapprove the contingency measure element submitted to address the contingency measure requirements for the San Joaquin Valley for the 2008 ozone NAAQS.[16] We did so because we found that, if we did not take into account the likelihood the District would need contingency measures or surplus emissions reductions from already implemented measures, then the one contingency measure that was included in the contingency measure element would have to shoulder the entire burden of achieving the recommended amount for contingency measures (if triggered). Moreover, that one contingency measure would have only achieved a small fraction of the recommended amount of emissions reductions for contingency measures.[17]

Pursuant to section 179 of the CAA and 40 CFR 52.31, the EPA's partial disapproval of the contingency measure element triggered sanctions clocks. More specifically, as explained in our final partial disapproval action, under 40 CFR 52.31, the offset sanction in CAA section 179(b)(2) would be imposed 18 months after the effective date of the partial disapproval action (the disapproval took effect November 2, 2022), and the highway funding sanction in CAA section 179(b)(1) would be imposed six months after the offset sanction was imposed, unless the EPA determined that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline.[18] In addition, the EPA's partial disapproval of the contingency measure SIP submissions triggered an obligation on the EPA to promulgate a federal implementation plan (FIP) within two years of the November 2, 2022 effective date, pursuant to CAA section 110(c)(1), unless we approved a subsequent SIP submission that corrects the plan deficiencies before the applicable deadline.[19]

In April 2024, in response to our final partial disapproval, the State of California adopted and submitted the 2024 SJV Ozone Contingency Measure Plan, which is the subject of this proposed action, to correct the deficiencies that the EPA identified in the previous contingency measure SIP submissions that were the basis for the EPA's October 2022 disapproval. We describe the 2024 SJV Ozone Contingency Measure Plan in more detail in sections III and IV of this document and present our evaluation of the SIP submission in section V of this document. Based on this proposed conditional approval, in the Rules and Regulations section of this issue of the **Federal Register**, we are issuing an interim final determination to stay the application of the offset sanction and to defer the application of the highway sanction that were triggered by the EPA's October 2022 partial disapproval.

In addition to the submission of the 2024 SJV Ozone Contingency Measure Plan, the District has adopted, and CARB has submitted, revisions to the District's architectural coatings rule (*i.e.,* District Rule 4601) to include a contingency measure for the 2008 ozone NAAQS (''Architectural Coatings Contingency Measure''). The EPA approved the amended architectural coatings rule in December 2022.[20] The Architectural Coatings Contingency Measure will, if triggered, remove the rule's small container exemption (*i.e.,* one liter or less) for certain types of coatings.[21] More recently, CARB

[8] For a precise definition of the boundaries of the San Joaquin Valley 2008 ozone nonattainment area, see 40 CFR 81.305.

[9] The population estimates and projections include all of Kern County, not just the portion of Kern County within the San Joaquin Valley Air Basin. *See* Chapter 2 and table 2–1 of the District's ''2022 Ozone Plan for the 2015 8-Hour Ozone Standard.''

[10] 84 FR 11198 (March 25, 2019).

[11] Id. at 11207.

[12] 83 FR 61346, at 61357 (November 29, 2018) (proposed conditional approval), finalized at 84 FR 11198, at 11205–11206.

[13] *Association of Irritated Residents* v. *EPA,* 10 F.4th 937 (9th Cir. 2021).

[14] Id., at 946. The reference to ''*Bahr* v. *EPA*'' is to *Bahr* v. *EPA,* 836 F.3d 1218, at 1235–1237 (9th Cir. 2016). Under the *Bahr* holding, contingency measures under CAA section 172(c)(9) must be designed so as to be implemented prospectively; already-implemented control measures may not serve as contingency measures even if they provide emissions reductions beyond those needed for any other CAA purpose.

[15] Id. at 947.

[16] 87 FR 59688 (October 3, 2022).

[17] Id, at 59690.

[18] Id.

[19] Id.

[20] 87 FR 78544 (December 22, 2022).

[21] SJVUAPCD Rule 4601, section 4.3.

adopted and submitted a contingency measure for the vehicle inspection and maintenance (''Smog Check'') program. As adopted, the ''Smog Check Contingency Measure'' would narrow the Smog Check inspection exemption for newer model year vehicles in certain California nonattainment areas upon a triggering event for certain NAAQS, including the 2008 ozone NAAQS for the San Joaquin Valley.[22] The EPA recently approved the Smog Check Contingency Measure as a revision to the California SIP.[23]

In our actions approving the Architectural Coatings Contingency Measure and the Smog Check Contingency Measure, we indicated that we were approving the contingency measures as individual contingency measures but that we were not determining in those actions whether the State had met the contingency measure SIP requirements under CAA sections 172(c)(9) and 182(c)(9) for the areas to which the contingency measures apply.[24] Instead, we indicated that we would take into account the emissions reductions associated with the Architectural Coatings Contingency Measure and the Smog Check Contingency Measure when we take action on the contingency measure element submitted by the State to demonstrate compliance with CAA sections 172(c)(9) and 182(c)(9) for a given area. As expected, we are taking into account the emissions reductions associated with the Architectural Coatings Contingency Measure and the Smog Check Contingency Measure in this proposed action on the 2024 SJV Ozone Contingency Measure Plan, which was submitted to satisfy the contingency measure SIP requirements under CAA sections 172(c)(9) and 182(c)(9) for the 2008 ozone NAAQS for the San Joaquin Valley.

## II. Contingency Measure Requirements, Guidance, and Legal Precedent

The EPA first provided its views on the CAA's requirements for ozone plans under part D, title I of the Act in the following guidance documents: (1) ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (''General Preamble'');[25] and (2) ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental.''[26] More recently, in the Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements, ''2008 Ozone SIP Requirements Rule (SRR),'' the EPA provided further interpretive guidance on the statutory SIP requirements that apply to areas designated nonattainment for the 2008 ozone NAAQS.[27]

### *A. Statutory and Regulatory Requirements*

Under CAA section 172(c)(9), states required to make an attainment plan SIP submission must include contingency measures to be implemented if the area fails to meet RFP (''RFP contingency measures'') or to attain the NAAQS by the applicable attainment date (''attainment contingency measures''). For ozone nonattainment areas classified Serious or above, CAA section 182(c)(9) further specifies that states must include contingency measures to be implemented if the area fails to meet any applicable milestone. An EPA determination that the state failed to meet an RFP milestone or to attain the NAAQS by the applicable attainment date is referred to as a ''triggering event'' because it triggers the requirement to implement the contingency measures.

Contingency measures must be fully adopted rules or control measures that are ready to be implemented upon a triggering event.[28] In general, the EPA expects all actions needed to effect full implementation of the measures to occur within 60 days after the EPA notifies the state of a failure to meet RFP or to attain.[29] Moreover, we generally expect the additional emissions reductions from the contingency measures to be achieved within a year of the triggering event.[30]

The purpose of contingency measures is to continue progress in reducing emissions while a state revises its SIP to meet the missed RFP requirement or to correct the failure to attain. Neither the CAA nor the EPA's implementing regulations establish a specific level of emission reductions that implementation of contingency measures must achieve, but the EPA has traditionally recommended that contingency measures should provide for emission reductions equivalent to approximately one year of reductions needed for RFP in the nonattainment area.[31] As part of the contingency measure SIP submission, the EPA expects states to explain the amount of anticipated emissions reductions that the contingency measures will achieve. In the ''Draft: Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter (DRAFT—3/17/23—Public Review Version)'' (herein referred to as the ''Draft Revised Contingency Measure Guidance'')[32] (discussed in section I.B below), the EPA recommends that, in the event that a state is unable to identify and adopt contingency measures that will provide for approximately one year's worth of emissions reductions, the state should provide a reasoned justification why the smaller amount of emissions reductions is appropriate.[33] [34]

To satisfy the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9), the contingency measures adopted as part of a 2008 ozone NAAQS attainment plan must consist of control measures for the area that are not otherwise required to meet other attainment plan requirements (*e.g.,* to meet reasonably available control measure (RACM)/reasonably available control technology (RACT) requirements). By definition, contingency measures are measures that are over and above what a state must adopt and impose to provide for RFP and to provide for attainment by the applicable attainment date.

In addition, to comply with CAA sections 172(c)(9) and 182(c)(9), contingency measures must be both conditional and prospective, *i.e.,* measures that go into effect and achieve emission reductions in the event of a future triggering event, but not before the triggering event. In the 2016 *Bahr* v.

[22] 89 FR 56222 (July 9, 2024).

[23] Id.

[24] 87 FR 57161, at 57164 (September 19, 2022) (proposed approval of Architectural Coatings Contingency Measure), finalized at 87 FR 78544; and 89 FR 56222, at 56229–56230 (July 9, 2024) (final approval of Smog Check Contingency Measure).

[25] 57 FR 13498 (April 16, 1992), referred to as the ''General Preamble.''

[26] 57 FR 18070 (April 28, 1992).

[27] 80 FR 12264, 12285–12286 (March 6, 2015).

[28] 80 FR 12264, 12285.

[29] General Preamble 13512, 13543–13544.

[30] General Preamble, 13511.

[31] 80 FR 12264, 12285. See also General Preamble, 13511.

[32] EPA, Office of Air Quality Planning and Standards, ''DRAFT: Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter,'' Draft—3/17/2023—Public Review Version. The Draft Revised Contingency Measure Guidance is available at: *https://www.epa.gov/air-qualityimplementation-plans/draft-contingency-measuresguidance.*

[33] Draft Revised Contingency Measure Guidance, p. 29.

[34] We note, the reasoned justification process outlined in the Draft Revised Contingency Measure Guidance is intended, first and foremost, as a means of identifying feasible measures rather than a justification for achieving less than the recommended emissions reductions needed for contingency measures.

*EPA* [35] decision, the Ninth Circuit Court of Appeals held that CAA section 172(c)(9) does not allow the EPA to approve already-implemented control measures as contingency measures. In other words, a state must develop, adopt, and submit one or more contingency measures to be implemented upon a triggering event, regardless of the extent to which already-implemented measures would achieve surplus emission reductions beyond those necessary to meet other applicable CAA requirements.

As noted in section I.C of this document, the recent *AIR* decision held that, under the EPA's current guidance, the surplus emissions reductions from already-implemented measures could not be relied upon to justify the approval of a contingency measure that would achieve far less than one year's worth of RFP as sufficient to meet the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9) for the nonattainment area.[36]

### *B. Draft Revised Contingency Measure Guidance*

In March 2023, the EPA published a notice of availability announcing new draft guidance (*i.e.,* the Draft Revised Contingency Measure Guidance) addressing the contingency measure SIP requirements of CAA sections 172(c)(9) and 182(c)(9) and provided the opportunity for public comment.[37] The principal differences between the draft revised guidance and existing guidance on contingency measures relate to the EPA's recommendations concerning the specific amount of emission reductions that implementation of contingency measures should achieve and the timing for when the emissions reductions from the contingency measures should occur. The Draft Revised Contingency Measure Guidance also provides recommended procedures for developing a demonstration, if applicable, that the area lacks sufficient feasible contingency measures to achieve the recommended amount of reductions, which builds on existing guidance that the state provide a reasoned justification for why the smaller amount of emissions reductions from contingency measures is appropriate.[38]

Under the Draft Revised Contingency Measure Guidance, the recommended level of emissions reductions that contingency measures should achieve is one year's worth of ''progress'' as opposed to one year's worth of RFP (the previous recommended amount of reductions).[39] One year's worth of ''progress'' is calculated by determining the average annual reductions between the base year emissions inventory and the projected attainment year emissions inventory, determining what percentage of the base year emissions inventory this amount represents, and then applying that percentage to the projected attainment year emissions inventory to determine the amount of reductions needed to ensure ongoing progress if contingency measures are triggered.

With respect to the time period within which reductions from contingency measures should occur, the EPA previously recommended that contingency measures take effect within 60 days of being triggered and that the resulting emission reductions generally occur within one year of the triggering event. Under the Draft Revised Contingency Measure Guidance, in instances where there are insufficient contingency measures available to achieve the recommended amount of emissions reductions within one year of the triggering event, the EPA recommends that contingency measures that provide reductions within up to two years of the triggering event could be appropriate to consider toward achieving the recommended amount of emissions reductions. The Draft Revised Contingency Measure Guidance does not alter the 60-day recommendation for the contingency measures to take initial effect.

If, after adequately evaluating additional control measures, the state is unable to identify contingency measures that would provide approximately one year's worth of emissions reductions, the Draft Revised Contingency Measure Guidance recommends that the state should provide a reasoned justification (referred to herein as an ''infeasibility demonstration''). This reasoned justification should explain and document the state's evaluation of all existing and potential control measures relevant to the appropriate source categories and pollutants in the nonattainment area and the state's conclusions regarding whether such measures are feasible.[40]

As explained in the Draft Revised Contingency Measure Guidance, CAA section 172(c)(9) and section 182(c)(9) do not explicitly provide for consideration of whether specific measures are feasible. However, the Agency does not read these statutory provisions to require states to adopt contingency measures that are not feasible.[41] The statutory provisions applicable to other nonattainment area plan control measure requirements, including RACM/RACT (for ozone and PM), best available control measure (BACM)/best available control technology (BACT) (for PM), and most stringent measures (MSM) (for PM), allow air agencies to exclude certain control measures that are deemed unreasonable or infeasible (depending on the requirement). For example, the MSM provision in CAA section 188(e) requires plans to include ''the most stringent measures that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area.'' While the contingency measures provisions do not include such caveats, the EPA does not conclude that the contingency measures provisions should be read to require plans to include infeasible measures. Thus, the EPA anticipates that a demonstrated lack of feasible measures would be a reasoned justification for adopting contingency measures that achieve less than the recommended amount of emission reductions.

## III. Summary of SIP Submission and Evaluation for Compliance With SIP Revision Procedural Requirements

### *A. Summary of SIP Submission*

On April 29, 2024, CARB submitted the 2024 SJV Ozone Contingency Measure Plan as a revision to the California SIP.[42] The District adopted the 2024 SJV Ozone Contingency Measure Plan on April 25, 2024, and submitted it to CARB for adoption and submission to EPA as a SIP revision.[43] The April 29, 2024 SIP submission includes the 2024 SJV Ozone Contingency Measure Plan (including appendices), as well as supporting material including the resolutions of adoption, CARB evaluation and completeness forms, and evidence of public notice and hearing.

[35] *Bahr* v. *EPA,* 836 F.3d 1218, 1235–1237 (9th Cir. 2016). See also *Sierra Club* v. *EPA,* 21 F.4th 815, 827–28 (D.C. Cir. 2021).

[36] *Association of Irritated Residents* v. *EPA,* 10 F.4th 937, 946–47 (9th Cir. 2021).

[37] 88 FR 17571 (March 23, 2023).

[38] 81 FR 58010 (August 24, 2016), at 58067/3.

[39] Draft Revised Contingency Measure Guidance, p. 22.

[40] Draft Revised Contingency Measure Guidance, p. 29.

[41] Id.

[42] CARB adopted the 2024 SJV Ozone Contingency Measure Plan as a SIP revision on April 26, 2024, through CARB Executive Order S–24–2003, and submitted the SIP revision to the EPA electronically on April 29, 2024, as an attachment to a letter dated April 26, 2024, from Steven S. Cliff, Ph.D., Executive Officer, CARB to Martha Guzman, Regional Administrator, EPA Region IX.

[43] See SJVUAPCD Board Resolution 2024–4–11 and letter dated April 25, 2024, from Jonathan Klassen, Director of Air Quality Planning and Science, SJVUAPCD to Sylvia Vanderspek, Branch Chief, Rule Evaluations section, CARB.

The 2024 SJV Ozone Contingency Measure Plan includes a general discussion of contingency measures and related guidance, including the EPA's Draft Revised Contingency Measure Guidance. The Plan also contains a calculation of emissions equal to one year's worth of progress, a discussion of the two adopted contingency measures that apply to this area, namely, the contingency provisions in District Rule 4601 (referred to as the Architectural Coatings Contingency Measure) and CARB's Smog Check Contingency Measure, and an estimate of reductions from each adopted contingency measure. The submittal also includes a commitment to adopt and submit to the EPA, within one year of the EPA's final conditional approval of the 2024 SJV Ozone Contingency Measure Plan, amendments to certain District rules, to include additional contingency provisions.[44] These rules are District Rule 4601 (Architectural Coatings) (''Architectural Coatings Rule''), Rule 4603 (Surface Coating of Metal Parts and Products, Plastic Parts and Products, and Pleasure Crafts) (''Surface Coating of Metal Parts and Products Rule''), Rule 4604, (Can and Coil Coating Operations) (''Can and Coil Coatings Rule''), Rule 4653 (Adhesives and Sealants) (''Adhesives and Sealants Rule''), and Rule 4663 (Organic Solvent Cleaning, Storage, and Disposal) (''Solvent Cleaning Rule''). We describe the specific contingency measure provisions that would be included in amendments to these rules in section IV.D of this document. The submission also includes infeasibility demonstrations to address the fact that the total reductions estimated from the two adopted contingency measures fall short of the recommended emissions reductions (equivalent to one year's worth of progress).

### *B. Evaluation for Compliance With SIP Revision Procedural Requirements*

Under CAA sections 110(a) and 110(l), SIPs and SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Pursuant to 40 CFR 51.102, states must provide at least 30-days' notice of any public hearing to be held on a proposed SIP revision. States must provide the opportunity to submit written comments and allow the public the opportunity to request a public hearing within that period.

The District adopted the 2024 SJV Ozone Contingency Measure Plan on April 25, 2024, through Resolution No. 2024–4–11, following a public hearing held on the same day. Prior to adoption, the District published notice of the April 25, 2024 public hearing via an email to members of a District electronic mailing list and provided 30 days for submission of written comments. CARB subsequently adopted the 2024 SJV Ozone Continency Measure Plan as a revision to the SIP on April 26, 2024, through Executive Order S–24–003. CARB then submitted the 2024 SJV Ozone Contingency Measure Plan on April 29, 2024, as an attachment to a transmittal letter dated April 26, 2024. Copies of all of these documents can be found in the docket for this proposed rule.

Based on the materials provided in the April 29, 2024 SIP submission, we propose to find that the District and CARB have met the procedural requirements for adoption and submission of SIPs and SIP revisions under CAA sections 110(a) and 110(l), and 40 CFR 51.102.

## IV. Summary of the San Joaquin Valley Ozone Contingency Measure Plan

The 2024 SJV Ozone Contingency Measure Plan includes a calculation of one year's worth of progress, an analysis of top source categories in the emissions inventory, a list of existing contingency measures and commitments to adopt and submit additional contingency measures, and a contingency measure feasibility analysis. In this section we describe each of these components of the plan.

### *A. One Year's Worth of Progress*

Section 3 of the 2024 SJV Ozone Contingency Measure Plan contains calculations for the contingency measure reduction targets that are equivalent to one year's worth of progress.[45] One year's worth of progress is calculated by determining the average annual reductions between the base year emissions inventory and the projected attainment year emissions inventory, determining what percentage of the base year emissions inventory this amount represents, then applying that percentage to the projected attainment year emissions inventory.

The resulting emissions reductions targets are shown in table 1.

TABLE 1—ONE YEAR'S WORTH OF PROGRESS CONTINGENCY MEASURE REDUCTION TARGETS FOR THE 2008 OZONE NAAQS

[Tons per day, summer average emissions]

| Base year | Attainment year | $NO_X$ | VOC |
|---|---|---|---|
| 2012 ..... | 2031 | 4.22 | 1.87 |

Source: Table 2, 2024 San Joaquin Valley Ozone Contingency Measure Plan.

### *B. Emissions Inventory Analysis and Contingency Measures*

The District reviewed the 2017, 2031, and 2037 baseline summer average emissions inventories for $NO_X$ and VOC to identify the principal source categories that contribute to regional emissions totals and thereby to identify the source categories for which meaningful emissions reductions from contingency measures might be achievable.[46] Its analysis also included an evaluation of select source categories that comprise less than 1% of the total VOC emissions inventory.[47] Year 2017 represents the base year of the most recent emissions inventory for San Joaquin Valley, 2031 represents the attainment year for the 2008 ozone NAAQS, and 2037 represents the attainment year for 2015 ozone NAAQS.

Table 2 shows that emissions from the top ten source categories for $NO_X$ and VOC constituted approximately 82% and 74% of the total inventory of $NO_X$ and VOC, respectively, in the San Joaquin Valley in 2017.[48] Appendix A to the 2024 SJV Ozone Contingency Measure Plan contains additional tables showing these emissions categories and their magnitudes.

[44] After the Plan was submitted, the District and CARB submitted letters clarifying the timeline for adopting and submitting to the EPA the five additional contingency measures that they have committed to develop. Letter from Samir Sheikh, Executive Director/Air Pollution Control Officer, SJVUAPCD, to Dr. Steven S. Cliff, Executive Officer, CARB and Martha Guzman, Regional Administrator, EPA Region IX, dated June 18, 2024. Letter from Michael Benjamin, D. Env., Division Chief, Air Quality Planning & Science Division, CARB, to Martha Guzman, Regional Administrator, EPA Region IX, dated June 24, 2024.

[45] 2024 SJV Ozone Contingency Measure Plan, 6–7. All emissions inventory data represent summer average emissions, specifically from the months of May through October.

[46] 2024 SJV Ozone Contingency Measure Plan, section 5, 13–18.

[47] 2024 SJV Ozone Contingency Measure Plan, section 5.12, p. 74.

[48] 2024 SJV Ozone Contingency Measure Plan, table 6.

TABLE 2—TOP TEN SOURCE CATEGORIES OF $NO_X$ AND VOC EMISSIONS, SAN JOAQUIN VALLEY, 2017

[Summer average]

| Ozone precursor | Source category | Emissions (tpd) | Emissions as a percentage of a total inventory |
|---|---|---|---|
| $NO_X$ | Heavy Heavy Duty Trucks (HHDT) [a] | 56.65 | 24.63 |
| | Farm Equipment | 50.45 | 21.93 |
| | Off Road Equipment | 24.01 | 10.44 |
| | Trains | 13.12 | 5.70 |
| | Medium Heavy Duty Trucks (MHDT) [b] | 9.22 | 4.01 |
| | Light Heavy Duty Trucks (LHDT1) [c] | 7.94 | 3.45 |
| | Food and Agricultural Processing | 7.12 | 3.09 |
| | Medium Duty Trucks (MDT) [d] | 6.86 | 2.98 |
| | Light Duty Passenger (LDA) | 6.47 | 2.81 |
| | Off Road Equipment (PERP) [e] | 5.87 | 2.55 |
| | Total of Top Ten Source Subcategories—$NO_X$ | 187.71 | 81.59 |
| VOC | Farming Operations [f] | 93.76 | 27.93 |
| | Consumer Products | 25.78 | 7.68 |
| | Other (Waste Disposal) [g] | 21.54 | 6.42 |
| | Pesticides/Fertilizers [h] | 20.81 | 6.20 |
| | Recreational Boats | 20.37 | 6.07 |
| | Managed Burning and Disposal | 16.38 | 4.88 |
| | Off-Road Equipment | 14.95 | 4.45 |
| | Food and Agriculture | 12.76 | 3.80 |
| | Oil and Gas Production | 11.46 | 3.41 |
| | Light Duty Passenger (LDA) | 10.82 | 3.22 |
| | Total of Top Ten Source Subcategories—VOC | 248.63 | 74.06 |

[a] HHDT have a gross vehicle weight rating (GVWR) greater than 33,000 pounds.
[b] MHDT have a GVWR of 14,001 to 33,000 pounds.
[c] LHDT1 have a GVWR of 8,501 to 10,000 pounds.
[d] MDT have a GVWR of 5,751 to 8,500 pounds.
[e] Off Road Equipment (PERP) refers to off-road equipment registered under CARB's Portable Equipment Registration Program. Owners or operators of portable engines and other types of equipment can register their units under the CARB Statewide Portable Equipment Registration Program (PERP) in order to operate their equipment throughout California without having to obtain individual permits from local air districts.
[f] Most of the VOC emissions within this source category is associated with livestock husbandry, particularly silage and dairy cattle waste.
[g] Most of the VOC emissions within this source category is associated with composting.
[h] Most of the VOC emissions within this source category is association with agricultural pesticide use.
Source: 2024 SJV Ozone Contingency Measure Plan, table 6.

Based on the emissions inventory information, SJVUAPCD identified existing and planned future controls for each sector in the nonattainment area. In this context, existing controls refer to the limits and requirements for different source categories set forth in the District, CARB, and EPA rules and regulations. Planned future controls refer to the commitments to develop and propose control measures found in District plans [49] and in CARB's Valley State SIP Strategy and the 2022 State SIP Strategy.[50] Next, the District conducted a search for potential additional controls by source category that could achieve additional emission reductions that are not already adopted or implemented.[51] In accordance with the Draft Contingency Measures Guidance, the District evaluated the technological and economic feasibility of the potential measures and whether the potential measure could be implemented within 60 days of being triggered and achieve the necessary reductions within two years of being triggered.[52] Based on the feasibility of the potential contingency measures, the District conducted a further evaluation of specific source categories and contingency measure opportunities.[53]

Concurrently, CARB identified existing and planned future controls for mobile and area sources that could achieve additional emissions reductions that are not already adopted or implemented.[54] CARB then evaluated the technological and economic feasibility of the potential measures, and whether the potential measure could be implemented within 60 days of being triggered and achieve the necessary reductions within two years of being triggered.[55]

The 2024 SJV Ozone Contingency Measure Plan identifies two already-adopted contingency measures (*i.e.,* rules that contain contingency provisions to be triggered in the event of a failure to attain or to meet an RFP milestone) and five additional contingency measures that the District has committed to adopt and CARB has committed to submit to the EPA as a revision to the California SIP. The two existing contingency measures are described in section IV.C of this document, and the five additional contingency measures are described in section IV.D of this document.

### *C. Adopted Contingency Measures*

The 2024 SJV Ozone Contingency Measure Plan identifies two existing contingency measures that have already

[49] See 2024 SJV Ozone Contingency Measure Plan, table 3, and section 5.

[50] CARB, ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan'' (''Valley State SIP Strategy''), table 7, approved at 85 FR 44192 (July 22, 2020); and CARB, ''2022 State Strategy for the State Implementation Plan (adopted September 22, 2022)'' (''2022 State SIP Strategy''), submitted on February 23, 2023, table 3.

[51] 2024 SJV Ozone Contingency Measure Plan, sections 5.1–5.7, and 5.11, 19–54 and 72–74.

[52] Id.

[53] 2024 SJV Ozone Contingency Measure Plan, section 5.12, 74–89.

[54] 2024 SJV Ozone Contingency Measure Plan, section 5.8, 5.9 and 5.10, and appendix B.

[55] 2024 SJV Ozone Contingency Measure Plan, table 9.

been adopted as revisions to the SIP and submitted to EPA: the District's Architectural Coatings Contingency Measure and CARB's Smog Check Contingency Measure. See section I.C of this document for a description of the two adopted contingency measures. The Plan calculated the emissions reductions expected from these measures, in the event that they are triggered. Those estimates are shown in table 3.

TABLE 3—OZONE SEASON EMISSIONS REDUCTIONS FROM DISTRICT AND CARB CONTINGENCY MEASURES

[Ozone season, tpd] [a]

| Contingency measure | $NO_X$ | VOC |
|---|---|---|
| Architectural Coatings [b] ..... | 0.000 | 0.650 |
| CARB Smog Check [c] ..... | 0.079 | 0.025 |
| Total ..... | 0.079 | 0.675 |

[a] 2024 SJV Ozone Contingency Measure Plan, section 4.2.

[b] The District's estimate of emissions reductions from the Architectural Coatings Contingency Measure (if triggered) represents a 7.5% reduction in area-wide VOC emissions from architectural coatings in 2031 and takes into account the percentage of VOC emissions associated with architectural coatings sold in small containers and the percentage of the small-container emissions associated with the particular coatings affected by the contingency measure provision. See SJVUAPCD, Final Draft Staff Report, Proposed Amendments to Rule 4601 (Architectural Coatings) April 16, 2020, pages 12–13. These emissions reductions do not include reductions associated with the District's commitment to remove the small container exemption for rust preventative coatings in Rule 4601.

[c] These emissions reductions account for the first triggering event of this contingency measure.

As noted in section I.C. of this document, the EPA approved the District's Architectural Coatings Contingency Measure as a revision to the California SIP in 2022.[56] Upon a triggering event, this contingency measure would remove the exemption for certain categories of architectural coatings sold in containers with a volume of one liter or less (referred to as the small container exemption (SCE)).

The California Smog Check Program is a vehicle inspection and maintenance program administered by the California Bureau of Automotive Repair (BAR), that identifies vehicles with faulty emission control components. Smog Check Program inspections are required biennially as a part of the vehicle registration process and/or when a vehicle changes ownership or is registered for the first time in California.[57] Currently, under California law, vehicles up to eight model years old (MYO) are exempt from the requirement to pass a biennial smog check inspection.[58] The Smog Check Contingency Measure adds a contingency provision to the existing program, that, within 30 days of a triggering event, the CARB Executive Officer would direct BAR to amend the California Smog Check Program's vehicle model-years old (MYO) exemption from the existing eight or less MYO to seven or less MYO, in the San Joaquin Valley nonattainment area.[59] In addition, the California Smog Check Contingency measure can be triggered a second time in the same nonattainment area upon a second triggering event.[60] If triggered a second time, the Smog Check exemption would be amended from seven or less MYO to six or less MYO in the San Joaquin Valley nonattainment area.[61] The EPA recently approved CARB's Smog Check Contingency Measure as a revision to the California SIP.[62]

### *D. Commitments To Adopt Additional Contingency Measures*

The Plan also identifies five additional contingency measures that the District has committed to adopt and submit to CARB, for submission to EPA as a revision to the California SIP. Specifically, the District and CARB have committed to amend the following rules to include contingency provisions: the Architectural Coatings Rule, Surface Coating of Metal Parts and Products Rule, Can and Coil Coatings Rule, Adhesives and Sealants Rule, and Solvent Cleaning Rule. Expected emissions reductions from these yet-to-be-adopted contingency measures have not been quantified and were not included in the Plan; however, the Plan notes that VOC reductions anticipated through the rule amendments that the district has committed to adopt are expected to be small.[63] No $NO_X$ reductions would result from these additional contingency measures.

The committed-to revisions to the District's Architectural Coatings Rule, Surface Coating of Metal Parts and Products Rule, Can and Coil Coatings Rule, Adhesives and Sealants Rule, and Solvent Cleaning Rule are described in section 5.12 of the 2024 SJV Ozone Contingency Measure Plan and are summarized in this document.[64]

The District's Architectural Coatings Rule establishes VOC content limits for architectural coatings. The District had previously included a contingency measure in the Architectural Coatings Rule that, if triggered, would narrow the SCE for certain architectural coatings, though not for rust preventative coatings. In the potential control measure analysis developed by the District for the 2024 SJV Ozone Contingency Measure Plan, the District found that the rust preventative coatings SCE could also be removed as part of the contingency measure. In the 2024 SJV Ozone Contingency Measure Plan, the District commits to amend Rule 4601 to incorporate the removal of the SCE for rust preventative coatings within the contingency measure provision with respect to the 2008 and 2015 ozone NAAQS.[65]

The District's Surface Coating of Metal Parts and Products Rule establishes VOC content limits for coatings used in the manufacturing and fabrication of metal parts and products as well as separate VOC limits for coatings used in large appliances and metal furniture. Except for large appliances or metal furniture, the general VOC limits for baked coatings and for air-dried coatings are 275 grams/liter (g/L) (*i.e.,* 2.3 pounds/gallon) and 340 g/L (2.8 pounds/gallon), respectively. The Surface Coating of Metal Parts and Products Rule exempts the stripping of cured coatings, cured adhesives, and cured inks, except the stripping of such materials from spray application equipment. In the 2024 SJV Ozone Contingency Measure Plan, the District commits to revise the Surface Coating of Metal Parts and Products Rule to include a contingency measure that, if triggered, would remove the exemption for stripping agents for metal

[56] 87 FR 78544.

[57] 2024 SJV Ozone Contingency Measure Plan, section 4.2, 12.

[58] California Health & Safety Code section 44011(a)(4)(B)(ii).

[59] The 2024 SJV Ozone Contingency Measure Plan, appendix B, 15. The Smog Check Contingency Measure also applies to other NAAQS and nonattainment areas.

[60] The triggering events that would result in the implementation of Smog Check Contingency Measure relate to multiple NAAQS in San Joaquin Valley in addition to the 2008 ozone NAAQS, including the 1997 8-hour ozone NAAQS and multiple $PM_{2.5}$ NAAQS. However, because the Smog Check Contingency Measure provides for a second triggering event, it will still be available for a triggering event related to the 2008 ozone NAAQS if it is first triggered by a determination related to one of the other NAAQS. Given the nature of the contingency measure (reducing the model-year exemption from eight to seven upon a first triggering event, and then from seven to six upon a second triggering event), we would expect the associated emissions reductions from implementation of the contingency measure to be roughly the same for both triggering events.

[61] Id.

[62] 89 FR 56222.

[63] 2024 SJV Ozone Contingency Measure Plan, 89.

[64] 2024 SJV Ozone Contingency Measure Plan, section 5.12, 74–89.

[65] 2024 SJV Ozone Contingency Measure Plan, 80.

parts and products and subject those stripping agents to a limit of 200 grams/liter.[66]

The District's Can and Coil Coatings Rule applies to can and coil coating operations and to organic solvent cleaning, storage, and disposal associated with can and coil coating operations. The Can and Coil Coatings Rule limits the VOC content of different compliant coatings and allows the use of non-compliant coatings with an emission control device to reduce VOC emissions. The rule contains provisions for organic solvent cleaning, organic solvent storage, disposal requirements, application methods for coatings, monitoring, and recordkeeping. The rule establishes a limit of 250 g/L for organic solvents used for cleaning coating application equipment and sheet coaters for three-piece cans. In the 2024 SJV Ozone Contingency Measure Plan, the District commits to revise the Can and Coil Coatings Rule to include a contingency measure that, if triggered, would lower the VOC limit from 250 g/L to 25 g/L for organic solvents used for cleaning coating application equipment and sheet coaters for three-piece cans.[67]

The District's Adhesives and Sealants Rule sets VOC content limits for adhesive products, sealant products, and associated solvent cleaning operations, and it applies to any person who supplies, sells, offers for sale, or applies any adhesive product, sealant product, or associated solvent, used within the District. The Adhesives and Sealants Rule contains a limit of 510 g/L for PVC welding adhesives. In the 2024 SJV Ozone Contingency Measure Plan, the District commits to revise the Adhesive and Sealants Rule to include a contingency measure that, if triggered, would lower the VOC limit from 510 g/L to 500 g/L for PVC welding adhesives.[68]

The District's Solvent Cleaning Rule controls VOC emissions from organic solvent cleaning outside a degreaser (tank, tray, drum, or other container) as well as storage and disposal of the solvents. The Solvent Cleaning Rule has solvent VOC content requirements for general product cleaning or surface preparation, repair and maintenance cleaning, and cleaning coating/adhesive application equipment (all 25 grams of VOC per Liter (g-VOC/L)). The Rule also imposes VOC content requirements for specific other categories (ranging from 100–800 g-VOC/L) or alternatively requires an equivalent control system with no less than 90% overall control for the emissions generated and containers for solvent storage and disposal. Currently, the Solvent Cleaning Rule does not include a limit for organic solvents used to sterilize food and manufacturing processing equipment. In the 2024 SJV Ozone Contingency Measure Plan, the District commits to revise the Solvent Cleaning Rule to include a contingency measure that, if triggered, would establish a limit of 200 g/L for organic solvents used for sterilizing food and manufacturing processing equipment.[69]

*E. Contingency Measure Feasibility Analysis*

The 2024 SJV Ozone Contingency Measure Plan includes infeasibility justifications for providing contingency measures that achieve less than one year's worth of progress, generally following the approach that the EPA describes for such analyses in the EPA's Draft Revised Contingency Measure Guidance. The feasibility analysis for source categories under District jurisdiction is found in sections 5.1–5.7 of the 2024 SJV Ozone Contingency Measure Plan, and further evaluation of select source categories under SJV District jurisdiction is found in section 5.12. The feasibility analysis for source categories under State jurisdiction is found in sections 5.8–5.10 and appendix B. For certain source categories, such as boilers, steam generators, and process heaters with total rated heat input greater than five million British thermal units per hour (MMBtu/hr) and commercial charbroiling, the District relies on and refers to previous analysis that the District included in the $PM_{2.5}$ Contingency Measure SIP Revision.[70] Lastly, in section 5.11 of the 2024 SJV Ozone Contingency Measure Plan, the District addresses opportunities for transportation control measures (TCMs) to be adopted as contingency measures.

With respect to source categories under District jurisdiction, the District analyzed the wide range of stationary and area sources for contingency measure opportunities, which included identifying potential control measures, analyzing the technological and economic feasibility of such measures, and assessing whether the measures could be implemented within 60 days and achieve emission reductions within one to two years. The District analyzed potential control measures in the fuel combustion, waste disposal, cleaning and surface coating, petroleum production and marketing, industrial processes, solvent evaporation, and miscellaneous processes emissions inventory source categories. Based on this analysis, the District further analyzed certain specific categories for contingency measure opportunities. More specifically, the District analyzed Rule 4565 (Biosolids, Animal Manure, and Poultry Litter Operations), Rule 4570 (Confined Animal Facilities), Architectural Coatings Rule, Surface Coating of Metal Parts and Products Rule, Can and Coil Coating Rule, Rule 4605 (Aerospace Assembly and Component Coating Operations), Adhesives and Sealants Rule, Organic Solvent Cleaning Rule, Rule 4684 (Polyester Resin Operations), and Rule 4694 (Wine Fermentation and Storage Tanks).

Through this process, the District identified additional possible contingency measures, through amendments to Rule 4601 (Architectural Coatings), Rule 4603 (Surface Coating of Metal Parts and Products, Plastic Parts and Products, and Pleasure Crafts), Rule 4604 (Can and Coil Coating Operations), Rule 4653 (Adhesives and Sealants) and Rule 4663 (Organic Solvent Cleaning, Storage and Disposal), as noted in section IV.D of this document. The 2024 SJV Ozone Contingency Measure Plan included commitments to adopt the amendments to these rules, as described in section III.A of this document. Additionally, the District and CARB have committed to adopt and submit the amended rules to the EPA as revisions to the California SIP within one year of the EPA's final conditional approval of the commitments.[71]

With respect to the other source categories under District jurisdiction, the District's analysis found that it was infeasible to adopt additional contingency measures for these categories. A detailed accounting of reasons for which new contingency measures in each source category were determined to be infeasible is contained in sections 5.1 through 5.7, and 5.12 of the 2024 SJV Ozone Contingency

[66] 2024 SJV Ozone Contingency Measure Plan, 81.

[67] 2024 SJV Ozone Contingency Measure Plan, 82.

[68] 2024 SJV Ozone Contingency Measure Plan, 83.

[69] Id.

[70] SJVUAPCD, $PM_{2.5}$ Contingency Measure State Implementation Plan Revision, May 18, 2023 (''$PM_{2.5}$ Contingency Measure SIP Revision''). The EPA proposed approval of the $PM_{2.5}$ Contingency Measure SIP Revision at 88 FR 87988 (December 20, 2023).

[71] The timing for the adoption and submittal of the amended rules to the EPA for inclusion in the SIP was clarified by letter, after submission of the 2024 SJV Ozone Contingency Measure Plan. See letter from Samir Sheikh, Executive Director/Air Pollution Control Officer, SJVUAPCD, to Dr. Steven S. Cliff, Executive Officer, CARB and Martha Guzman, Regional Administrator, EPA Region IX, dated June 18, 2024, and letter from Michael Benjamin, D. Env., Division Chief, Air Quality Planning & Science Division, CARB, to Martha Guzman, Regional Administrator, EPA Region IX, dated June 24, 2024.

Measure Plan. These reasons include conclusions that further controls are not technologically or economically feasible, that rules have recently been amended and owners or operators in affected source categories are still working to comply with recently adopted rule changes, that the source category does not lend itself to a rule that has a trigger mechanism, and that the District is already implementing the most stringent controls feasible. Additional reasons include that the rule meets or exceeds federal RACT requirements and that the rulemaking process, including public process, to develop such a rule would take longer than two years.

With respect to source categories under State jurisdiction, CARB stated that opportunities for contingency measures that would achieve the recommended amount of emission reductions are limited due to the stringency of their existing mobile source control program and the fact that the portion of emissions due to federally-regulated sources is expected to increase in the coming years.[72] CARB further noted that a relatively limited portion of $NO_X$ emissions are regulated by local air districts in California and that additional control measures to achieve the one year's worth of emission reductions are scarce or nonexistent.

CARB stated that if such measures were identified, they would be adopted to improve air quality and help attain the NAAQS, rather than held in reserve as contingency measures, and that control measures to achieve large emission reductions often take longer than two years to implement—beyond the one- to two-year timeframe for achieving emission reductions for contingency purposes.[73] For example, CARB stated that the three largest $NO_X$ reduction measures committed to in the 2022 State SIP Strategy rely on accelerated turnover of engines and trucks and shifting to zero-emission equipment, which is limited by infrastructure and equipment options.[74] CARB further stated that a central difficulty in considering contingency measures is that CARB has already committed to zero emission standards where feasible and as expeditiously as possible to fulfill goals established in California Executive Order N–79–20 for mobile sources ranging from light-duty cars by 2035 to heavy-duty trucks by 2045.[75]

More specifically, CARB analyzed all mobile sources under its authority to identify potential contingency measures using three criteria: CAA requirements, court decisions, and the EPA's Draft Revised Contingency Measure Guidance.[76] First, CARB assessed whether the measure could be implemented within 60 days of a triggering event and achieve the recommended amount of emission reductions within one to two years. Second, CARB assessed the technological and economic feasibility of implementing the measure, particularly within the one- to two-year timeframe. Third, CARB evaluated whether it could adopt the measure and secure EPA approval by the September 30, 2024 consent decree deadline for the EPA to promulgate a $PM_{2.5}$ contingency measures FIP or alternatively, approve $PM_{2.5}$ contingency measure SIP submissions meeting the contingency measure requirements.[77]

Regarding mobile source contingency measures, CARB described several challenges that limit the control measure options that would meet contingency measure requirements. For new engine standards, CARB stated that engine manufacturers need lead time to ''design, plan, certify, manufacture, and deploy cleaner engines.'' [78] Regarding consumer-related challenges, CARB stated that additional time would be required for ''procurement implementation and there may be additional infrastructure needed to meet new requirements.'' [79] Based on the time required for implementing such measures, CARB concluded that measures that require fleet turnover or new engine standards are not appropriate for contingency measures.

In addition to mobile source control measures, CARB noted that vehicular emissions can be reduced through implementation of TCMs.[80] CARB stated that county planning and transportation districts, and local jurisdictions are responsible for identifying, adopting, and implementing TCMs. Because of timing concerns associated with the transportation planning process, CARB concluded that TCMs are not feasible contingency measures.

Furthermore, CARB stated that its regulations are technology-forcing, which requires time for industry to plan, develop, and implement new technologies and that it is driving mobile sources to zero-emissions where feasible to achieve criteria, air toxic, and climate pollutant goals. Similarly, CARB argued that the technology-forcing and zero-emission-based nature of its mobile source regulations reduce or eliminate opportunities for contingency measure emission reductions. Lastly, CARB stated that its full rulemaking process for most mobile source measures takes about five years to develop and adopt, which would not be possible prior to the September 30, 2024 consent decree deadline for the EPA to promulgate a $PM_{2.5}$ contingency measure FIP or approve $PM_{2.5}$ contingency measure SIP submissions meeting the contingency measure requirements.[81]

Through its review of potential contingency measures, CARB identified certain revisions to the California Smog Check program as feasible for adoption as a contingency measure, culminating in the adoption and submission to the EPA of the Smog Check Contingency Measure. As noted previously, the EPA has approved the Smog Check Contingency Measure as a revision to the California SIP. The Smog Check Contingency Measure complements the District contingency measure for architectural coatings and the commitments to submit additional contingency measures to the EPA. A detailed accounting of the reasons CARB cites in determining that additional mobile source contingency measures are infeasible is contained in appendix B of the 2024 SJV Ozone Contingency Measure Plan.[82]

CARB also evaluated VOC area source emissions categories and controls for potential contingency measures.[83] The specific source categories evaluated by CARB include consumer products, crude oil and natural gas facilities, petroleum marketing (vehicle refueling and cargo tanks), portable fuel containers (gas cans), and pesticides. CARB concluded that there are no

[72] 2024 SJV Ozone Contingency Measure Plan, appendix B, pages 7 and 8.

[73] 2024 SJV Ozone Contingency Measure Plan, appendix B, page 7.

[74] CARB, ''2022 State Strategy for the State Implementation Plan,'' adopted September 22, 2022, Chapter 5 (''State SIP Measures'').

[75] Executive Department, State of California, Executive Order N–79–20, September 23, 2020.

[76] 2024 SJV Ozone Contingency Measure Plan, appendix B, page 45.

[77] The consent decree to which CARB is referring is the consent decree in the *Comite´ Progreso de Lamont, et al.* v. *United States Environmental Protection Agency, et al.,* No. 3:21–cv–08733–WHA (N.D. Cal.). See 87 FR 71631 (November 23, 2022). With respect to mobile sources, CARB is relying on the same infeasibility demonstration in connection with the contingency measure elements for San Joaquin Valley for both the $PM_{2.5}$ NAAQS and the ozone NAAQS.

[78] Id.

[79] 2024 SJV Ozone Contingency Measure Plan, appendix B, pages 45–46.

[80] 2024 SJV Ozone Contingency Measure Plan, section 5.11, pages 72–74.

[81] 2024 SJV Ozone Contingency Measure Plan, appendix B, page 46.

[82] 2024 SJV Ozone Contingency Measure Plan, appendix B, table 51, pages 46–58.

[83] 2024 SJV Ozone Contingency Measure Plan, section 5.10.

feasible contingency measures for these sources categories and summarized the Agency's assessment and rationale in table 9 of the 2024 SJV Ozone Contingency Measure Plan.[84]

In sum, based on the adoption of the Architectural Coatings Contingency Measure and the Smog Check Contingency Measures, the commitments to adopt and submit five additional District contingency measures, and the infeasibility demonstrations, CARB and the District conclude that the 2024 SJV Ozone Contingency Measure Plan fulfills the contingency measure requirements for the 2008 ozone NAAQS for San Joaquin Valley.

## V. EPA Evaluation

### *A. One Year's Worth of Progress*

As noted previously, neither the CAA nor the EPA's implementing regulations establish a specific level of emission reductions that implementation of contingency measures must achieve, but the EPA Draft Revised Contingency Measure Guidance recommends that contingency measures should provide for emission reductions equivalent to approximately one year's worth of progress in the nonattainment area. As part of the attainment plan SIP submission, the EPA expects states to explain the amount of anticipated emissions reductions that the contingency measures will achieve. In the event that a state is unable to identify and adopt contingency measures that will provide for approximately one year's worth of emissions reductions, then the EPA recommends that the state provide a reasoned justification why the smaller amount of emissions reductions is appropriate.

We have reviewed the calculations in the 2024 SJV Ozone Contingency Measure Plan, as summarized in table 1 of this document, and are proposing to find that the District calculated one year's worth of progress for VOC and $NO_X$ for the 2008 ozone NAAQS in San Joaquin Valley in a manner consistent with the EPA's recommendations in the Draft Revised Contingency Measure Guidance. We have also reviewed the calculations in the 2024 SJV Ozone Contingency Measure Plan used to compare the emissions reductions from the Architectural Coatings Contingency Measure and the Smog Check Contingency Measure with one year's worth of progress and are proposing to generally find them to be acceptable, with the exception that the calculation for the Architectural Coatings Contingency Measure should reflect more recent emission inventory data for the architectural coatings source category.[85]

Table 4 presents the estimated emissions reductions as percentages of one year's worth of progress, consistent with the EPA's Draft Revised Contingency Measure Guidance.

TABLE 4—EPA EVALUATION OF DISTRICT AND CARB CONTINGENCY MEASURES AS PERCENTAGE OF ONE YEAR'S WORTH (OYW) OF PROGRESS

| Pollutant | OYW of progress: reductions target (tpd) | Reductions expected from contingency measures (tpd) | % OYW expected to be achieved |
|---|---|---|---|
| $NO_X$ | 4.22 | 0.079 | 1.88 |
| VOC | 1.87 | [a] 0.355 | [b] 18.98 |

[a] The estimate in table 4 of the 2024 SJV Ozone Contingency Measure Plan for the 2015 8-hour ozone standard has been substituted for the estimate shown for the 2008 8-hour ozone standard because the former reflects updated emissions inventory data for the architectural coatings source category.

[b] Reflects the sum of 0.33 tpd VOC emissions reductions from the Architectural Coatings Contingency Measure and 0.025 tpd VOC emissions reductions from the Smog Check Contingency Measure.

Source: 2024 SJV Ozone Contingency Measure Plan, tables 2, 4, and 5, unless otherwise noted.

As noted in a footnote to table 4 in this document, we have used the emissions reductions estimates for the 2015 8-hour ozone standard from 2024 SJV Ozone Contingency Measure Plan in place of the emissions reductions estimates for the 2008 8-hour ozone standard from the Plan because the estimates for the 2015 standard reflects updated emissions inventory data for the architectural coatings source category. Consequently, our estimates of the emissions from the contingency measures relative to one year's worth of progress differ from those contained in the 2024 SJV Ozone Contingency Measure Plan. Nevertheless, our conclusion is the same as the conclusion drawn by the District and CARB, namely, that the emissions reductions would provide only a portion of one year's worth of progress for VOC and $NO_X$. Thus, we would expect the State to provide a ''reasoned justification'' to support approval of the contingency measures as meeting the requirements under CAA sections 172(c)(9) and 182(c)(9) for the San Joaquin Valley even though the contingency measures would not provide for the magnitude of emissions reductions recommended by the EPA. The District and CARB have included their reasoned justifications in the form of feasibility analyses in Chapter 5 and appendix B of the 2024 SJV Ozone Contingency Measure Plan. We provide our review of the feasibility analyses in section V.D of this document.

### *B. Contingency Measures*

As previously discussed, to meet the applicable requirements, contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the relevant NAAQS by the applicable attainment date. In general, we expect all actions needed to effect full implementation of the measures to occur within 60 days after the EPA notifies the state of a failure to meet RFP or to attain. Moreover, we expect the additional emissions reductions from the contingency measures to be partially achieved within a year or two of the triggering event. To satisfy the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9), the contingency measures adopted as

[84] 2024 SJV Ozone Contingency Measure Plan, table 9, pages 69–71.

[85] We are relying on the District's emissions estimate of the VOC reductions for the Architectural Coatings Contingency Measure in table 4 of the 2024 SJV Ozone Contingency Measure Plan that is shown for the 2015 8-hour ozone standard because that estimate reflects updated emissions inventory data for the architectural coatings source category.

part of a 2008 ozone NAAQS attainment plan must consist of control measures for the area that are not otherwise required to meet other attainment plan requirements (*e.g.,* to meet RACM or RACT requirements).

The 2024 SJV Ozone Contingency Measure Plan relies on two adopted contingency measures: the Architectural Coatings Contingency Measure and the Smog Check Contingency Measure. As noted previously, we have already approved both contingency measures and, in each instance, determined that the contingency measures meet the requirements for such measures under CAA sections 172(c)(9) and 182(c)(9).[86]

*C. Commitments To Adopt Additional Contingency Measures*

In addition to the adopted contingency measures, the 2024 SJV Ozone Contingency Measure Plan includes commitments to adopt and submit additional contingency measures. We have evaluated the commitments made by the District to adopt an expansion of the contingency measure in the Architectural Coatings Rule to remove the SCE for rust preventative coatings and to adopt new contingency measures in the Surface Coating of Metal Parts and Products Rule, Can and Coil Coatings Rule, Adhesives and Sealants Rule, and Solvent Cleanings Rule. We have also evaluated the commitments by the District and CARB to adopt and submit the rule revisions to the EPA within one year of the EPA's final approval.

We are proposing to find that the measures that the District has committed to adopt represent additional controls or measures that are not already implemented and that would provide emissions reductions beyond those needed for any other CAA purpose, and thus, they may be relied upon as contingency measures for the 2008 ozone NAAQS. We will review the specifics of each revised or new contingency measure for compliance with the requirements for such measures under CAA sections 172(c)(9) and 182(c)(9) when the amended rules are adopted and submitted to the EPA for approval as revisions to the California SIP.

Also, as clarified by the letters submitted by the District and CARB,[87] we are proposing to find that the commitments in the Plan to adopt new or amended contingency measures within one year of a final conditional approval are the type of commitments to adopt ''specific enforceable measures by a date certain'' that allow the EPA to propose a conditional approval of the 2024 SJV Ozone Contingency Measure Plan under CAA section 110(k)(4).[88] In this regard, we note that the District and CARB have clarified that the District has committed to transmit the revised rules to CARB in a timely manner such that CARB can meet its commitment to transmit the revised rules to the EPA as SIP revisions within one year of the effective date of the final conditional approval.

*D. Contingency Measure Feasibility Analysis*

The EPA has reviewed the State's infeasibility demonstrations for not adopting contingency measures beyond the Architectural Coatings Contingency Measure, Smog Check Contingency Measure, and the five new or amended contingency measures that the District has committed to adopt, including both the processes used by the District and CARB and their assessments specific to a wide range of stationary, area, and mobile source categories. Notably, in connection with the EPA's proposed contingency measure FIP for the San Joaquin Valley, the EPA recently prepared a detailed evaluation of source categories and measures that we considered as potential additional contingency measures but determined to be infeasible or otherwise unsuitable for contingency measures. Although the EPA proposed the FIP to address the fine particulate matter ($PM_{2.5}$) contingency measure requirement, some of the analysis is relevant for ozone, as $NO_X$ was evaluated in the FIP as a $PM_{2.5}$ precursor, and is also a precursor for ozone. See ''EPA Source Category and Control Measure Assessment and Reasoned Justification Technical Support Document, Proposed Contingency Measures Federal Implementation Plan for the Fine Particulate Matter Standards for San Joaquin Valley, California,'' July 2023 (''EPA's Reasoned Justification TSD''). We have relied on that TSD given its breadth and depth, as well as the expertise of EPA Region IX staff, to review the District's and CARB's infeasibility demonstrations with respect to $NO_X$ measures, understand where the State's and the EPA's analyses draw largely similar conclusions, and identify those source categories where the control measure analyses differ.[89] As described in the following paragraphs, the EPA proposes to find that the District's and CARB's infeasibility demonstrations adequately justify the collection of contingency measures selected by the State to meet the contingency measure requirement under CAA sections 172(c)(9) and 182(c)(9) for the San Joaquin Valley for the 2008 ozone NAAQS.

In terms of process, the District and CARB identified and evaluated existing and potential control measures using components of the process recommended in the EPA's Draft Revised Contingency Measures Guidance.[90] As described in section IV.E of this proposed rule, for the wide range of stationary and area sources under its jurisdiction, the District described its ongoing stationary source regulatory efforts, identified potential control measures as candidate contingency measures, and analyzed the technological and/or economic feasibility of each candidate measure, including the feasibility of implementing such measures within 60 days and achieving the resulting emission reductions within one to two years.[91] The District also provided more in-depth analysis of potential control measures for ten source categories, ultimately adopting commitments for new or amended contingency measures for five source categories and providing a reasoned justification for not adopting such measures for the other five source categories.[92] We are proposing to find that the District employed a reasonable process to identify and assess the feasibility and suitability of potential control measures as contingency

[86] 87 FR 78544 (Architectural Coatings Contingency Measure approval) and 89 FR 5622 (July 9, 2024) (Smog Check Contingency Measure approval).

[87] Letter from Samir Sheikh, Executive Director/Air Pollution Control Officer, SJVUAPCD, to Dr. Steven S. Cliff, Executive Officer, CARB and Martha Guzman, Regional Administrator, EPA Region IX, dated June 18, 2024. Letter from Michael Benjamin, D. Env., Division Chief, Air Quality Planning & Science Division, CARB, to Martha Guzman, Regional Administrator, EPA Region IX, dated June 24, 2024.

[88] CAA section 110(k)(4) provides that the EPA may approve a SIP revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

[89] While the EPA Reasoned Justification TSD was prepared in connection with a $PM_{2.5}$ contingency measure FIP, the analysis contained therein is relevant for our review of the 2024 SJV Ozone Contingency Measure Plan to the extent it addresses $NO_X$ emissions sources and controls given that $NO_X$ is a precursor for both ozone and $PM_{2.5}$ in the San Joaquin Valley.

[90] EPA's Draft Contingency Measure Guidance, section 4 (''Reasoned Justification for Less Than [One Year's Worth] of Progress'').

[91] 2024 SJV Ozone Contingency Measure Plan, sections 5.1 through 5.7, and 5.11.

[92] 2024 SJV Ozone Contingency Measure Plan, section 5.12, and the $PM_{2.5}$ Contingency Measure SIP Revision (for the boilers, steam generators, and process heaters >5 MMBtu/hour source category).

measures for stationary and area sources in the San Joaquin Valley.

Similarly, CARB identified potential mobile source and area source control measures, assessed whether each candidate measure could be implemented within 60 days of a triggering event and emission reductions achieved within one to two years, and then analyzed their technological and/or economic feasibility.[93] Regarding timing of emission reductions from mobile sources, CARB concluded that new engine standards are not appropriate for contingency measures given the time needed for manufacturers to design, develop, and deploy cleaner engines or equipment at scale, especially for zero-emission equipment.

As described in the EPA's Reasoned Justification TSD,[94] as a general matter, new mobile source engine or vehicle emission standards require significant lead time (more than two years) to allow manufacturers time to retool factories to produce compliant engines or vehicles. Retrofit or replacement requirements also require significant lead time to allow owners and operators to manage the process of retrofitting or replacing old engines or vehicles. Therefore, we agree with CARB that such mobile source control measures (that require significant lead time to implement) would not achieve emission reductions within one to two years of a contingency measure triggering event. In sum, we are proposing to find that CARB employed a reasonable process to identify and assess the feasibility and suitability of potential control measures as contingency measures for mobile sources in the San Joaquin Valley.

With respect the District's and CARB's justifications that it is infeasible to adopt additional contingency measures, the EPA notes that technological and economic feasibility are generally acceptable considerations for evaluating the feasibility of additional contingency measure controls for relevant source categories. Accordingly, we are proposing to find the infeasibility demonstrations are adequately justified for the following reasons (as described in the 2024 SJV Contingency Measure Plan): further controls for specific source categories are not technologically or economically feasible, the source category does not lend itself to a rule that has a trigger mechanism, or the District is already implementing the most stringent controls possible.

However, the EPA notes that the fact that a particular rule meets or exceeds federal RACT requirements is not a sufficient justification for concluding that additional controls for that category are infeasible. Contingency measures are intended to be measures that achieve reductions beyond the reductions associated with other applicable CAA requirements for the nonattainment area. Therefore, additional controls that exceed what is required to implement RACT could very well be viable candidates for contingency measures. Additionally, the length of the rulemaking process is not a valid consideration for finding a control measure infeasible that would otherwise be feasible to adopt. We expect states with nonattainment area contingency measure requirements to proactively identify relevant candidate measures such that the rulemaking process does not impede timely development of contingency measures. We are therefore proposing to find that the District's and CARB's stated reasons of already meeting or exceeding RACT for the relevant source category, or expecting a lengthy rulemaking process, are not relevant justifications for not adopting additional contingency measures. In this instance, however, neither CARB nor the District found potential contingency measures infeasible solely because additional controls would exceed the RACT requirement or because the rulemaking process would take too long.

For each of the stationary and area source categories examined that relate primarily to $NO_X$ emissions, the EPA is proposing to find that additional control measures cannot feasibly reduce emissions within one to two years. In the following paragraphs, we describe those source categories where we agree with the bases presented by the District. We then discuss those source categories where the basis of the EPA's conclusion differs from that of the District, even while the conclusion itself is the same—that the additional control measure evaluated cannot feasibly reduce emissions within one to two years.

The District's analyses are substantially the same as those of the EPA for the following source categories: flares (Rule 4311), solid fuel-fired boilers, steam generators, and process heaters (Rule 4352), glass melting furnaces (Rule 4354), internal combustion engines (Rule 4702), stationary gas turbines (Rule 4703), and natural gas-fired, fan type residential central furnaces (Rule 4905).

We note that the candidate $NO_X$ control measures evaluated for internal combustion engines, stationary gas turbines, boilers, steam generators, and process heaters would require installation of costly and engineering-intensive devices (*e.g.,* oxyfuel fired furnaces and natural gas furnaces equipped with selective catalytic reduction (SCR) for glass melting). As described in the EPA's Reasoned Justification TSD, while these technologies may be available and feasible in some contexts, we concluded there that it would be technologically infeasible for these measures to be implemented and achieve meaningful emission reductions within one to two years.[95] We are therefore proposing to agree with the District's determinations that such measures are technologically infeasible as contingency measures at this time.

We note that the EPA's Reasoned Justification TSD does not evaluate potential contingency measures specifically related to District Rules 4309 and 4352 and, thus, we provide our review and evaluation in this document.

With respect to sources covered by Rule 4309, the District considered controls for dryers, dehydrators, and ovens, citing to their analysis of this source category for the 2022 Ozone Plan.[96] The District found that additional controls such as low $NO_X$ burners could not feasibly be implemented within the relevant timeframes for contingency measures for this source category. The District noted that the time associated with design, planning, and installation of controls would not be feasible to implement within 60 days of triggering and would exceed the one- to two-year timeline for a contingency measure to achieve emissions reductions as recommended in EPA's Draft Contingency Measure Guidance. Further, the District states that, in certain applications (*e.g.,* dehydrators for onions), the controls may have an adverse effect on food product quality, which diminishes the technical feasibility of using such controls until the technology is further improved.[97] We have reviewed the District's infeasibility demonstration and are proposing to agree that additional emissions reductions for this source category could not feasibly be achieved within one to two years or are

[93] 2024 SJV Ozone Contingency Measure, section 5.10, and appendix B, pages 44–58.

[94] EPA's Reasoned Justification TSD, pp. 141–144.

[95] See, *e.g.,* EPA's Reasoned Justification TSD, pp. 9–22 (the EPA's evaluation of contingency measures for boilers, steam generators, and process heaters).

[96] SJVUAPCD, *2022 Plan for the 2015 8-Hour Ozone Standard,* December 15, 2022 (''2022 Ozone Plan''), submitted as a SIP revision on February 23, 2023.

[97] 2024 SJV Ozone Contingency Measure Plan, page 44.

not technically feasible in the case of dehydrators for certain products, and they are therefore not feasible as contingency measures. The EPA recommends that the District continue to evaluate dryers, dehydrators, and ovens for opportunities to further reduce $NO_X$ emissions in developing subsequent plans.

With respect to Rule 4352, which covers solid fuel fired boilers, steam generators, and process heaters, the State's submittal notes that the District adopted amendments to Rule 4352 in December 2021. The District's analysis associated with the 2021 amendments to Rule 4352 found that all control alternatives that would further reduce emissions require technology that had prohibitively high capital costs and therefore were not cost effective.[98] Given the economic infeasibility of additional controls for the sources covered by Rule 4352, we are proposing to agree with the District's conclusion with respect to Rule 4352.

For several other source categories, the EPA finds that the $NO_X$ contingency measure analyses by the District and the EPA differ in certain respects that warrant further discussion. Notwithstanding these differences, both the District's analyses and the EPA's analyses supporting our recent contingency measure FIP proposal support our proposed conclusion that the measures evaluated are technologically infeasible because they cannot feasibly reduce emissions within one to two years. We discuss each of these source categories in the paragraphs that follow.

With respect to residential water heaters (Rule 4902) and residential furnaces (Rule 4905), the District evaluated a candidate contingency measure to adopt electrification requirements (*i.e.,* requiring newly purchased furnaces and water heaters to be zero-emission units) on a more expedited timeline than the state-wide building electrification measure, to which CARB committed, that would achieve emission reductions starting in 2030.[99] The District deemed this contingency measure option technologically infeasible, citing the lead time necessary for manufacturers to design and produce electric units, the need for collaboration with energy and building code regulators, the desire for consistency with State and local efforts, the potential for housing cost and affordability impacts, and the impact on equity considerations for low-income and environmental justice communities.[100] While we note that some of these factors do not necessarily align with the feasibility criteria outlined in the EPA's Draft Revised Contingency Measures Guidance,[101] the EPA is proposing to find that the building electrification contingency measure option is not feasible because we expect that the measure would not result in emissions reductions within two years after trigger.[102] The EPA also recommends that the District consider developing control measures or programs that would incentivize the early replacement of existing gas space and water heaters with electric appliances, as such actions could significantly reduce emissions from this significant source category in the longer-term future.

With respect to District Rules 4306 and 4320, which cover oil and gas production combustion equipment requirements, the District evaluated numerous control options including electrification of oilfield steam generators and solar powered oilfield steam generators, citing its analysis for this source category for the $PM_{2.5}$ Contingency Measure SIP Revision.[103] For each of these options, the District provided technological and/or economic infeasibility justifications. The District also evaluated imposing lower emission limits for boilers and steam generators.[104] In this evaluation, the District explained that the EPA has determined that Rule 4306 meets MSM requirements and that Rule 4320 goes beyond MSM by establishing even lower emissions limits. The District noted that equipment operators are already in the process of investing in and installing technology to meet the recently amended Rule 4320 limits and suggested that the time needed to plan, prepare for installation, and install control equipment to meet lower limits would exceed the one- to two-year timeline for a contingency measure to achieve emissions reductions.

The EPA's evaluation focused on lowering emission limits for boilers and steam generators, including identification of lower emission limits adopted by the South Coast AQMD for oilfield steam generators than those adopted in Rule 4306. While the EPA's evaluation does not indicate that control requirements required to meet the lower limits would be technologically infeasible altogether (in light of the lower limits adopted by South Coast AQMD), we are proposing to determine that it would be technologically infeasible to meet the lower limits within the two-year timeframe for contingency measures due to the likely requirement that affected units would need to install SCR to meet the lower limits. The District noted that the time associated with design, planning, and installation of SCR would exceed the one- to two-year timeline for a contingency measure to achieve emissions reductions.

The District also included evaluations for boilers, steam generators, and process heaters that are covered by District Rules 4307 and 4308.[105] The District's assessments for these rules focus on economic and technological feasibility, citing dollar per ton cost effectiveness values for numerous control options and adding technological feasibility concerns for EMx™ (formerly SCONOx). The EPA's evaluation for boilers does not provide cost effectiveness values to suggest that lower emission limits for boilers, steam generators, and process heaters are economically infeasible. However, as described in the EPA's evaluation, we are proposing to find that units required to meet lower limits than those already adopted in Rules 4307 and 4308 would require installation of SCR and that this cannot be feasibly achieved within the two-year timeframe for contingency measures.[106]

As noted previously, the EPA's Reasoned Justification TSD for the EPA's proposed San Joaquin Valley $PM_{2.5}$ contingency measure FIP focused solely on controls of direct $PM_{2.5}$ and $NO_X$. Thus, unlike source categories that are entirely or substantially associated with $NO_X$ emissions, the EPA could not rely on its previous evaluation in EPA's Reasoned Justification TSD for that FIP action to inform our review of the District's analysis of VOC emissions sources and controls in the 2024 SJV Ozone Contingency Measure Plan.

For this proposed action, the EPA reviewed the District's evaluation of the seven stationary or area source categories under District jurisdiction and the numerous existing District rules that apply to sources in those categories

[98] SJVUAPCD, ''appendix C, Cost Effectiveness Analysis for Proposed Amendments to Rule 4352 (Solid Fuel Fired Boilers, Steam Generators, and Process Heaters,'' December 16, 2021.

[99] 2024 Ozone Contingency Measure Plan, pages 52–54.

[100] For further discussion of these factors, see CARB, ''2022 State Strategy for the State Implementation Plan,'' adopted September 22, 2022, pp. 101–103 (''Proposed Measures: Residential and Commercial Buildings'').

[101] EPA's Draft Revised Contingency Measures Guidance, pp. 35–38.

[102] EPA's Reasoned Justification TSD, pp. 43–51.

[103] $PM_{2.5}$ Contingency Measure SIP Revision, pages 44–47.

[104] $PM_{2.5}$ Contingency Measure SIP Revision, pages 47–49.

[105] 2024 SJV Ozone Contingency Measure Plan, pages 20–22.

[106] EPA's Reasoned Justification TSD, pp. 9–22.

for potential VOC contingency measures. For most of the rules that were evaluated, the District concluded that further controls would not be economically or technologically feasible but identified ten rules in five source categories for further analysis. With respect to the sources and rules that the District did not identify for further analysis, we propose to find that the District's evaluation and rationale for its conclusion that there are no feasible contingency measures available, due to the small contribution from these source categories to the overall emissions inventory, is adequately supported.

Of the ten rules that the District identified for further analysis,[107] the District has committed to adopt contingency measures for five of them, as described in section IV.D of this document. For the other five rules, the District concluded that there are no feasible contingency measures to adopt. We evaluate the District's rationale in the following paragraphs.

With respect to Rule 4565, which covers biosolids, animal manure, and poultry litter operations, the District's analysis concluded that no technologies were currently available to further achieve emissions reductions from organic material composting. The District further concluded that requiring additional controls for small to medium sized facilities was not cost-effective.[108] We are proposing to agree that there are no technologically feasible contingency measures for organic material composting and that there are no economically feasible contingency measures for small to medium sized facilities, although we recommend that the District further evaluate Rule 4565 for opportunities to further reduce VOC emissions in developing subsequent plans.

With respect to Rule 4605, which covers aerospace assembly and component coating operations, and Rule 4684, which covers polyester resin operations, the District's analysis concluded that additional emission reductions from these two source categories would be insignificant, given that the sources under these two rules emit 0.18 tpd of VOC emissions, representing only 0.054 percent of the entire VOC emissions inventory.[109] Therefore, the District did not identify contingency measure opportunities for either of these source categories. We are proposing to agree with the District's conclusions with respect to Rules 4605 and 4684, given that the emission reductions from these two source categories would be insignificant, representing an insignificant percentage of the VOC emissions inventory.[110]

With respect to Rule 4694, which covers wine fermentation and storage tanks, the District's analysis concluded that the most stringent controls are already in place, and additional control technologies have not been proven at the scale of the wineries found in the San Joaquin Valley or in the climatic conditions that prevail in the San Joaquin Valley. Specifically, the District analyzed a published BACT guideline, which established a 67 percent combined capture and control efficiency requirement, averaged over the fermentation season for closed-top wine fermentation tanks with capacities equal to or less than 30,000 gallons.[111] This analysis found that the majority of wine fermentation tanks in the San Joaquin Valley are significantly greater than 30,000 gallons in capacity, and that winemaking practices are significantly different in the San Joaquin Valley.[112] As such, the District concluded that a contingency measure would be incompatible with the technologies involved in reducing emissions in this source category due to the time needed for necessary construction activities such as engineering, redesigning facilities, procuring materials, equipment, utilities, scheduling contractors, and installing and testing the fermentation controls.[113] We propose to find that the District's evaluation and rationale for its conclusion that no feasible contingency measures exist for this source category is adequately supported because additional control technologies have not been proven at this time at the scale of the wineries found in the San Joaquin Valley or in the climatic conditions that prevail in the valley.

With respect to Rule 4570, which covers confined animal facilities, the District's analysis concluded that that the District is implementing the most stringent measures feasible and determined that further controls of this source category would be technologically infeasible. The District based this conclusion on the absence of more stringent requirements that have been achieved in practice anywhere in the country.[114] We are proposing to agree with the District's conclusions with respect to Rule 4570.

Similar to our evaluation of the District's feasibility analysis for potential $NO_X$ contingency measures for sources it regulates, we have evaluated CARB's feasibility analysis for the sources it regulates, in part by comparing the bases and conclusions of the State's analysis against those presented in the EPA's Reasoned Justification TSD.[115] Both CARB and the EPA note the importance of mobile source emissions in the San Joaquin Valley, particularly given that the large majority of $NO_X$ emissions are from mobile sources, and describe the breadth of control measures considered by CARB to reduce $NO_X$ emissions for broader CAA purposes in the San Joaquin Valley. These include new vehicle and engine emission standards for both on-road and non-road applications that generally apply to manufacturers and achieve emission reductions through vehicle turnover; retrofit or replacement requirements for existing vehicles and fleets; and inspection and maintenance (I/M) program requirements, such as the requirements implemented under California's Smog Check program for light-duty passenger cars and trucks and the requirements that CARB has started to implement under California's Heavy-Duty I/M program. We agree that the adopted measures and on-going development of mobile sources measures by CARB, including zero-emission standards, further constrain the available opportunities for

[107] The District's evaluation for the ten rules for which the District concluded further analysis is warranted is found in section 5.12 of the 2024 SJV Ozone Contingency Measure Plan.

[108] The District presents its cost-effectiveness estimates for various Class 1 and Class 2 mitigation measures for medium- and small-sized facilities on pages 78 and 79 of the 2024 SJV Ozone Contingency Measure Plan.

[109] Aerospace assembly and component coating operations represent 0.004 percent of the San Joaquin Valley's VOC emissions inventory, and polyester resin operations represent 0.05 percent of the inventory. See the 2024 SJV Ozone Contingency Measure Plan, pp. 82, 84.

[110] Based on the District's estimates, we note that the sources covered by these two rules represent approximately 9.6 percent of OYW of progress.

[111] Santa Barbara Air Pollution Control District BACT Guideline 4.1, available at *https://www.ourair.org/wp-content/uploads/BACT-Guideline-4.1.pdf.*

[112] 2024 SJV Ozone Contingency Measure Plan, pp. 84–89.

[113] 2024 SJV Ozone Contingency Measure Plan, pp. 84–89.

[114] 2024 SJV Contingency Measure Plan, pp. 79–80. The District identified an analogous rule adopted by another air district (Imperial County APCD) that has a lower applicability threshold for the ''other cattle'' category when compared to SJVUAPCD Rule 4570. However, Imperial County APCD indicated that Imperial County APCD does not have any large ''other cattle'' confined animal facilities (CAFs) operating in their region and therefore do not have any facilities that would have to comply with this lower threshold. See ICAPCD. Rule 217 Large Confined Animal Facilities. (Revised February 9, 2016). Retrieved from: *https://apcd.imperialcounty.org/wp-content/uploads/2020/01/1RULE217.pdf.*

[115] EPA's Reasoned Justification TSD, section H (''Mobile Sources'').

additional emission reductions via contingency measures.[116]

With respect to contingency measure requirements, CARB examined potential controls across the wide range of mobile source categories, including on-road light-duty passenger cars, trucks, and motorcycles; medium- and heavy-duty trucks and buses and transportation refrigeration units; commercial harbor craft, recreational boats, and ocean going vessels; off-road industrial, construction, and mining equipment; airport ground equipment, port and rail operations, and locomotives; lawn and garden equipment; and space and water heaters. As potential controls, CARB considered and evaluated pulling forward compliance dates and/or phase-in requirements; setting more stringent standards (often atop recently tightened standards) through mechanisms such as emission standards, emissions caps, thresholds for compliance, testing frequency, making optional standards required, or percentage of sales requirements; and removing exemptions and/or compliance options. In virtually all cases, CARB found that control measures beyond those already adopted or in development to fulfill commitments (*e.g.,* under the 2022 State SIP Strategy) were not technologically feasible.[117] In all cases (except the adopted Smog Check Contingency Measure), CARB found that the measures were not technologically feasible as contingency measures because the lead time to develop, certify, adopt, and/or implement the measures is too long, and because that the potential measures could not be implemented within 60 days of a triggering event and achieve emission reductions within one or two years of the triggering event.

We have reviewed CARB's specific control measure analyses and are proposing to agree that such potential control measures are not feasible within the timeframe necessary for contingency measures and, in many cases, are not technologically feasible to the extent that they build upon measures currently in development that are already technology- or market-forcing. The EPA has not identified any engine or vehicle emission standards for consideration as contingency measures, which remains consistent with the evaluation presented in the EPA's Reasoned Justification TSD.[118] Beyond the wide range of source types and control approaches examined by CARB, the EPA also examined a handful of potential additional controls in the EPA's Reasoned Justification TSD, and our conclusion that they too were not suitable as contingency measures remains unchanged. Specifically, we have determined that including expansion of Enhanced I/M requirements to areas currently subject to ''Basic'' I/M or ''Partial Enhanced'' I/M requirements in the San Joaquin Valley,[119] provisions to expand the applicability of and to add requirements to District Rule 9510 (''Indirect Source Review''),[120] and additional transportation control measures [121] are not suitable as contingency measures. Therefore, we propose to find that CARB's infeasibility demonstration adequately justifies the contingency measures selected by CARB for the San Joaquin Valley for the 2008 ozone NAAQS.

CARB supplemented the $NO_X$ mobile source control measure evaluation that CARB provides in the Smog Check Contingency Measure SIP, which is included as appendix B of the 2024 SJV Ozone Contingency Measure Plan, with an evaluation of VOC area source categories that fall under State jurisdiction.[122] The area source categories include Pesticides, Oil and Gas, Consumer Products, Portable Fuel Containers (Gas Cans), Cargo Tanks and Petroleum Marketing. Based on that evaluation, CARB explained for each of the source categories why it would be infeasible to achieve additional emissions reductions from these source categories within one or two years of triggering. We have reviewed CARB's evaluation and propose to find that contingency measures for these area source categories would be technologically infeasible because they will not achieve emissions reductions within one or two years of the triggering event.

*E. Conclusion*

Based on the one year's worth of progress for $NO_X$ and VOC reductions that would be achieved from adopted contingency measures that meet the requirements of CAA sections 172(c)(9) and 182(c)(9), supplemented by contingency measures that the District and CARB have committed to adopt and submit within one year of EPA's final conditional approval, and their reasoned justification for achieving less than one year's worth of progress contained in the feasibility analyses, the EPA proposes to find that the 2024 SJV Ozone Contingency Measure Plan, adopted rules, and rule commitments together fulfill the contingency measure requirements for the 2008 ozone NAAQS for the San Joaquin Valley.

## VI. Proposed Action and Request for Public Comment

For reasons discussed above, under CAA section 110(4)(4), we are proposing to conditionally approve the 2024 SJV Ozone Contingency Measure Plan as a revision of the California SIP as it pertains to the 2008 ozone NAAQS. We are doing so based on our preliminary determination that, considered together with the existing approved contingency measures and the commitments to submit additional contingency measures, the 2024 SJV Ozone Contingency Measure Plan meets the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9) for the San Joaquin Valley for the 2008 ozone NAAQS. Thus, we preliminarily find that the 2024 SJV Ozone Contingency Measure Plan, including the already adopted contingency measures and commitments, corrects the deficiencies in the previous contingency measure element submissions for San Joaquin Valley for the 2008 ozone NAAQS that we partially disapproved in October 2022. Our proposal is conditional because it relies on commitments by CARB and the District to supplement the 2024 SJV

[116] EPA's Reasoned Justification TSD, pp. 139–142. See also, 2024 SJV Ozone Contingency Measure Plan, appendix B, pp. 8–10.

[117] CARB identified three measures as technologically feasible. One is the Smog Check Contingency Measure that CARB has adopted and submitted, and that the EPA has approved. A second was a different Smog Check measure that would require testing on an annual basis (rather than the current biennial basis) or require testing on an annual basis only for high mileage vehicles; however, CARB found that the compliance burden would disproportionately fall on low-income populations and disadvantaged communities. 2024 SJV Ozone Contingency Measure Plan, appendix B, p. 47. The third was to increase the testing frequency under the Heavy-Duty I/M program; however, CARB found that the compliance burden would disproportionately fall on small businesses and low-income populations. 2024 SJV Ozone Contingency Measure Plan, appendix B, p. 49. In the latter two cases, CARB also found that, even if the measure were technologically feasible, the measures could not be effectuated within the timeframe necessary for contingency measures.

[118] EPA's Reasoned Justification TSD, pp. 138–144.

[119] EPA's Reasoned Justification TSD, section IV.E. In addition, CARB noted in its comment letter on the EPA's proposed $PM_{2.5}$ contingency measure FIP that, under the I/M measure evaluated by the EPA, 50% of the vehicles that would be newly subject to Enhanced I/M would be in disadvantaged communities whereas only 35% of San Joaquin Valley population live in such disadvantaged communities. Letter dated September 22, 2023, from Steven S. Cliff, Ph.D., Executive Officer, CARB to Martha Guzman, Regional Administrator, EPA Region IX. In other words, the compliance burden would disproportionately fall on low-income populations and disadvantaged communities.

[120] EPA's Reasoned Justification TSD, section IV.B.

[121] EPA's Reasoned Justification TSD, pp. 144–146.

[122] CARB's evaluation of VOC area sources is found in section 5.10 of the 2024 SJV Ozone Contingency Measure Plan.

Ozone Contingency Measure Plan through submission of additional contingency measures within one year of final conditional approval, should we finalize this action as proposed.

In this same issue of the **Federal Register**, we are also issuing an interim final determination, effective upon publication, to stay and defer sanctions. Specifically, the determination will stay application of the offset sanction and defer application of the highway sanction that were triggered by the EPA's October 3, 2022 partial disapproval of SIP revisions submitted to address the contingency measure requirements for the 2008 ozone NAAQS for the San Joaquin Valley.[123] The determination to stay and defer sanctions is based upon our proposed conditional approval action detailed in this document, with respect to the revised SIP submissions addressing the contingency measure SIP requirement. Please see the interim final determination document for further information concerning sanctions and the basis for issuing the interim final determination.

The EPA is soliciting public comments on the proposed action, our rationale for the proposed action, and any other pertinent matters related to the issues discussed in this document. We will accept comments from the public on this proposal for the next 30 days and will consider comments before taking final action.

## VII. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with Environmental Justice (EJ) concerns to the greatest extent practicable and permitted by law. The 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.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

Neither CARB nor the District evaluated EJconsiderations as part of the SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Due to the nature of the action being proposed here, this action, if finalized, 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.

## List of Subjects in 40 CFR Part 52

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

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

Dated: October 16, 2024.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

[FR Doc. 2024–24706 Filed 10–24–24; 8:45 am]

**BILLING CODE 6560–50–P**

[123] See 40 CFR 52.31(d)(2)(ii).

# Notices

Federal Register
Vol. 89, No. 207
Friday, October 25, 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.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of Meeting

**AGENCY:** United States Agency for International Development.

**ACTION:** Request for public comment and notice of public meeting.

**SUMMARY:** The United States Agency for International Development (USAID) announces a public meeting, and requests public comment for the sixth meeting of the Partnership for Peace Fund (PPF) Advisory Board to receive updates on progress and changes to USAID programming under MEPPA following the terrorist attacks of October 7, 2023, and discuss recommendations for the strategic direction of MEPPA one year later.

**DATES:** Written comments and information are requested on or before November 11, 2024, at 5:00 p.m. EST.

The public meeting will take place on Tuesday, November 19, 2024, from 11:00 a.m.–1:00 p.m. EST via the WebEx platform (*https://usaid.webex.com/usaid/j.php?MTID=ma3abcea1c0e636b33b35abe43d844958*).

The meeting does not require pre-registration.

**ADDRESSES:** You may submit comments regarding the work of the PPF Advisory Board by email to *MEPPA@usaid.gov.* Include ''Public Comment, PPF Advisory Board Meeting, November 19'' in the subject line. All public comments and questions will be included in the official record of the meeting and posted publicly on the USAID website.

Please email *MEPPA@usaid.gov* to request reasonable accommodations for the public meeting. Include ''Request for Reasonable Accommodation, PPF Advisory Board Meeting, November 19'' in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Dan McDonald, 202–712–4965, *meppa@usaid.gov.*

**SUPPLEMENTARY INFORMATION:** In December 2020, Congress passed the Nita M. Lowey Middle East Partnership for Peace Act, or MEPPA, with bipartisan support. The Act directs USAID and the U.S. International Development Finance Corporation (DFC), in coordination with the Department of State, to program $250 million over five years to build the foundation for peaceful coexistence between Israelis and Palestinians through a new PPF, managed by USAID, and a Joint Investment Initiative, managed by the DFC.

MEPPA serves as a recognition that economic, social, and political connections between Israelis and Palestinians are the best way to foster mutual understanding and provide the strongest basis for a sustainable, two-state solution. USAID's Middle East Bureau has been working with Congress, interagency colleagues, and partners in Israel, the West Bank, and Gaza to implement the Act. MEPPA also calls for the establishment of a board to advise USAID on the strategic direction of the PPF.

Composed of up to 15 members, the PPF Advisory Board includes development experts, private sector leaders and faith-based leaders who are appointed by members of Congress and the USAID Administrator. As stated in its charter, the Board's role is purely advisory and possesses no enforcement authority or power to bind USAID. Duties of the Board and individual members are restricted to providing information and making recommendations to USAID on matters and issues relating to the types of projects USAID should seek to support to further the purposes of the People-to-People Partnership for Peace Fund and partnerships with foreign governments and international organizations to leverage the impact of the Fund.

The following are the current members of the Advisory Board:

Chair: The Honorable George R. Salem
The Honorable Elliott Abrams
Farah Bdour
Rabbi Angela Buchdahl
Rabbi Michael M. Cohen
Sander Gerber
Ambassador Mark Green (ret.)
Hiba Husseini
Heather Johnston
Harley Lippman
The Honorable Nita M. Lowey
Dina Powell McCormick
Nickolay Mladenov
Jen Stewart
The Honorable Robert Wexler

PPF Advisory Board meetings are held twice a year and are public. More information about how USAID is implementing MEPPA to increase people-to-people partnerships between Israelis and Palestinians is available at: *https://www.usaid.gov/west-bank-and-gaza/meppa.*

The purpose of this meeting is for the Advisory Board to gain a better understanding of the progress so far to program funds under the PPF to bring Israelis and Palestinians together to increase understanding and advance the goal of a two-state solution.

During this meeting, the Board will (1) receive updates on progress and changes to USAID programming under MEPPA following the terrorist attacks of October 7, 2023, and (2) discuss recommendations for the strategic direction of MEPPA one year later.

*Request for Public Comment:* To inform the direction and advice of the Board, USAID invites written comments from the public on areas for focus and strategies for people-to-people peacebuilding under the PPF.

Written comments and information are requested on or before Monday, November 11, 2024, at 5:00 p.m. EDT. Include ''Public Comment, PPF Advisory Board Meeting, November 11'' in the subject line. Please submit comments and information as a Word or PDF attachment to your email. You are encouraged to submit written comments even if you plan to attend the public meeting. All public comments and questions will be included in the official record of the meeting and posted publicly on the USAID website.

*Public Meeting:* A public meeting will take place Tuesday, November 19, 2024, from 11:00 a.m.–1:00 p.m. This meeting is free and open to the public. Persons wishing to attend the meeting should use the following link: (*https://usaid.zoomgov.com/j/1606503264?pwd=ZVpXSWpnYnBoTHFIVFEwYTR5QTVTUT09*).

Requests for reasonable accommodations should be directed to Daniel McDonald at *MEPPA@usaid.gov.* Please include ''Request for Reasonable Accommodation, PPF Advisory Board

Meeting, November 19'' in the subject line.

**John Walsh,**

*USAID Designated Federal Officer for the PPF Advisory Board, Bureau for the Middle East, U.S. Agency for International Development.*

[FR Doc. 2024–24830 Filed 10–24–24; 8:45 am]

**BILLING CODE 6116–01–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. No. AMS–LP–24–0064]**

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) for an extension of the currently approved information collection ''Plan for Estimating Daily Livestock Slaughter Under Federal Inspection'' (OMB 0581–0050).

**DATES:** Comments on this notice must be received by December 24, 2024 to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit comments concerning this notice online using the electronic process available at *https://www.regulations.gov.* Comments may also be submitted to Russell Avalos, Livestock, Poultry, and Grain Market News Division, Livestock and Poultry Program, Agricultural Marketing Service, U.S. Department of Agriculture; STOP 0252; 1400 Independence Avenue SW; Room 2619–S; Washington, DC 20250–0252. All comments should reference docket number AMS–LP–24–0064 and note the date and page number of this issue of the **Federal Register**. All comments submitted in response to this notice will be posted without change, including any personal information provided, at *https://www.regulations.gov/,* and become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Russell Avalos, Livestock, Poultry, and Grain Market News Division, AMS, USDA, by telephone at (202) 738–2112, or via email at *Russell.Avalos@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Plan for Estimating Daily Livestock Slaughter Under Federal Inspection.

*OMB Number:* 0581–0050.

*Expiration Date of Approval:* December 31, 2024.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), section 203(g), directs and authorizes the U.S. Department of Agriculture (USDA) to collect and disseminate marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and to bring about a balance between production and utilization.

Under this Market News program, AMS issues a Market News report estimating daily livestock slaughter under Federal inspection. This report is compiled by AMS on a voluntary basis in cooperation with the livestock and meat industry. Market News reporting must be timely, accurate, and continuous if it is to be useful to producers, processors, and the trade in general. The daily livestock slaughter estimates are provided at the request of industry and are used to make production and marketing decisions.

The Daily Estimated Livestock Slaughter Under Federal Inspection Report is used by a wide range of industry contacts, including packers, processors, producers, brokers, and retailers of meat and meat products. The livestock and meat industry requested that AMS issue slaughter estimates (daily and weekly), by species, for cattle, calves, hogs, and sheep in order to assist them in making immediate production and marketing decisions and as a guide to the volume of meat in the marketing channel. The information requested from respondents includes their estimation of the current day's slaughter at their plant(s) and the actual slaughter for the previous day. Also, the Government is a large purchaser of meat and related products and this report assists other Government agencies in providing timely information on the quantity of meat entering the processing channels.

The aforementioned information must be collected, compiled, and disseminated by an impartial third-party, in a manner which protects the confidentiality of the reporting entity. USDA's Agricultural Marketing Service is in the best position to provide this service.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .0333 hours per response.

*Respondents:* Business or other for-profit entities, individuals or households, farms, and the Federal Government.

*Estimated Number of Respondents:* 69.

*Estimated Number of Responses:* 17,940.

*Estimated Number of Responses per Respondent:* 260.

*Estimated Total Annual Burden on Respondents:* 597 hours.

*Comments:* Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the burden of the proposed collection of information, 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.

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

**Melissa Bailey,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2024–24844 Filed 10–24–24; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to

minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding this information collection received by November 25, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Agricultural Research Service**

*Title:* Meeting the Information Requirements of the Animal Welfare Act Workshop Registration Form.

*OMB Control Number:* 0518–0033.

*Summary of Collection:* The U.S. Department of Agriculture, National Agricultural Library (NAL), Animal Welfare Information Center conducts a workshop titled ''Meeting the Information Requirements of the Animal Welfare Act.'' The registration form collects information from interested parties necessary to register them for the workshop. This information includes workshop data preferences, signature, name, title, organization name, mailing address, phone and fax numbers and email address. The information will be collected using online and printed versions of the form. Also, forms can be fax or mailed.

*Need and Use of the Information:* NAL will collect information to register participants, contact them regarding schedule changes, control the number of participants due to limited resources and training space, and compile and customize class materials to meet the needs of the participants. Failure to collect the information would prohibit the delivery of the workshop and significantly inhibit NAL's ability to provide up-to-date information on the requirements of the Animal Welfare Act.

*Description of Respondents:* Individuals or Households; Not-for-Profit Institutions; Business or Other for-profit; Government; State, Local, or Tribal Government.

*Number of Respondents:* 840.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 42.

**Rachelle Ragland-Greene,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2024–24817 Filed 10–24–24; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request; Correction

October 21, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 25, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Office of Partnerships and Public Engagement**

*Title:* Outreach and Assistance to Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program (2501 Program) Application and Performance Reporting.

*OMB Control Number:* 0503–NEW.

*Summary of Collection:* The Department of Agriculture published a document in the **Federal Register** on October 16, 2024 at 89 FR 83446 concerning a request for comments on the Information Collection ''Outreach and Assistance to Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers Program (2501 Program) Application and Performance Reporting'' OMB control number 0503–NEW. The reporting agency in the second column of page 83447 reads the Office of Procurement and Property Management, which is incorrect. The correct reporting agency for this notice should be the Office of Partnerships and Public Engagement.

**Levi S. Harrell,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2024–24766 Filed 10–24–24; 8:45 am]

**BILLING CODE 3412–88–P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Food Distribution Program on Indian Reservations Participant Characteristics and Program Operations Study

**AGENCY:** Food and Nutrition Service (FNS), United States Department of Agriculture (USDA).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a new information collection request in which FNS seeks updated information about the Food Distribution Program on Indian Reservations (FDPIR), including participant characteristics, program operations, and why FDPIR participation has been declining. This study will also include an evaluation of the self-determination demonstration projects (SDDPs), which allow Tribes administering FDPIR to directly purchase food for the FDPIR food packages distributed to their Tribe.

**DATES:** Written comments must be received on or before December 24, 2024.

**ADDRESSES:** Comments may be sent to Kavitha Sankavaram, Office of Policy Support, Food and Nutrition Service, U.S. Department of Agriculture 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via email to *kavitha.sankavaram@usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection should be directed to Kavitha Sankavaram at 703–605–4627.

**SUPPLEMENTARY INFORMATION:** The 2018 Farm Bill authorized USDA to establish a demonstration project for one or more Tribal organizations administering FDPIR to enter into self-determination contracts, as defined in section 4 of the Indian Self-Determination and Education Assistance Act, to purchase USDA Foods for the FDPIR food package for their Tribes. The goals of the demonstration project include (1) supporting Tribal self-governance by allowing participating Tribes to purchase similar foods of their choosing, supporting tribal dietary preferences; (2) enabling Tribes to purchase foods through commercial vendors of their choice; (3) supporting Tribal economies as Tribes may choose to contract with local, regional, and/or Tribal vendors; and (4) providing FNS with an opportunity to see how Tribal procurement may work under a food distribution program model across Region, program size, and food selection. To date, FNS has awarded $11.4 million to 16 sites. Through this information collection, FNS aims to understand the impact, successes, and challenges of the demonstration projects to inform future policy goals.

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

*Title:* Food Distribution Program on Indian Reservations (FDPIR) Participant Characteristics and Program Operations (PCPO) and Self-Determination Demonstration Project (SDDP) Evaluation.

*Form Number:* Not applicable.

*OMB Number:* 0584–NEW.

*Expiration date:* Not yet determined.

*Type of request:* New collection of information.

*Abstract:* Administered by the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS), the Food Distribution Program on Indian Reservations (FDPIR) provides USDA Foods to income-eligible households living on Indian reservations and to American Indian households residing in approved areas near reservations in Oklahoma. Many households participate in FDPIR as an alternative to the Supplemental Nutrition Assistance Program (SNAP) because they do not have easy access to SNAP offices or authorized food stores. The last comprehensive study of FDPIR participant characteristics and program operations (PCPO) used data collected in 2013 and 2014. This study will provide current, nationally representative information on FDPIR participants and local program operations across the nation. The study will also provide FNS with a better understanding of the reasons for the decline in FDPIR participation and how to streamline and target food/nutrition education efforts, funding, and policy changes. To identify reasons for variable participation, FNS will collect information on perceptions about the program, potential access barriers, and participation in SNAP and other food assistance programs. The study also includes an evaluation of the Self-Determination Demonstration Project (SDDP). The SDDP, authorized in the 2018 Farm Bill, provides FDPIR sites with the flexibility to procure and distribute local, regional, and/or Tribal foods. This study is needed to help FNS make decisions about program administration and identify ways to make the program more beneficial to participants.

The study will be conducted over a 3-year period. For the PCPO component of the study, data collection activities will include administrative data submissions, a participant survey, discussion groups with participants and eligible nonparticipants, and site visits to 26 FDPIR programs. Site visits will consist of focus groups with FDPIR participants and eligible nonparticipants; key informant interviews with FDPIR program staff, community partners, and Tribal leaders; and observations of program facilities. Using the administrative data collected from the 26 FDPIR programs, the study team will select a random nationally representative sample of 1,050 participating households. This sample of participating households will be the basis of recruitment for the participant survey. For the SDDP component of the study, data collection activities will include administrative data submissions, key informant interviews with FDPIR program staff and vendors, and interviews with a convenience sample of FDPIR participants at the 16 SDDP sites. Clearance is requested for the following new data collection activities: administrative data collection, survey of FDPIR participants, key informant interviews, onsite observations of FDPIR program operations, FDPIR participants and eligible nonparticipant discussion groups, and FDPIR participant interviews.

*Affected public:* (1) State, local, and Tribal agencies; (2) businesses; and (3) individuals. Identified respondent groups include the following:

1. *State, local, and Tribal agencies:* FDPIR agency staff from 38 Tribal agencies (22 PCPO-only sites, 12 SDDP-only sites, and 4 sites participating in both the PCPO and SDDP components).

2. *Businesses:* nonprofit businesses—staff from community-based organizations at the 26 PCPO sites—and for-profit businesses—food vendor staff at the 16 SDDP sites.

3. *Individuals:* 1,050 FDPIR participants and eligible nonparticipants who will be recruited for the PCPO participant survey and 316 who will be recruited for participation in discussion groups across the 26 PCPO sites. For the SDDP component, 400 FDPIR participants across the 16 SDDP sites will be recruited to complete an interview.

*Estimated number of respondents:* The total estimated number of respondents is 2,068: 182 State, local, and Tribal government staff; 69 business (for-profit and not-for-profit) staff; and 1,817 individuals. Of the 2,068 contacted, 1,728 are estimated to be responsive, and 340 are estimated to be nonresponsive. The breakout follows:

1. *State, local, and Tribal agency staff:* Of the 182 FDPIR Tribal staff contacted, 168 are estimated to be responsive, and

14 will be nonresponsive. For the PCPO component, 145 Tribal staff will be contacted, and 131 are estimated to be responsive and 14 will be nonresponsive. For the SDDP component, 37 Tribal staff will be contacted, and all are estimated to be responsive.

2. *Business (for-profit and not-for-profit) staff:* Of the 53 non-profit business staff contacted, all are estimated to be responsive. Of the 16 for-profit business staff contacted, all are estimated to be responsive.

3. *Individuals:* Of the 1,817 individuals contacted, 1,491 are estimated to be responsive, and 326 will be nonresponsive.

- For the PCPO study, 1,050 FDPIR participants will be contacted to complete the PCPO survey, and 871 will complete the survey and receive a thank-you email; 179 will be nonresponsive. A total of 316 participants will be recruited for the PCPO discussion groups; 252 will participate in the discussion, and 64 will be nonresponsive.
- Twenty-six Tribal leaders at FDPIR sites will be asked to participate in a key informant interview; 23 will participate in the interview, and 3 will be nonresponsive.
- For the SDDP study, 400 participants will be contacted to complete the SDDP interview, and 320 will complete the interview and receive a thank-you email; 80 will be nonresponsive.

*Estimated number of responses per respondent:* 3.375—based on 6,979 total annual responses (6,460 responsive and 519 nonresponsive) made by the 2,068 respondents (1,728 responsive and 340 nonresponsive). See table 1 for the estimated number of responses per respondent for each type of respondent. The breakout follows:

1. *State, local, and Tribal agencies (182):*

- Twenty-nine FDPIR directors will receive recruitment emails from FNS; 26 will be responsive, and 3 will be nonresponsive. Twenty-six FDPIR directors will receive an introductory email from the study team, participate in a phone call to discuss the data request, and facilitate the execution of a data use agreement. They will also receive materials from the study team about key informant interview scheduling and participate in the PCPO key informant interviews. Sixteen FDPIR directors will respond to scheduling and participate in the SDDP interviews; the same 16 FDPIR directors will also participate in a phone call to discuss the SDDP data request, and facilitate the execution of a data use agreement.
- Seventeen FDPIR directors will complete the electronic PCPO administrative data submission. One FDPIR director will pretest the PCPO administrative data request. Sixteen FDPIR directors will complete the SDDP administrative data submission; one of these 16 directors will pretest the SDDP administrative data request.
- Fifty-two FDPIR frontline staff will receive recruitment information, and 45 will respond to scheduling and participate in the PCPO key informant interviews; 7 will be nonresponsive. Twenty-six frontline staff will also participate in the observation. Sixteen frontline staff will respond to scheduling and participate in the SDDP interviews. One frontline staff member will pretest the key informant interview protocol. One frontline staff member will pretest the observation guide.
- Twenty-six distribution staff will receive recruitment information, and 24 will respond to scheduling and participate in the observation; 2 will be nonresponsive. One distribution staff member will pretest the observation guide.
- Twenty-six warehouse staff will receive recruitment information, and 24 will respond to scheduling and participate in the observation; 2 will be nonresponsive.
- Nine administrative staff will provide onsite support for the administrative data abstraction.
- Five SDDP coordinators will receive recruitment information and will respond to scheduling and participate in the SDDP interviews.

2. *Business (for-profit and not-for-profit) vendor and community organization staff (69):*

- Sixteen food vendor staff will respond to scheduling and participate in the SDDP interviews.
- Fifty-two community organization staff will respond to scheduling and participate in the PCPO key informant interviews. One community organization staff member will pretest the key informant interview guide.

3. *Individuals (1,817):*

- A total of 1,050 individuals will be recruited, and 871 will complete the PCPO participant survey. A total of 316 individuals will be recruited, and 252 will participate in the PCPO focus groups. A total of 400 individuals will be recruited, and 320 will complete the SDDP participant survey.
- Twenty-six Tribal leaders will receive scheduling information, and 23 will respond to scheduling and participate in the PCPO key informant interviews. One Tribal leader will pretest the key informant interview guide.
- Nine individuals will be recruited and pretest the SDDP participant survey. Nine individuals will be recruited and pretest the PCPO participant survey. Six individuals will be recruited and pretest the PCPO discussion group guide.

*Estimated total annual responses:* 6,979 (6,460 annual responses for responsive participants and 519 annual responses for nonresponsive participants).

*Estimated time per response:* 0.304 hours (0.33 hours for responsive participants and 0.02 hours for nonresponsive participants). Among respondents, the estimated time of response varies from 0.03 hours to 2.00 hours depending on the respondent group and activity, as table 1 shows.

*Estimated total annual burden on respondents and nonrespondents:* 2,124.09 hours (2,116.85 hours for responsive participants and 9.55 hours for nonresponsive participants). See table 1 for the estimated total annual burden for each type of respondent.

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*Table 1. Total public burden hours*

| Type of respondents | | Instruments | Respondents | | | | | | Nonrespondents | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Sample size[a] | Number of respondents | Frequency of response | Total annual responses | Hours per response[b] | Annual burden (hours) | Number of non-respondents | Frequency of response | Total annual responses | Hours per response[b] | Annual burden (hours) | Grand total annual burden estimate (hours) |
| **State, Local, and Tribal Government** | | | | | | | | | | | | | | |
| PCPO COMPONENT | | | | | | | | | | | | | | |
| FDPIR Staff | Director | Initial recruitment email from FNS | 29 | 26 | 1 | 26 | .0835 | 2.17 | 3 | 1 | 3 | 0.08 | 0.24 | 2.41 |
| | | Study team introductory email | 26 | 26 | 1 | 26 | 0.08 | 2.17 | 0 | 0 | 0 | 0.00 | 0 | 2.17 |
| | | Phone call to discuss the PCPO administrative data request | 26 | 26 | 1 | 26 | 1.00 | 26.00 | 0 | 0 | 0 | 0.00 | 0 | 26.00 |
| | | PCPO administrative data use agreement | 26 | 26 | 1 | 26 | 2.00 | 52.00 | 0 | 0 | 0 | 0.00 | 0 | 52.00 |
| | | PCPO administrative data email reminder #1 | 10 | 10 | 1 | 10 | 0.03 | 0.33 | 0 | 0 | 0 | 0.00 | 0 | 0.33 |
| | | PCPO administrative data email reminder #2 | 7 | 7 | 1 | 7 | 0.03 | 0.23 | 0 | 0 | 0 | 0.00 | 0 | 0.23 |
| | | PCPO electronic administrative data submission | 17 | 17 | 1 | 17 | 1.00 | 17.00 | 0 | 0 | 0 | 0.00 | 0 | 17.00 |
| | | PCPO electronic administrative data submission thank-you email | 17 | 17 | 1 | 17 | 0.03 | 0.57 | 0 | 0 | 0 | 0.00 | 0 | 0.57 |
| | | PCPO administrative data review follow-up questions | 17 | 17 | 1 | 17 | 0.25 | 4.25 | 0 | 0 | 0 | 0.00 | 0 | 4.25 |
| | | PCPO administrative data pretest | 1 | 1 | 1 | 1 | 0.95 | 0.95 | 0 | 0 | 0 | 0.00 | 0 | 0.17 |
| | | PCPO key informant interview pretest | 1 | 1 | 1 | 1 | 1.70 | 1.70 | 0 | 0 | 0 | 0.00 | 0 | 0.17 |
| | | PCPO key informant interview scheduling email | 26 | 26 | 1 | 26 | 0.25 | 6.50 | 0 | 0 | 0 | 0.00 | 0 | 6.50 |

| | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | PCPO key informant interview recruitment call #1 | 10 | 10 | 1 | 10 | 0.03 | 0.33 | 0 | 0 | 0 | 0.00 | 0 | 0.33 |
| | | PCPO key informant interview recruitment call #2 | 7 | 7 | 1 | 7 | 0.03 | 0.23 | 0 | 0 | 0 | 0.00 | 0 | 0.23 |
| | | PCPO key informant interview | 26 | 26 | 1 | 26 | 1.50 | 39.00 | 0 | 0 | 0 | 0.00 | 0 | 39.00 |
| | | PCPO key informant interview thank-you email | 26 | 26 | 1 | 26 | 0.03 | 0.87 | 0 | 0 | 0 | 0.00 | 0 | 0.87 |
| | Frontline staff | PCPO key informant interview pretest | 1 | 1 | 1 | 1 | 1.70 | 1.70 | 0 | 0 | 0 | 0.00 | 0 | 1.70 |
| | | PCPO key informant interview scheduling | 52 | 45 | 1 | 45 | 0.25 | 11.25 | 7 | 1 | 7 | 0.08 | 0.56 | 11.81 |
| | | PCPO key informant interview | 45 | 45 | 1 | 45 | 1.50 | 67.50 | 0 | 0 | 0 | 0.00 | 0 | 67.50 |
| | | PCPO key informant interview thank-you email | 45 | 45 | 1 | 45 | 0.03 | 1.50 | 0 | 0 | 0 | 0.00 | 0 | 1.50 |
| | | Observation and assessment pretest | 1 | 1 | 1 | 1 | 0.62 | 0.62 | 0 | 0 | 0 | 0.00 | 0 | 0.62 |
| | | Observation and assessment | 26 | 26 | 1 | 26 | 1.00 | 26.00 | 0 | 0 | 0 | 0.00 | 0 | 26.00 |
| | | Observation and assessment thank-you email | 26 | 26 | 1 | 26 | 0.03 | 0.87 | 0 | 0 | 0 | 0.00 | 0 | 0.87 |
| | Distribution center staff | Observation and assessment pretest | 1 | 1 | 1 | 1 | 0.62 | 0.62 | 0 | 0 | 0 | 0.00 | 0 | 0.62 |
| | | Observation and assessment recruitment scheduling email | 26 | 24 | 1 | 24 | 0.08 | 2.00 | 2 | 1 | 2 | 0.08 | 0.16 | 2.16 |
| | | Observation and assessment | 24 | 24 | 1 | 24 | 1.00 | 24.00 | 0 | 0 | 0 | 0.00 | 0 | 24.00 |
| | | Observation and assessment thank-you email | 24 | 24 | 1 | 24 | 0.03 | 0.80 | 0 | 0 | 0 | 0.00 | 0 | 0.80 |
| | Warehouse staff | Observation and assessment recruitment scheduling email | 26 | 24 | 1 | 24 | 0.08 | 2.00 | 2 | 1 | 2 | 0.08 | 0.16 | 2.16 |
| | | Observation and assessment | 24 | 24 | 1 | 24 | 1.00 | 24.00 | 0 | 0 | 0 | 0.00 | 0 | 24.00 |

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| | | Observation and assessment thank-you email | 24 | 24 | 1 | 24 | 0.03 | 0.80 | 0 | 0 | 0 | 0.00 | 0 | 0.80 |
| | Administrative staff | Onsite administrative data collection support | 9 | 9 | 1 | 9 | 2.00 | 18.00 | 0 | 0 | 0 | 0.00 | 0 | 18.00 |
| | | Onsite administrative data collection support thank-you email | 9 | 9 | 1 | 9 | 0.03 | 0.30 | 0 | 0 | 0 | 0.00 | 0 | 0.30 |
| Subtotal for PCPO Component | | | 145 | 131 | 4.74 | 621 | 0.54 | 336.28 | 14 | 1 | 14 | 1.12 | 1.12 | 335.09 |
| SDDP COMPONENT | | | | | | | | | | | | | | |
| FDPIR Staff | FDPIR Director | SDDP interview recruitment | 16 | 16 | 1 | 16 | 0.25 | 4.00 | 0 | 0 | 0 | 0 | 0 | 4.00 |
| | | SDDP pre-interview inventory | 16 | 16 | 1 | 16 | 0.25 | 4.00 | 0 | 0 | 0 | 0 | 0 | 4.00 |
| | | SDDP interview | 16 | 16 | 1 | 16 | 1.50 | 24.00 | 0 | 0 | 0 | 0 | 0 | 24.00 |
| | | SDDP interview thank you email | 16 | 16 | 1 | 16 | 0.03 | 0.53 | 0 | 0 | 0 | 0 | 0 | 0.53 |
| | | Phone call to discuss the SDDP administrative data request | 16 | 16 | 1 | 16 | 1.00 | 16.00 | 0 | 0 | 0 | 0 | 0 | 16.00 |
| | | SDDP administrative data use agreement | 16 | 16 | 1 | 15 | 2.00 | 30.00 | 0 | 0 | 0 | 0 | 0 | 30.00 |
| | | SDDP administrative data email reminder 1 | 8 | 8 | 1 | 8 | 0.03 | 0.24 | 0 | 0 | 0 | 0 | 0 | 0.24 |
| | | SDDP administrative data email reminder 2 | 4 | 4 | 1 | 4 | 0.03 | 0.12 | 0 | 0 | 0 | 0 | 0 | 0.12 |
| | | SDDP electronic administrative data submission | 16 | 16 | 1 | 16 | 3.00 | 48.00 | 0 | 0 | 0 | 0 | 0 | 48.00 |
| | | SDDP electronic administrative data submission thank you email | 16 | 16 | 1 | 16 | 0.03 | 0.48 | 0 | 0 | 0 | 0 | 0 | 0.48 |
| | | SDDP administrative data review follow-up questions | 16 | 16 | 1 | 16 | 1.00 | 16.00 | 0 | 0 | 0 | 0 | 0 | 16.00 |
| | | SDDP administrative data pretest | 1 | 1 | 1 | 1 | 0.9500 | 0.95 | 0 | 0 | 0 | 0 | 0 | 0.95 |
| | | SDDP key informant interview pretest recruitment | 1 | 1 | 1 | 1 | 0.17 | 0.17 | 0 | 0 | 0 | 0 | 0 | 0.17 |
| | FDPIR Frontline Staff | SDDP interview recruitment | 16 | 16 | 1 | 16 | 0.25 | 4.00 | 0 | 0 | 0 | 0 | 0 | 4.00 |
| | | SDDP interview | 16 | 16 | 1 | 16 | 1.00 | 16.00 | 0 | 0 | 0 | 0 | 0 | 16.00 |

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| | | SDDP interview thank-you email | 16 | 16 | 1 | 16 | 0.25 | 4.00 | 0 | 0 | 0 | 0 | 0 | 4.00 |
| | SDDP Coordinator | SDDP interview recruitment | 5 | 5 | 1 | 5 | 0.25 | 1.25 | 0 | 0 | 0 | 0 | 0 | 1.25 |
| | | SDDP interview | 5 | 5 | 1 | 5 | 1.00 | 5.00 | 0 | 0 | 0 | 0 | 0 | 5.00 |
| | | SDDP interview thank-you email | 5 | 5 | 1 | 5 | 0.25 | 1.25 | 0 | 0 | 0 | 0 | 0 | 1.25 |
| Subtotal for SDDP Component | | | 37 | 37 | 5.95 | 220 | 0.80 | 175.99 | 0 | 0 | 0 | 0 | 0 | 175.99 |
| State/local/tribal government subtotal | | | 182 | 168 | 5.01 | 841 | 0.61 | 512.27 | 14 | 1 | 14 | 1.12 | 1.12 | 511.08 |
| **Businesses** | | | | | | | | | | | | | | |
| PCPO COMPONENT | | | | | | | | | | | | | | |
| Businesses (non-profit) | Community organization staff | PCPO key informant interview pretest | 1 | 1 | 1 | 1 | 1.70 | 1.70 | 0 | 0 | 0 | 0 | 0 | 1.70 |
| | | PCPO key informant interview scheduling | 52 | 52 | 1 | 52 | 0.25 | 13.00 | 0 | 0 | 0 | 0 | 0 | 13.00 |
| | | PCPO key informant interview | 52 | 52 | 1 | 52 | 1.50 | 78.00 | 0 | 0 | 0 | 0 | 0 | 78.00 |
| | | PCPO key informant interview thank-you email | 52 | 52 | 1 | 52 | 0.03 | 1.74 | 0 | 0 | 0 | 0 | 0 | 1.74 |
| Subtotal for PCPO Component | | | 53 | 53 | 3.0 | 157 | 0.60 | 94.44 | 0 | 0 | 0 | 0 | 0 | 94.44 |
| SDDP COMPONENT | | | | | | | | | | | | | | |
| Businesses (for-profit) | Food vendor staff | SDDP interview recruitment | 16 | 16 | 1 | 16 | 0.25 | 4.00 | 0 | 0 | 0 | 0 | 0 | 4.00 |
| | | SDDP interview | 16 | 16 | 1 | 16 | 1.00 | 16.00 | 0 | 0 | 0 | 0 | 0 | 16.00 |
| | | SDDP interview thank-you email | 16 | 16 | 1 | 16 | 0.03 | 0.53 | 0 | 0 | 0 | 0 | 0 | 0.53 |
| Subtotal for SDDP Component | | | 16 | 16 | 3 | 48 | 0.43 | 20.53 | 0 | 0 | 0 | 0 | 0 | 20.53 |
| Subtotal for Businesses | | | 69 | 69 | 2.97 | 205 | 0.56 | 114.97 | 0 | 0 | 0 | 0 | 0 | 114.97 |
| **Individuals** | | | | | | | | | | | | | | |
| PCPO COMPONENT | | | | | | | | | | | | | | |
| Individuals | FDPIR participants and eligible non-participants | PCPO participant survey email invitation | 1050 | 871 | 1 | 871 | 0.08 | 72.73 | 179 | 0 | 179 | 0.02 | 2.99 | 75.72 |
| | | PCPO participant survey | 1050 | 871 | 1 | 871 | 0.5 | 435.50 | 179 | 1 | 179 | 0.02 | 2.99 | 438.49 |
| | | PCPO participant survey first phone call reminder | 552 | 552 | 1 | 552 | 0.08 | 46.09 | 0 | 0 | 0 | 0 | 0 | 46.09 |

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| | | PCPO participant survey second phone call reminder | 87 | 87 | 1 | 87 | 0.17 | 14.53 | 0 | 0 | 0 | 0 | 0 | 14.53 |
| | | PCPO participant survey thank you email | 871 | 871 | 1 | 871 | 0.03 | 29.09 | 0 | 0 | 0 | 0 | 0 | 29.09 |
| | | PCPO discussion group recruitment | 316 | 252 | 1 | 252 | 0.17 | 42.08 | 64 | 1 | 64 | 0.02 | 1.07 | 43.15 |
| | | PCPO discussion group | 252 | 252 | 1 | 252 | 1.50 | 378.00 | 0 | 0 | 0 | 0 | 0 | 378.00 |
| | | PCPO discussion group thank you email | 252 | 252 | 1 | 252 | 0.03 | 8.42 | 0 | 0 | 0 | 0 | 0 | 8.42 |
| | | PCPO participant survey pretest | 9 | 9 | 1 | 9 | 1.20 | 10.77 | 0 | 0 | 0 | 0 | 0 | 10.77 |
| | | PCPO discussion group pretest | 6 | 6 | 1 | 6 | 1.70 | 10.18 | 0 | 0 | 0 | 0 | 0 | 10.18 |
| | Tribal leaders | PCPO key informant interview pretest | 1 | 1 | 1 | 1 | 1.70 | 1.70 | 0 | 0 | 0 | 0 | 0 | 1.70 |
| | | PCPO key informant interview scheduling | 26 | 23 | 1 | 23 | 0.25 | 5.75 | 3 | 1 | 3 | 0.02 | 0.05 | 5.80 |
| | | PCPO key informant interview | 23 | 23 | 1 | 23 | 1.50 | 34.50 | 0 | 0 | 0 | 0 | 0 | 34.50 |
| | | PCPO key informant interview thank-you email | 23 | 23 | 1 | 23 | 0.03 | 0.77 | 0 | 0 | 0 | 0 | 0 | 0.77 |
| PCPO Subtotal | | | 1408 | 1162 | 3.52 | 4093 | 0.27 | 1090.11 | 246 | 1.73 | 425 | 0.02 | 7.10 | 1097.21 |
| SDDP COMPONENT | | | | | | | | | | | | | | |
| Individuals | FDPIR participants | SDDP participant interview invitation letter | 400 | 320 | 1 | 320 | 0.08 | 26.72 | 80 | 1 | 80 | 0 | 1.336 | 28.06 |
| | | SDDP participant interview email reminder | 224 | 224 | 1 | 224 | 0.08 | 18.70 | 0 | 0 | 0 | 0 | 0 | 18.70 |
| | | SDDP participant interview first phone reminder | 96 | 96 | 1 | 96 | 0.08 | 8.02 | 0 | 0 | 0 | 0 | 0 | 8.02 |
| | | SDDP participant interview second phone reminder | 32 | 32 | 1 | 32 | 0.17 | 5.34 | 0 | 0 | 0 | 0 | 0 | 5.34 |
| | | SDDP participant interview | 320 | 320 | 1 | 320 | 1.00 | 320.00 | 0 | 0 | 0 | 0 | 0 | 320.00 |
| | | SDDP participant interview thank-you email | 320 | 320 | 1 | 320 | 0.03 | 10.69 | 0 | 0 | 0 | 0 | 0 | 10.69 |

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|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | SDDP participant interview pretest | 9 | 9 | 1 | 9 | 1.11 | 10.02 | 0 | 0 | 0 | 0 | 0 | 10.02 |
| SDDP Subtotal | | | 409 | 329 | 4.02 | 1321 | 0.30 | 399.49 | 80 | 1 | 80 | 0.02 | 1.34 | 400.83 |
| Subtotal for Individuals | | | 1817 | 1491 | 3.63 | 5414 | 0.28 | 1489.61 | 326 | 2 | 505 | 0.02 | 8.43 | 1498.04 |
| **Total** | | | 2068 | 1728 | 3.74 | 6460 | 0.33 | 2116.85 | 340 | 1.53 | 519 | 0.02 | 9.55 | 2124.09 |

FDPIR = Food Distribution Program on Indian Reservations; PCPO = participant characteristics and program operations; SDDP = Self-Determination Demonstration Project

[a] Numbers are always rounded up to the next whole number.

[b] Decimal values have been calculated by multiplying the decimal unit value of 1 minute (.0167) by the total number of minutes (conversion of minutes to decimals).

**Tameka Owens,**
*Acting Administrator and Assistant Administrator, Food and Nutrition Service.*
[FR Doc. 2024–24868 Filed 10–24–24; 8:45 am]
**BILLING CODE 3410–30–C**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: FNS 245—Supplemental Nutrition Assistance Program Negative Case Action Review Schedule

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

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision of a currently approved collection. This information collection, the FNS–245, Negative Case Action Review Schedule, is designed to collect quality control (QC) data and serve as the data entry form for negative case action QC reviews in the Supplemental Nutrition Assistance Program (SNAP). Revisions to the form, its instructions, and burden hours are within.

**DATES:** Written comments must be received on or before December 24, 2024.

**ADDRESSES:** Comments may be sent to: John McCleskey, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314. Comments may also be submitted via email to *SM.FN.SNAPQCRules-ICR@usda.gov* or may also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection should be directed to John McCleskey at 703–457–7747.

**SUPPLEMENTARY INFORMATION:**

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

*Title:* FNS–245: SNAP Negative Case Action Review Schedule.

*Form Number:* FNS–245.

*OMB Control Number:* 0584–0034.

*Expiration Date:* December 31, 2024.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* The FNS–245, Negative Case Action Review Schedule, is designed to collect quality control (QC) data and serves as the data entry form for negative case action QC reviews in the Supplemental Nutrition Assistance Program (SNAP). State agencies complete the FNS–245 for each negative case in their QC sample. The number of responses for reporting and recordkeeping increased from 177,230 to 196,615 responses; a total increase of 19,385 due to the increase in number of cases selected for negative review. The reporting and recordkeeping burden associated with the completion of the FNS–245 has increased from approximately 112,491.43 hours to 125,778.55 hours. The 13,203.96-hour increase in the total burden is largely a result of an administrative adjustment due to the increase in total SNAP negative action case selections for review from 34,322 cases in fiscal year (FY) 2018 to 39,323 cases in FY 2023 and due to a program change to add two new codes to the form for the head of household's race/ethnic information and to include household zip code. The program is adding 1.5 minutes or 0.025 hours to the case record review burden to now include reviewing this information in the case record to properly report the information on the form. A summary of the revised reporting and recordkeeping estimates are below, along with a revision of the burden table.

The program is making additional revisions to the form that do not impact burden. These include:

—Clarification that Section I must be submitted to FNS for the QC review process, though the information contained within will not be part of the official Federal record of FNS 245 data, which is permanently retained per Federal record requirements.

—In Section II, instead of three case classification codes for item 9, there will now be two—included or excluded from the error rate calculation.

—For Section III,

—Existing elements 111, 130, 162, 365 and 413 include terminology updates for accuracy, and elements 313 and 540 are now 314 and 541 to align with the element numbering on the active QC forms, FNS 380-Worksheet for active QC reviews (OMB 0584–0074 FNS–380 Worksheet for the Supplemental Nutrition Assistance Program Quality Control Reviews, expiration 7–31–25) and FNS 380–1, the Review Schedule for Active cases (OMB 0584–0299 FNS–380–1 Supplemental Nutrition Assistance Program's Quality Control Review Schedule, expiration 9–30–26).

—Item 10a, Disposition of the review, code 3, is revised to indicate the review cannot be processed since no electronic or paper records exist.

—Item 14d's code 99 is revised to code 00 to correct the numerical association with the code description.

—Items 17 and 18 now have four new possible elements for variance identification: Element 214—Substantial Lottery or Gambling Winnings, 362—Homeless shelter deduction, 540—Missing Required Reports (Monthly, Quarterly or Periodic Report Forms), and Element 542—Expired Certification Period. All changes may be reviewed on the form provided with this notice.

**Reporting**

*Affected Public:* State, Local and Tribal Government.

*Estimated Number of Respondents:* 53 State Agencies.

*Estimated Number of Responses per Respondent:* 2,967.77.

*Estimated Total Annual Responses:* 157,292.

*Estimated Time per Response:* 3.175 hours.

*Estimated Total Annual Burden on Respondents:* 124,850.53.

**Recordkeeping**

*Affected Public:* State, Local and Tribal Government.

*Estimated Number of Respondents:* 53 State Agencies.

*Estimated Number of Responses per Respondent:* 741.94.

*Estimated Total Annual Responses:* 39,323.

*Estimated Time per Response:* 0.0236 hour.

*Estimated Total Annual Burden on Respondents:* 928.02.

*Grand Total Reporting and Recordkeeping Annual Burden:* 125,778.55.

REPORTING AND RECORDKEEPING BURDEN FOR STATE AGENCIES FNS 245, OMB 0584–0034

| Regulation | Description of activity | Number of respondents | Estimated frequency number of negative sample cases per respondent | Estimated total annual number of negative sample cases per annum | Estimated annual reporting hours per respondents | Estimated total annual burden hours | Previous submission total hours | Difference due to program changes | Difference due to adjustments |
|---|---|---|---|---|---|---|---|---|---|
| **Reporting Burden** | | | | | | | | | |
| 275.13(b) | Household Case Record Review. | 53 | 741.94 | 39,323.00 | 1.525 | 59,967.58 | 53,169.00 | 983.08 | 5,815.50 |
| 275.13(c) | Error analysis | 53 | 741.94 | 39,323.00 | 1.15 | 45,221.45 | 40,762.90 | | 4,458.55 |
| 275.13(d) | Reporting of review findings. | 53 | 741.94 | 39,323.00 | 0.25 | 9,830.75 | 8,861.50 | | 969.25 |
| 275.13(e) | Disposition of case review. | 53 | 741.94 | 39,323.00 | 0.25 | 9,830.75 | 8,861.50 | | 969.25 |
| Total Reporting Burden | | 53 | 2,967.77 | 157,292.00 | 3.175 | 124,850.53 | 111,654.90 | 983.08 | 12,212.55 |
| | | | | | | | ttl rep diff | 13,195.63 | |
| **Recordkeeping Burden** | | | | | | | | | |
| 275.4 | Record Retention | 53 | 741.9433962 | 39,323.00 | 0.0236 | 928.0228 | 836.5256 | | 91.4972 |
| **Total Recordkeeping Burden** | | | | | | | | | |
| Total Reporting and Recordkeeping Burden. | | 53 | 3709.72 | 196,615.00 | 3.1986 | 125,778.55 | 112,491.43 | 983.08 | 12,304.05 |
| | | | | | | | ttl rep/rcdkp difference | 13,287.12 | |

**Tameka Owens,**

*Acting Administrator and Assistant Administrator, Food and Nutrition Service.*

[FR Doc. 2024–24866 Filed 10–24–24; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

**[Docket No.: RUS–24–ELECTRIC–0032]**

### Notice of Funding Opportunity for Section 313A Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year (FY) 2025

**AGENCY:** Rural Utilities Service, USDA

**ACTION:** Notice.

**SUMMARY:** The Rural Utilities Service (RUS or the Agency), a Rural Development agency of the United States Department of Agriculture (USDA), announces the acceptance of applications under the Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes Program (the 313A Program) for Fiscal Year (FY) 2025. This notice is being issued in order to allow applicants sufficient time to prepare and submit their applications and give the Agency time to process applications within FY 2025. In FY 2024, Congress appropriated $900 million for the 313A Program. Because full-year appropriations have not been enacted as of this date, the final amount that will be made available in FY 2025 will be determined by subsequent Congressional action. The agency is accepting applications up to the amount made available in FY 2024, subject to Congressional action. The purpose of the 313A Program is to guarantee loans to selected applicants as a Guaranteed Lender. Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through apportionment. All applicants are responsible for all expenses incurred in developing their applications.

**DATES:** Completed applications must be electronically received by RUS no later than 5 p.m. Eastern Time (ET) on December 24, 2024. Applicants intending to submit applications must have their applications received by the closing deadline.

**ADDRESSES:** Completed applications must be submitted electronically to Amy McWilliams, Branch Chief, Policy and Outreach Branch, Office of Customer Service and Technical Assistance, Electric Program, RUS at *amy.mcwilliams@usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Amy McWilliams, Branch Chief, Policy and Outreach Branch, Office of Customer Service and Technical Assistance, Electric Program, Rural Utilities Service, USDA, 1400 Independence Avenue SW, Mail Stop 1560, Room 4121-South, Washington, DC 20250–1560, by email at *amy.mcwilliams@usda.gov,* or call (202) 205–8663.

**SUPPLEMENTARY INFORMATION:**

#### Overview

*Federal Awarding Agency Name:* Rural Utilities Service.

*Funding Opportunity Title:* Notice of Funding Opportunity (NOFO) for Section 313A Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year (FY) 2025.

*Announcement Type:* Notice of Funding Opportunity.

*Assistance Listing:* 10.850.

*Dates:* Completed applications must be received by RUS no later than 5:00 p.m. Eastern Time (ET) on December 24, 2024.

*Rural Development Key Priorities:* The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *rd.usda.gov/priority-points*):

• Addressing Climate Change and Environmental Justice—Reducing

climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

• Advancing Racial Justice, Place-Based Equity, and Opportunity—Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects.

• Creating More and Better Market Opportunities—Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure.

**A. Program Description**

1. *Purpose of the Program.* The purpose of the 313A Program is to guarantee loans to selected applicants (each referred to as the ''Guaranteed Lender'' in this NOFO). The proceeds of the guaranteed loan are to be used (a) to make utility infrastructure loans, or (b) to refinance bonds or notes issued for such purposes to a borrower that has at any time received, or is eligible to receive, a loan under the Rural Electrification Act of 1936, as amended (RE Act). Each applicant must provide a statement on how it proposes to use the proceeds of the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program pursuant to 7 CFR 1720.6(a)(3), or its equivalent in any subsequent regulation. Objectives may include, but are not limited to the annual savings to be realized by the ultimate borrower(s) as a result of the applicant's use of lower cost loan funds provided by the Federal Financing Bank (FFB) and guaranteed by RUS.

The Agriculture Improvement Act of 2018 (2018 Farm Bill) modified the 313A Program by amending the RE Act to allow proceeds of guaranteed bonds awarded under this NOFO to be used to make broadband loans, or to refinance broadband loans made to a borrower that has received, or is eligible to receive, a broadband loan under Title VI of the RE Act.

The 2018 Farm Bill has also modified the 313A Program to allow the proceeds of guaranteed loans made under this NOFO to be used by the Guaranteed Lender to fund projects for the generation of electricity.

2. *Statutory and Regulatory Authority.* The 313A Program is authorized by Section 313A of the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c–1), and is implemented by regulations located at 7 CFR part 1720. The Administrator of RUS (the Administrator) has been delegated responsibility for administering the 313A Program.

3. *Definitions.* The definitions applicable to this NOFO are currently published at 7 CFR 1720.3.

4. *Application of Awards.* RUS will review and evaluate applications received in response to this NOFO based on the regulations at 7 CFR 1720.7, and as provided in this NOFO.

**B. Federal Award Information**

*Type of Awards:* Guaranteed Loans.

*Fiscal Year Funds:* FY 2025.

*Anticipated Available Funds:* $900,000,000. Should additional funding become available this FY, RUS reserves the right to increase the total funds available under this notice.

*Award Amounts:* RUS anticipates making multiple guarantees under this NOFO. The number, amount, and terms of awards under this NOFO will depend in part on the number of eligible applications and the amount of funds requested and the final amount appropriated by Congress. In determining whether to make an award, RUS will take overall program policy objectives into account.

*Anticipated Award Date:* Awards will be made on or before September 30, 2025, but no earlier than December 24, 2024.

*Performance Period:* The RE Act provides that loans guaranteed under this program cannot exceed 30 years in length.

*Renewal or Supplemental Awards:* N/A.

*Type of Assistance Instrument:* The type of assistance is in the form of an RUS FFB Guaranteed Loan and is supported by a perfected lien on collateral sufficient to provide for full loan security.

**C. Eligibility Information**

1. *Eligible Applicants.* To be eligible to participate in the 313A Program or receive a guarantee, a Guaranteed Lender must meet the eligibility criteria specified in 7 CFR 1720.5.

2. *Cost Sharing or Matching.* There is no requirement for cost sharing or matching; however, borrowers must provide sufficient unencumbered collateral to secure loan guarantees made under this program.

3. *Other.* Applications will only be accepted from lenders that serve rural areas as defined in 7 CFR 1710.2(a).

**D. Application and Submission Information**

1. *Address to Request Application Package.* All applications must be prepared and submitted in accordance with this NOFO and 7 CFR part 1720 (*ecfr.gov/current/title-7/subtitle-B/chapter-XVII/part-1720*).

2. *Content and Form of Application Submission.* In addition to the required application specified in 7 CFR 1720.6, all applicants must submit the following additional required documents and materials:

a. *Restrictions on Lobbying.* Applicants must comply with the requirements relating to restrictions on lobbying activities (See 2 CFR part 418). This form is available at *gsa.gov/forms-library/disclosure-lobbying-activities.*

b. *Uniform Relocation Act assurance statement.* Applicants must comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. (See 7 CFR 1710.124.) This form (Assurances Required by 49 CFR 2.2(a)) is available at *rd.usda.gov/resources/directives/electric-sample-documents.*

c. *Federal debt delinquency requirements.* This report indicates whether the applicants are delinquent on any Federal debt (See 7 CFR 1710.126 and 7 CFR 1710.501(a) (12)). This form (the Federal Debt Delinquency Certification) is available at *rd.usda.gov/directives/federal-debt-delinquency-certification.*

d. *Form RD 400–4, Assurance Agreement.* Applicants must submit a non-discrimination assurance commitment to comply with certain regulations on non-discrimination in program services and benefits and on equal employment opportunity as set forth in 7 CFR part 15, 12 CFR part 202, 7 CFR part 1901 Subpart E, DR 4300–003, DR 4330–0300, and DR 4330–005. This form is available at *rd.usda.gov/directives/compliance-assurance-rd-form-400-4-nov-2017.*

e. *Articles of Incorporation and Bylaws.* See 7 CFR 1710.501(b)(1). These are required if either document has been amended since the last loan application was submitted to RUS, or if this is the applicant's first application for a loan under the RE Act.

f. *Pro forma financial statements including cash flow projections and assumptions.* Each applicant must include five-year pro forma income statements, balance sheets and cash flow projections or business plans and clearly state the assumptions that underlie the projections, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed loan in accordance with its terms (See 7 CFR 1720.6(a)(4)).

g. *Pending litigation statement.* A statement from the applicant's counsel listing any pending litigation, including levels of related insurance coverage and the potential effect on the applicant, must be submitted to RUS.

3. *System for Award Management and Unique Entity Identifier.*

a. At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25 (*ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25*). To register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *sam.gov/content/entity-registration.*

b. Applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

c. Applicant must ensure it completes the Financial Assistance General Certifications and Representations in SAM.

d. Applicant must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

e. The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times.* To be considered, applications must be submitted no later than 5:00 p.m. Eastern Time (ET) on December 24, 2024.

5. *Funding Restrictions.* Funds from loans guaranteed under this program may only be used in accordance with this notice, the program regulations, and the RE Act.

*6. Other Submission Requirements.* Each applicant is required to submit such other application documents and submissions deemed necessary by the Secretary for evaluation of applications.

**E. Application Review Information**

1. *Criteria.* Each application will be reviewed by the Secretary to determine whether it is eligible under 7 CFR 1720.5, the information required under 7 CFR 1720.6 is complete, and the proposed guaranteed bond complies with applicable statutes and regulations. The Secretary can at any time reject an application that fails to meet these requirements.

2. *Review and Selection Process.* Applications will be subject to a substantive review, on a competitive basis, by the Administrator based upon the evaluation factors listed in 7 CFR 1720.7(b). The Administrator may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS will notify the applicant in writing of the Administrator's approval or denial of an application. Approvals for guarantees will be conditioned upon compliance with 7 CFR 1720.4 and 7 CFR 1720.6. The Administrator reserves the discretion to approve an application for an amount that is less than the applicant's request.

Before an award decision is made by the Administrator, the Administrator shall request that FFB review the rating agency determination required by 7 CFR 1720.5(b)(2) as to whether the bond or note to be issued would receive an investment grade rating without regard to the guarantee.

**F. Federal Award Administration Information**

1. *Federal Award Notices.* RUS will send a commitment letter to an applicant once the guaranteed loan has been approved. Applicants must accept and commit to all terms and conditions of the guaranteed loan which are requested by RUS and FFB before the loan guarantee award can be obligated.

The requirements under 7 CFR 1720.8 must be met by the applicant prior to the endorsement of a guarantee by the Administrator. Each Guaranteed Lender will be required to enter into a Guarantee Agreement with RUS that contains the provisions described in 7 CFR 1720.8 (Issuance of the Guarantee), 7 CFR 1720.9 (Guarantee Agreement), and 7 CFR 1720.12 (Reporting Requirements). The Guarantee Agreement will also obligate the Guaranteed Lender to pay, on a semi-annual basis, a guarantee fee equal to 30 basis points (0.30 percent) of the outstanding principal amount of the guaranteed loan (See 7 CFR 1720.10).

2. *Administrative and National Policy Requirements.* Applicants must accept and commit to all terms and conditions of the guaranteed loan which are requested by RUS and FFB as follows:

a. Compliance conditions. In addition to the standard conditions placed on the 313A Program or conditions requested by RUS to ensure loan security and statutory compliance, applicants must comply with the following conditions:

(1) Each Guaranteed Lender selected under the 313A Program will be required to post collateral for the benefit of RUS in an amount at least equal to the aggregate amount of loan advances made to the Guaranteed Lender under the 313A Program.

(2) The pledged collateral (the Pledged Collateral) shall consist of outstanding notes or bonds payable to the Guaranteed Lender (the Eligible Instruments) and shall be placed on deposit with a collateral agent for the benefit of RUS. To be deemed Eligible Instruments that can be pledged as collateral, the notes or bonds to be pledged (i) cannot be classified as non-performing, impaired, or restructured under generally accepted accounting principles; special mention loans as defined by the Office of the Comptroller of the Currency; or any other elevated risk categories used by the Guaranteed Lender, (ii) must be free and clear of all liens other than the lien created for the benefit of RUS, (iii) cannot be comprised of more than 30 percent of bonds or notes from generation and transmission borrowers, (iv) cannot have more than 5 percent of bonds and notes be from any one particular borrower and (v) cannot be unsecured notes.

(3) The Guaranteed Lender will be required to place a lien on the Pledged Collateral in favor of RUS (as secured party) at the time that the Pledged Collateral is deposited with the collateral agent. RUS will have the right, in its sole discretion, within 14 business days of the Guaranteed Lender's written request to pledge Pledged Collateral, to reject any of the Pledged Instruments and require the Guaranteed Lender to substitute other Pledged Instruments as collateral with the collateral agent. Prior to receiving any advances under the 313A Program, the Guaranteed Lender will be required to enter into a pledge agreement, satisfactory to RUS, with a banking institution serving as collateral agent.

(4) The Guaranteed Lender will be required to agree not to take any action that would have the effect of reducing the value of the pledged collateral below the level described above.

(5) Applicants must certify to the RUS, the portion of their loan portfolio that is:

i. Refinanced RUS debt;

ii. Debt of borrowers for whom both RUS and the applicants have outstanding loans; and

iii. Debt of borrowers for whom both RUS and the applicant have outstanding concurrent loans pursuant to Section 307 of the RE Act, and the amount of Eligible Loans.

b. *Schedule of Loan Repayment:* The amortization method for the repayment of the guaranteed loan shall be repaid by the Guaranteed Lender: (i) in periodic installments of principal and interest,

(ii) in periodic installments of interest and, at the end of the term of the bond or note, as applicable, by the repayment of the outstanding principal, or (iii) through a combination of the methods described in (i) and (ii) above. The amortization method will be agreed to by RUS and the Guaranteed Lender.

c. *Geospatial Data.* Awardee, and any and all contracts entered into by the awardee with respect to the award, shall ensure that geospatial data required to be collected and provided to the agency, conforms with the requirements of USDA Department Regulation DR–3465–001 and the Geospatial Metadata Standards set forth in DM 3465–001, which can be obtained online at *https://www.usda.gov/directives/dr-3465-001.*

3. *Compliance with Federal Laws.* Applicants must comply with all applicable Federal laws and regulations.

a. The loan guarantee will be subject to the provisions contained in the appropriations act for FY 2025, once enacted by Congress. Prior appropriations acts have included prohibitions against RUS making awards to applicants having corporate felony convictions within the past 24 months or to applicants having corporate federal tax delinquencies. It is possible that such provisions will be included in the appropriations act for FY 2025.

b. An authorized official within your organization must execute, date, and return the loan commitment letter to RUS within 14 calendar days from the date of the letter, otherwise the commitment will be voided.

4. *Reporting.* Guaranteed Lenders are required to comply with the financial reporting requirements and Pledged Collateral review and certification requirements set forth in 7 CFR 1720.12.

**G. Federal Awarding Agency Contact(s)**

For general questions about this announcement, please contact the USDA Rural Development contact provided in the **ADDRESSES** section of this notice.

**H. Other Information**

1. *Paperwork Reduction Act.* Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), OMB must approve all ''collection of information'' as a requirement for ''answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons'' (44 U.S.C. 3502(3)(A)). RUS has concluded that the reporting requirements contained in this funding announcement will involve fewer than 10 persons and do not require approval under the provisions of the Act.

2. *National Environmental Policy Act.* In accordance with 7 CFR 1970.53(a)(7), any proceeds to be used to refinance bonds or notes previously issued by the Guaranteed Lender for RE Act purposes are classified as categorical exclusions. However, for any new projects using 313A Program funds, applicants must consult with RUS and comply with the Agency regulations at 7 CFR part 1970.

3. *Federal Funding Accountability and Transparency Act.* All applicants, in accordance with 2 CFR part 25 (*ecfr.gov/current/title-2/part-25*), must be registered in SAM and have an UEI number as stated in Section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170 (*ecfr.gov/current/title-2/part-170*).

4. *Civil Rights Act.* RD has reviewed this NOFO in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis,'' to identify any major civil rights impacts the NOFO might have on program participants on the basis of age, race, color, national origin, sex, disability, gender identity (including gender expression), genetic information, political beliefs, sexual orientation, marital status, familial status, parental status, veteran status, religion, reprisal and/or resulting from all or a part of an individual's income being derived from any public assistance program. This NOFO is within a Guarantee-based program. Guarantees are not covered under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title IX of the Education Amendments Act of 1972, as amended, when the Federal assistance does not include insurance or interest credit loans. Lenders must comply with other applicable Federal laws, including Equal Employment Opportunities, the Equal Credit Opportunity Act, the Fair Housing Act, and the Civil Rights Act of 1964. Guaranteed loans that involve the construction of or addition to facilities that accommodate the public must comply with the Architectural Barriers Act Accessibility Standard. The borrower and lender are responsible for ensuring compliance with these requirements.

5. *Equal Opportunity for Religious Organizations.*

a. Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of, this part and any applicable constitutional and statutory requirements. USDA will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

b. A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

c. A faith-based organization may not use direct Federal financial assistance from USDA to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by USDA, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA

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

The completed AD–3027 form or letter must be submitted to USDA by:

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

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

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

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

**Andrew Berke,**

*Administrator, Rural Utilities Service, USDA Rural Development.*

[FR Doc. 2024–24930 Filed 10–24–24; 8:45 am]

**BILLING CODE 3410–15–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Commonwealth of the Northern Mariana Islands Advisory Committee to the U.S. Commission on Civil Rights

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of public meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Commonwealth of the Northern Mariana Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 9:30 a.m. ChST on Friday, November 8, 2024 (6:30 p.m. ET on Thursday, November 7, 2024). The purpose of this meeting is to discuss the Committee's report on the topic, *Access to Adequate Health Care for Incarcerated Individuals in the CNMI Judicial System.*

**DATES:** Friday, November 8, 2024, 9:30 a.m.–11:00 a.m. Chamorro Standard Time (Thursday, November 7, 2024, 6:30 p.m.–8:00 p.m. Eastern Time).

**ADDRESSES:** The meeting will be held via Zoom Webinar.

*Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_Pw4d_tpJSCKiIDzZIp2bjQ.*

*Join by Phone (Audio Only):* (833) 435–1820 USA Toll-Free; Meeting ID: 160 183 6370.

**FOR FURTHER INFORMATION CONTACT:** Kayla Fajota, Designated Federal Officer, at *kfajota@usccr.gov* or (434) 515–2395.

**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 for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@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 Kayla Fajota at *kfajota@usccr.gov*. Persons who desire additional information may contact the Regional Programs Coordination Unit at (434) 515–2395.

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, *www.box.com.* 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 the above phone number.

**Agenda**

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion: Report Findings
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: October 22, 2024.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2024–24887 Filed 10–24–24; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Commonwealth of the Northern Mariana Islands Advisory Committee to the U.S. Commission on Civil Rights

**AGENCY:** U.S. Commission on Civil Rights

**ACTION:** Notice of Public Meeting

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Commonwealth of the Northern Mariana Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 9:30 a.m. ChST on Wednesday, December 4, 2024 (6:30 p.m. ET on Tuesday, December 3, 2024). The purpose of this meeting is to discuss the Committee's report on the topic, *Access to Adequate Health Care for Incarcerated Individuals in the CNMI Judicial System.*

**DATES:** Wednesday, December 4, 2024, 9:30 a.m.–11 a.m. Chamorro Standard Time (Tuesday, December 3, 2024, 6:30 p.m.–8 p.m. Eastern Time)

**ADDRESSES:** The meeting will be held via Zoom Webinar.

*Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_D0I8XhnpR2yxW02ouY48YA.*

*Join by Phone (Audio Only):* (833) 435–1820 USA Toll-Free; Meeting ID: 160 106 3153.

**FOR FURTHER INFORMATION CONTACT:** Kayla Fajota, Designated Federal Officer, at *kfajota@usccr.gov* or (434) 515–2395.

**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 for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@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 Kayla Fajota at *kfajota@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (434) 515–2395.

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, *www.box.com.* 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 the above phone number.

**Agenda**

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion: Report Findings
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: October 22, 2024

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2024–24888 Filed 10–24–24; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Office of the Secretary

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Research Performance Progress Report (RPPR)

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 June 28, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* Office of the Secretary, Commerce.

*Title:* Research Performance Progress Report (RPPR).

*OMB Control Number:* 0690–0032.

*Form Number(s):* None.

*Type of Request:* Regular submission. Extension of a currently approved collection.

*Number of Respondents:* 2,050.

*Average Hours per Response:* The annual progress reports range from a minimum of 2 hours to a maximum of 15 hours, depending on the type of research project being supported.

*Total Annual Burden Hours:* 82,000 hours.

*Needs and Uses:* This Research Performance Progress Report (RPPR) directly benefits award recipients by making it easier for them to administer Federal grant and cooperative agreement programs through standardization of the types of information required in performance reports—thereby reducing their administrative effort and costs. The RPPR also makes it easier to compare the outputs, outcomes, etc. of research programs across the government.

The RPPR resulted from an initiative of the Research Business Models (RBM) Subcommittee of the Committee on Science (CoS), a committee of the National Science and Technology Council (NSTC). One of the RBM Subcommittee's priority areas is to create greater consistency in the administration of Federal research awards. Given the increasing complexity of interdisciplinary and interagency research, it is important for Federal agencies to manage awards in a similar fashion. The RPPR is used by agencies that support research and research-related activities for use in submission of progress reports. It is intended to replace other performance reporting formats currently in use by agencies. The RPPR does not change the performance reporting requirements specified in 2 CFR part 215 (OMB Circular A–110) and the Common Rule implementing OMB Circular A–102. Each category in the RPPR is a separate reporting component. Agencies will direct recipients to report on the one mandatory component (''Accomplishments''), and may direct them to report on optional components, as appropriate. Within a particular component, agencies may direct recipients to complete only specific questions, as not all questions within a given component may be relevant to all agencies.

Agencies may develop an agency- or program-specific component, if necessary, to meet programmatic requirements, although agencies should minimize the degree to which they supplement the standard components. Such agency- or program specific requirements will require review and clearance by OMB.

*Affected Public:* State and Local governments.

*Frequency:* Quarterly.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C. 131 and 182.

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 0690–0032.

**Sheleen Dumas,**

*Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2024–24842 Filed 10–24–24; 8:45 am]

**BILLING CODE 3510–17–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of National Advisory Council on Innovation and Entrepreneurship Meeting

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice of an open meeting.

**SUMMARY:** The National Advisory Council on Innovation and Entrepreneurship (NACIE) will hold a virtual public meeting on November 19,

2024. This will be the current NACIE members' seventh meeting since their appointments in 2022. During this meeting, NACIE expects to discuss strategies to unlock sources of capital to leverage federal investments, aligned with the U.S. Department of Commerce's existing work in this area.

**DATES:** November 19, 2024, 2:00 p.m.–3:00 p.m. Eastern Time (ET).

**ADDRESSES:** The meeting will be held virtually with no in-person component or option. Teleconference or web conference connection information will be published prior to the meeting along with the agenda on the NACIE website at *https://www.eda.gov/strategic-initiatives/national-advisory-council-on-innovation-and-entrepreneurship/meetings.*

**FOR FURTHER INFORMATION CONTACT:** Eric Smith, Office of the Assistant Secretary, 1401 Constitution Avenue NW, Room 78018, Washington, DC 20230; email: *nacie@doc.gov;* telephone: +1 202 482 8001. Please reference ''NACIE November 2024 Meeting'' in the subject line of your correspondence.

**SUPPLEMENTARY INFORMATION:** NACIE, established pursuant to section 25(c) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3720(c)), is a Federal Advisory Committee Act committee that provides advice directly to the Secretary of Commerce.

NACIE has been charged with developing a national entrepreneurship strategy that strengthens America's ability to compete and win as the world's leading startup nation and as the world's leading innovator in critical emerging technologies. NACIE also has been charged with identifying and recommending solutions to drive the innovation economy, including growing a skilled STEM workforce and removing barriers for entrepreneurs ushering innovative technologies into the market. The Council facilitates federal dialogue with the innovation, entrepreneurship, and workforce development communities. Throughout its history, NACIE has presented recommendations to the Secretary of Commerce along the research-to-jobs continuum, such as increasing access to capital, growing and connecting entrepreneurial communities, fostering small business-driven research and development, supporting the commercialization of key technologies, and developing the workforce of the future.

The final agenda for the meeting will be posted on the NACIE website at *https://www.eda.gov/strategic-initiatives/national-advisory-council-on-innovation-and-entrepreneurship/meetings* prior to the meeting. Any member of the public may submit pertinent questions and comments concerning NACIE's affairs at any time before or after the meeting. Comments may be submitted to Eric Smith (see contact information above). Those wishing to listen to the proceedings can do so via teleconference or web conference (see above). Copies of the meeting minutes will be available by request within 90 days of the meeting date.

Date: October 22, 2024.

**Peter Langlois,**

*Group Federal Officer.*

[FR Doc. 2024–24864 Filed 10–24–24; 8:45 am]

**BILLING CODE 3510–24–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### National Advisory Council on Innovation and Entrepreneurship (NACIE); Solicitation of Applications and Nominations

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice of opportunity to apply for membership on the National Advisory Council on Innovation and Entrepreneurship (NACIE).

**SUMMARY:** The Department of Commerce (DOC) is currently seeking applications for membership on the National Advisory Council on Innovation and Entrepreneurship (NACIE). NACIE advises the Secretary of Commerce (the Secretary) on matters related to accelerating innovation and entrepreneurship, advancing the commercialization of research and development, promoting workforce development, and other related matters.

**DATES:** Applications for consideration for membership must be received by the U.S. Economic Development Administration (EDA) by 5:00 p.m. Eastern Time (ET) on December 15, 2024. EDA will continue to accept applications under this notice for three years from the deadline to fill any vacancies.

**ADDRESSES:** Please submit application information by email to *nacie@doc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For further information, interested parties can contact Eric Smith, Acting Deputy Assistant Secretary for Policy at telephone: +1 202 482 8001; email: *nacie@doc.gov.*

**SUPPLEMENTARY INFORMATION:** An agency within the U.S. Department of Commerce (DOC), EDA invests in communities and supports regional collaboration to create jobs for U.S. workers, promote American innovation, and accelerate long-term sustainable economic growth. The mission of EDA is to lead the federal economic development agenda by promoting competitiveness and preparing the nation's regions for growth and success in the worldwide economy. Additional information regarding EDA can be found at *https://eda.gov/.*

NACIE's establishment is authorized by section 25(c) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended, 15 U.S.C. 3720(c). Additional information regarding NACIE can be found at *https://www.eda.gov/strategic-initiatives/national-advisory-council-on-innovation-and-entrepreneurship.*

EDA is accepting applications and nominations for membership on NACIE for one-year, two-year, and three-year terms beginning on the date of appointment. Members will be selected based on their ability to advise the Secretary on matters relating to the acceleration of innovation and the support for and expansion of entrepreneurship including but not limited to the matters set forth in 15 U.S.C. 3720(b) and

- strategies to support geographic diversification and growth of America's innovation clusters and technology hubs all throughout the United States;
- the development of federal policy and program recommendations, through policy and program vehicles such as the CHIPS and Science Act and the Inflation Reduction Act, to support economic growth, resilience, high-growth entrepreneurship, and innovation across business sectors and geographies;
- policies that increase equitable access to, and representation in, entrepreneurship opportunities by historically excluded populations, communities, and geographies;
- insights into opportunities to increase American innovation and competitiveness in industries of the future, including but not limited to artificial intelligence, biotechnology, advanced computing, advanced materials and manufacturing, cybersecurity, and clean energy technologies;
- the development and expansion of successful talent and workforce development initiatives to create high quality jobs and to support American innovation and competitiveness; and
- the identification and promotion of best practices that accelerate the commercialization of research and intellectual property.

NACIE will identify and recommend solutions to issues critical to driving the innovation economy, including enabling entrepreneurs and firms to successfully access and develop a skilled, globally competitive workforce. NACIE will also serve as a vehicle for ongoing dialogue with the innovation, entrepreneurship, and workforce development communities, including but not limited to business and trade associations. The duties of NACIE are solely advisory, and it shall report to the Secretary through EDA and the Office of the Secretary.

NACIE members shall be selected in a manner that ensures that NACIE is balanced and diverse, including diverse perspectives and expertise with regard to innovation, technology commercialization, and related capital and talent and workforce development issues. Considerations when making appointments will also include geographic diversity; diversity in the size of the appointee's company or organization; diversity of technology sector; and representation of workers, business and industry, academic institutions, nonprofit and nongovernmental organizations, and other stakeholders.

Additional factors which may be considered in the selection of NACIE members include each candidate's proven experience in the design, creation, or improvement of innovation systems; commercialization of research and development; entrepreneurship; business-driven talent development that leads to a globally competitive workforce; and the creation and growth of innovation- and entrepreneurship-focused ecosystems. Members' affiliations may include, but are not limited to, successful executive-level business leaders; entrepreneurs; innovators; investors; post-secondary education leaders; directors of workforce and training organizations; and other experts drawn from industry, government, academia, philanthropic foundations with a demonstrated track record of research or support of innovation, entrepreneurship, or workforce development, and non-governmental organizations. Applicants and nominees will be evaluated consistent with factors specified in this notice and their ability to carry out the goals of NACIE. Appointments will be made without regard to political affiliation.

*Membership.* Members shall serve at the discretion of the Secretary. Because members will be appointed as experts, members will be considered special government employees (SGEs). Members participating in NACIE meetings and events should expect to be responsible for their travel, living, and other personal expenses. Meetings will be held regularly and not less than twice annually, usually in Washington, DC. Members are required to attend a majority of NACIE's meetings. For the first meeting of the Council, members may be required to arrive one day early for onboarding and orientation activities.

*Eligibility.* Eligibility for membership is limited to (i) U.S. citizens who are not full-time employees of the United States government or of a foreign government; (ii) are not required to register with the Department of Justice as a foreign agent under the Foreign Agents Registration Act of 1938, as amended, and (iii) are not federally-registered lobbyists.

*Application Procedure.* For consideration, an applicant or nominator should submit:

(1) Applicant's or nominee's name and title;

(2) the applicant's or nominee's personal resume and short bio (fewer than 300 words);

(3) confirmation that the applicant or nominee meets all eligibility criteria, including a signed affirmative statement that the applicant is:

(i) a U.S. citizen who is not a full-time employee of the United States government or of a foreign government;

(ii) not required to register with the Department of Justice as a foreign agent under the Foreign Agents Registration Act of 1938, as amended; and

(iii) not a federally-registered lobbyist; and

(5) all relevant contact information, including mailing address, email address, phone number, and support staff information where relevant.

Applications and nominations must be submitted via email to *nacie@doc.gov* with a subject line that includes the text ''[NACIE Application]'' (without quotation marks).

Appointments of members to NACIE will be made by the Secretary.

Dated: October 22, 2024.

**Peter Langlois,**

*Group Federal Officer.*

[FR Doc. 2024–24865 Filed 10–24–24; 8:45 am]

**BILLING CODE 3510–24–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Materials and Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials and Equipment Technical Advisory Committee will meet on November 7, 2024, 10:00 a.m.–3:00 p.m., Eastern Standard Time, in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). The Committee advises and assists the Secretary of Commerce (Secretary) and other Federal officials and agencies with respect to actions designed to carry out the policy set forth in section 1752(1)(A) of the Export Control Reform Act. The purpose of the meeting is to have Committee members and U.S. Government representatives mutually review updated technical data and policy-driving information that has been gathered.

**Agenda**

*Open Session*

1. Opening Remarks and Introduction by BIS Senior Management.
2. Presentation: Overview of Livingston International.
3. Presentation: Hydraulic Institute Valve Association.
4. Public comments and Proposals.

*Closed Session*

5. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Betty Lee at *Betty.Lee@bis.doc.gov.* A limited number of seats will be available for members of the public to attend the open session in person. Reservations are not accepted. *Special Accommodations:*

Individuals requiring special accommodations to access the public meeting should contact Ms. Betty Lee no later than Thursday, October 31, 2024, so that appropriate arrangements can be made. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of materials to the Committee members, the Committee suggests that members of the public forward their materials prior to the meeting to Ms. Springer via email. Material submitted by the public will be made public and therefore should not contain confidential information. Meeting materials from the public session will be accessible via the Technical Advisory Committee (TAC) site at *https://tac.bis.gov,* within 30-days after the meeting. The Deputy Assistant Secretary for Administration, performing the non-exclusive functions and duties of the Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on May 6, 2024, pursuant to 5 U.S.C. 1009(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1) and 1009(a)(3). The remaining portions of the meeting will be open to the public.

Meeting cancellation: If the meeting is cancelled, a cancellation notice will be posted on the TAC website at *https://tac.bis.doc.gov.*

For more information, contact Ms. Lee.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2024–24779 Filed 10–24–24; 8:45 am]

**BILLING CODE 3510–JT–P**

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; MBDA National Minority Enterprise Awards Program Requirements

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 August 26, 2024, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* Minority Business Development Agency (MBDA), Commerce.

*Title:* MBDA National Minority Enterprise Awards Program Requirements.

*OMB Control Number:* 0640–0025.

*Form Number(s):* None.

*Type of Request:* Regular; Revision of a currently approved collection.

*Number of Respondents:* 250.

*Average Hours per Response:* 1 hour.

*Burden Hours:* 250.

*Needs and Uses:* One of MBDA's largest initiatives is the annual National Minority Enterprise Development (MED) Week Conference. The conference recognizes the role that minority entrepreneurs play in building the American economy through the creation of jobs, products and services, in addition to supporting their local communities. It includes the private, non-profit, and government sectors and provides a venue to discuss critical business issues affecting minority business as well as strategies to foster the growth and competitiveness of the minority business community. The MED Week Awards Program is a key element in the conference as it celebrates the outstanding achievements of minority entrepreneurs. MBDA has created categories of awards including Minority Construction Firm of the Year, Minority Manufacturer of the Year, Minority Retail or Service Firm of the Year, Minority Technology Firm of the Year, Minority Supplier Distributor of the Year, Media Award, Distinguished Supplier Diversity Award, Access to Capital Award, the Ronald H. Brown Leadership Award, and the Abe Venable Award for Lifetime Achievement. Nominations for these awards are to be opened to the public. MBDA must collect two kinds of information: (a) Information identifying the nominee and nominator and (b) information explaining why the nominee should be given the award. The information will be used to determine those applicants best meeting the pre-announced selection criteria. Use of a nomination form standardizes and limits the information collected as part of the nomination process. This makes the competition fair and eases any burden on applicants and reviewers alike. Participation in the competition is voluntary. The awards are strictly honorary.

*Affected Public:* Business or other for-profit organizations; not-for-profit institutions; State, local, or tribal government; Federal government.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

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.

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 0640–0025.

**Sheleen Dumas,**

*Departmental PRA Clearance Officer, Office of the Under Secretary of Economic Affairs, Commerce Department.*

[FR Doc. 2024–24927 Filed 10–24–24; 8:45 am]

**BILLING CODE 3510–21–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XE322]**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to SouthCoast Wind Energy Marine Site Characterization Surveys Off the Coast of Massachusetts and Rhode Island

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

**ACTION:** Notice; issuance of renewal incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a renewal incidental harassment authorization (IHA) to SouthCoast Wind Energy, LLC

(SouthCoast Wind) to incidentally harass marine mammals incidental to activities associated with marine site characterization surveys off of Massachusetts and Rhode Island, specifically within the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (Lease) Area OCS–A 0521 and associated export cable route (ECR).

**DATES:** This renewal IHA is valid from the date of issuance through May 11, 2025.

**ADDRESSES:** Electronic copies of the original application, renewal request, and supporting documents (including the **Federal Register** notices of the original proposed and final authorizations, and the previously issued and renewal IHAs), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Gatzke, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

## Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are promulgated or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). NMFS must also prescribe requirements pertaining to monitoring and reporting of such takings. The definition of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in the MMPA and the NMFS's implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.103).

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial IHA, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal of an IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

## History of Request

On May 11, 2023, NMFS issued an IHA to SouthCoast Wind to take marine mammals incidental to marine site characterization off Massachusetts and Rhode Island in the New England region, specifically within BOEM Lease Area OCS–A–0521 and associated ECR areas (88 FR 31678, May 18, 2023), effective from May 12, 2023 through May 11, 2024. This 2023 IHA was substantially similar to the prior 2021 IHA associated with identical survey activities in the same lease area (86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021) and, therefore, **Federal Register** notices for the 2023 IHA relied heavily upon information originally presented in **Federal Register** notices for the 2021 IHA.

On July 1, 2024, NMFS received an application from SouthCoast Wind for the renewal of the initial 2023 IHA. As described in the application for renewal, the activities for which authorization of incidental take is requested consist of activities that are covered by the initial authorization but were not completed prior to its expiration. As required, the applicant also provided a monitoring report (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-southcoast-wind-energy-llcs-marine-site-characterization*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. The notice of the proposed renewal incidental harassment authorization was published on September 19, 2024 (89 FR 76796). There are no changes from the proposed authorization to this final authorization.

**Description of the Specified Activities and Anticipated Impacts**

Under the initial IHA, SouthCoast Wind planned to conduct marine site characterization surveys, including high-resolution geophysical (HRG) surveys, in waters off Massachusetts and Rhode Island, specifically within BOEM Lease Area OCS–A 0521 and associated ECR areas. SouthCoast Wind's 2023 survey plan included a total of approximately 2,700 km tracklines. However, only 718 km of survey tracklines were completed. SouthCoast Wind was unable to complete the planned surveys associated with the 2023 IHA prior to its expiration.

Under the renewal IHA, SouthCoast Wind is planning to complete a subset of the activities during the remainder of October 2024—May 2025, using the same survey equipment, methods and types of vessels as those previously analyzed. The 2024–2025 surveys will also be within the same survey area described in the applications for the 2021 and 2023 IHAs. The planned survey trackline, the number of active sound source days (the number of days the vessels will be actively emitting sound into the water column), and vessel days (number of days that the vessels will be present in the area) will be reduced in 2024–2025. A total of up to 700 km (435 mi) of trackline (500 km (311 mi) in the Lease Area (Inter-Array Cable surveys) and 200 km (124 mi) in the ECC will be surveyed (table 1). On average, approximately 50 km (31 mi) will be surveyed per day within the Lease Area and 15 km (9 mi) per day within the ECC, resulting in 10 active sound source days in the Lease Area and approximately 14 active sound source days in the ECC (for a total of approximately 24 active sound source days in the entire project area). The previous IHA application described up to four vessels being utilized concurrently to conduct the surveys, and this would be unchanged under the 2024–2025 renewal IHA. There are no changes to mitigation and monitoring requirements from the 2023–2024 IHA to this 2024 IHA renewal. The only changes under this renewal IHA are that fewer trackline kilometers will be surveyed, there will be fewer sound source days, and fewer vessel days. More information can be found in the following **Federal Register** notices (86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021; 88 FR 14335, March 8, 2023; 88 FR 31678, May 18, 2023; 89 FR 76796, September 19, 2024).

TABLE 1—GEOPHYSICAL SURVEYS COMPLETED IN 2023–2024 AND TRACKLINES REMAINING

[In Km]

| Location | IHA trackline planned 2023–2024 | Total trackline completed 2023–2024 | Planned trackline 2024–2025 |
|---|---|---|---|
| ECC—Potential HDD | 750 | 0 | [a] 200 |
| Lease Area—Inter-array Cable | 1,950 | 718 | [a] 500 |

[a] The length of the planned trackline is reduced from the original scope described for 2023 IHA.

The potential impacts of SouthCoast Wind's planned activities on marine mammals involve potential acoustic stressors and are unchanged from the impacts described in the **Federal Register** notices for the 2021 IHA (86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021). Underwater sound, resulting from particular components of SouthCoast Wind's HRG survey activities, has the potential to result in incidental take of marine mammals, in the form of Level B harassment only, in the specified geographic region. This renewal IHA is for a subset of the work that was not completed by the expiration date of the initial IHA. The renewal IHA authorizes incidental take, by Level B harassment only, of 15 species (comprising 15 stocks) of marine mammals for a subset of marine site characterization survey activities to be completed in less than 1 year (*i.e.,* by May 11, 2025), in the same general area, using survey methods identical to those conducted under the initial IHA. Neither SouthCoast Wind nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. Take by Level A harassment (injury) is unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use. Therefore, the anticipated effects on marine mammals and the affected stocks also remain the same. All mitigation, monitoring, and reporting measures would remain exactly as required by the initial IHA (88 FR 31678, May 18, 2023).

*Detailed Description of the Activity*

A detailed description of the marine site characterization survey activities for which incidental take is authorized here may be found in the **Federal Register** notices for the 2021 IHA (86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021). The specific geographic region, survey location, specified activities, including the types of survey equipment and number of survey vessels planned for use, are identical to those described in these previous notices, with the exception that the scale of work is reduced. Only a subset of the planned HRG work was completed under the 2023 IHA (88 FR 14335, March 8, 2023; 88 FR 31678, May 18, 2023). Between May 18 and July 10, 2023, a total of 55 survey days and 718 km (446 mi) of tracklines were completed. SouthCoast Wind proposes to conduct a subset (700 km (435 mi)) of the tracklines that were not completed prior to the expiration of the 2023 IHA (table 1).

*Description of Marine Mammals*

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notices of the proposed IHAs for the previous authorizations (86 FR 27393, May 20, 2021; 88 FR 14335, March 8, 2023). Since the publication of the final **Federal Register** notice (88 FR 31678, May 18, 2023), NMFS has reviewed the monitoring data from the prior IHA, the draft 2023 Stock Assessment Report (SAR), which included updates to certain stock abundances since the 2023 IHA was issued, information on relevant Unusual Mortality Events (UME), and other scientific literature.

The draft 2023 SAR updated the population estimate (Nbest) of North Atlantic right whales (NARW) from 338 to 340 and annual mortality and serious injury from 31.2 to 27.2. The updated population estimate in the draft 2023 SAR is based upon sighting history through December 2021 (89 FR 5495, January 29, 2024). Total annual average observed NARW mortality during the period 2017–2021 was 7.1 animals and annual average observed fishery mortality was 4.6 animals, however,

estimates of 27.2 total mortality and 17.6 fishery mortality account for undetected mortality and serious injury (89 FR 5495, January 29, 2024). In October 2023, NMFS released a technical report identifying that the NARW population size based on sighting history through 2022 was 356 whales, with a 95 percent credible interval ranging from 346 to 363 (Linden, 2023).

The draft 2023 SARs include updates for additional marine mammal species and stocks (*i.e.,* NARW, fin whale, sei whale, minke whale, sperm whale, Atlantic spotted dolphin, Atlantic white-sided dolphin, bottlenose dolphin (Western North Atlantic—Offshore stock), common dolphin, long-finned pilot whales, Risso's dolphin, harbor porpoise, and gray seal), which are described in table 2 of the **Federal Register** notice proposing this renewal IHA (89 FR 76796, September 19, 2024). For species for which there has been no change between the finalization of the final 2022 SARs to the release of the draft 2023 SARs, NMFS has noted that below.

*Potential Effects on Marine Mammals and Their Habitat*

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized may be found in the **Federal Register** notices for the 2021 IHA (86 FR 11930, March 1, 2021; 86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021) and are incorporated by reference in the 2023 IHA (88 FR 14335, March 8, 2023; 88 FR 31678, May 18, 2023). NMFS has reviewed the monitoring data from the initial 2023 IHA, recent draft SARs, information on relevant UMEs, other scientific literature, and public comments, and determined that there is no new information that affects our initial analysis of impacts on marine mammals and their habitat.

*Estimated Take*

A detailed description of the methods and inputs used to estimate take for the specified activity is found in the **Federal Register** notices for the 2021 IHA (86 FR 11930, March 1, 2021; 86 FR 27393, May 20, 2021; 86 FR 38033, July 19, 2021), and is incorporated by reference in both the proposed 2023 IHA (the initial authorization) (88 FR 14335, March 8, 2023), and the proposed renewal IHA (89 FR 76796, September 19, 2024). The applicable source levels and marine mammal density/occurrence data used to estimate take remain unchanged from those used in support of the initial IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the initial IHA. The number of takes authorized in this renewal IHA are a subset of the initial authorized takes that better represent the amount of activity that SouthCoast Wind has left to complete. These estimated takes, which reflect the remaining survey days, are indicated below in table 2.

TABLE 2—NUMBER OF AUTHORIZED TAKES, BY LEVEL B HARASSMENT, AND PERCENTAGES OF EACH STOCK ABUNDANCE FOR THE 2024–2025 SURVEY PERIOD

| Species | NMFS stock abundance | Combined density based calculated takes | Authorized takes | Percentage of stock abundance |
|---|---|---|---|---|
| NARW | 340 | 1.2 | [a] 2 | 0.59 |
| Fin whale | 6,802 | 0.5 | [c] 3 | 0.04 |
| Sei whale | 6,292 | 0.3 | [a] 2 | 0.03 |
| Minke whale | 21,968 | 2.7 | 3 | 0.02 |
| Humpback whale | 1,396 | 0.5 | [b] 11 | 0.86 |
| Sperm whale | 5,895 | 0.1 | [a] 2 | 0.03 |
| Atlantic white-sided dolphin | 93,233 | 5.8 | [a] 28 | 0.03 |
| Atlantic spotted dolphin | 31,506 | 1.0 | [a] 29 | 0.09 |
| Common bottlenose dolphin | 64,587 | 3.0 | [b] 31 | 0.05 |
| Long finned pilot whale | 39,215 | 0.4 | [a] 8 | 0.02 |
| Risso's dolphin | 44,067 | 0.5 | [a] 5 | 0.02 |
| Common dolphin | 93,100 | 49.3 | [b] 429 | 0.46 |
| Harbor porpoise | 85,765 | 19 | 19 | 0.02 |
| Gray seal | 27,911 | 32.4 | 32 | 0.12 |
| Harbor seal | 61,366 | 14.4 | 14 | 0.24 |

[a] Take increased to the species assumed mean group size (86 FR 38033, July 19, 2021; 88 FR 31678, May 18, 2023).
[b] Take increased to equal the estimate of potential take based on previous Protected Species Observer (PSO) data (86 FR 38033, July 19, 2021; 88 FR 31678, May 18, 2023).
[c] Average group size for fin whales is assumed here as two. However, we increase the authorized take number to three to equal the number of whales reported observed within the estimated harassment zone by SouthCoast during 2023–2024 survey effort.

*Description of Mitigation, Monitoring and Reporting Measures*

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (88 FR 31678, May 18, 2023), and the discussion of the least practicable adverse impact included in that document remains accurate. The following identical measures are included in this renewal:

- *Ramp-up:* A ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels (*i.e.,* any acoustic source with a non-binary switch) at the start or re-start of survey activities;
- *PSOs:* A minimum of one NMFS-approved PSO must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs would be on duty during nighttime operations;
- *Pre-Operation Clearance Protocols:* Prior to initiating HRG survey activities, SouthCoast Wind would be required to implement a 30-minute pre-operation clearance period. If any marine mammals are detected within the shutdown zones prior to or during ramp-up, the HRG equipment would be shut down (as described below);
- *Shutdown Zones:* If an HRG source is active and a marine mammal is

observed within or entering a relevant shutdown zone, an immediate shutdown of the HRG survey equipment would be required. We note that this shutdown requirement would be waived for certain genera of small delphinids (*i.e., Delphinus, Lagenorhynchus, Stenella,* or *Tursiops*) and pinnipeds;

- *Vessel Strike Avoidance Measures:* 500 m (1, 640 feet (ft)) separation distances for NARWs and other large Endangered Species Act (ESA) listed whales (*i.e.,* fin whale, sei whale, and sperm whale), 100 m (328 ft) for other non-ESA listed baleen whales (*i.e.,* minke whale and humpback whale), and 50 m (164 ft) for all other marine mammals); as well as restricted vessel speeds and operational maneuvers; and
- *Reporting:* SouthCoast Wind would submit a marine mammal report within 90 days following their completion of the surveys.

**Comments and Responses**

A notice of NMFS' proposal to issue a renewal IHA to SouthCoast Wind was published in the **Federal Register** on September 19, 2024 (89 FR 76796). That notice either described, or referenced descriptions of, SouthCoast Wind's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. During the 15-day public comment period, NMFS received one comment letter from an environmental non-governmental organization, Oceana, Inc. The comments, and NMFS' responses, are summarized below, and the letter is available online on NMFS' website: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* Please review the comment letter found on NMFS' website for full details regarding the comments and associated rationale.

*Comment 1:* Oceana raised objections to NMFS' proposed renewal process for potential extension of the 1-year IHA with an abbreviated 15-day public comment period. Oceana recommended that an additional 30-day public comment period is necessary for any IHA renewal request.

*Response:* NMFS' IHA renewal process meets all statutory requirements. In prior responses to comments about IHA renewals (*e.g.,* 84 FR 52464, October 2, 2019; 85 FR 53342, August 28, 2020), NMFS explained the IHA renewal process is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, and further promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue to implement the existing renewal process.

All IHAs issued, whether an initial IHA or a renewal, are valid for a period of not more than 1 year. The public has 30 days to comment on proposed IHAs, with a cumulative total of 45 days for IHA renewals. The notice of the proposed IHA published in the **Federal Register** on March 8, 2023 (88 FR 14335) provided a 30-day public comment period and made clear that NMFS was seeking comment on the proposed IHA and the potential issuance of a renewal IHA. As detailed in the **Federal Register** notice for the proposed IHA and on the agency's website, eligibility for renewal is determined on a case-by-case basis, renewals are subject to an additional 15-day public comment period, and the renewal is limited to up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of the proposed IHA notice or the activities described in the Description of Proposed Activities section of the proposed IHA notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the Dates and Duration section of the proposed notice. NMFS' analysis of the anticipated impacts on marine mammals caused by the applicant's activities covers both the initial IHA period and the possibility of a 1-year renewal. Therefore, a member of the public considering commenting on a proposed initial IHA also knows exactly what activities (or subset of activities) would be included in a proposed renewal IHA, the potential impacts of those activities, the maximum amount and type of take that could be caused by those activities, the mitigation and monitoring measures that would be required, and the basis for the agency's negligible impact determinations, least practicable adverse impact findings, small numbers findings, and (if applicable) the no unmitigable adverse impact on subsistence use finding—all the information needed to provide complete and meaningful comments on a possible renewal at the time of considering the proposed initial IHA. Members of the public have the information needed to meaningfully comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one.

Renewal requests must include documentation that NMFS uses to verify eligibility for renewal, *i.e.,* that the activities are identical or nearly identical to those in the initial IHA such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS also confirms, among other things, that the activities would occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request must also contain preliminary monitoring data, in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period, which includes NMFS' direct notice to anyone who commented on the proposed initial IHA, provides the public an opportunity to review these documents, provide any additional pertinent information, and comment on whether NMFS' criteria for renewal have been met. Combined together, the 30-day public comment period on the initial IHA and the additional 15-day public comment period on the renewal of the same or nearly identical activities, provides the public with a total of 45 days to comment on the potential for renewal of the IHA.

In addition to the IHA renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the description of the process and express invitation to comment on specific potential renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further clarification of the process through responses to comments such as these, posting of documents on the agency's website, and provision of 30 or 45 (cumulative) days for public review and comment on all proposed initial IHAs and renewals respectively, NMFS has ensured that the public is ''invited and encouraged to participate fully in the agency's decision-making process,'' as Congress intended.

*Comment 2:* Oceana stated that NMFS must rely upon the best available science, and suggested that NMFS has not done so, specifically referencing information regarding the NARW such as updated population estimates, habitat usage in the survey area, and seasonality information. Oceana specifically

asserted that NMFS is not using the best available scientific evidence with regards to the NARW population estimate. Specifically, for population estimates, Oceana suggests the NARW Consortium's Annual Report Card (Report Card) is the best available science.

*Response:* NMFS agrees the best available scientific evidence should be used for assessing NARW abundance estimates. As detailed in the **Federal Register** notice for the proposed renewal IHA, NMFS reviewed and relied on the draft 2023 SAR (89 FR 76796, Sept. 19, 2024). However, we note that whether the SAR value of 340 or the updated value of 356 (see below) is used does not affect the necessary determinations related to NARW and use of the lower SAR value is conservative. The draft 2023 SAR updated the population estimate (Nbest) of North Atlantic right whales from 338 to 340 and annual mortality and serious injury from 31.2 to 27.2. The updated population estimate in the draft 2023 SAR is based upon sighting history through December 2021 (89 FR 5495, January 29, 2024). Total annual average observed North Atlantic right whale mortality during the 2017–2021 period was 7.1 animals and annual average observed fishery mortality was 4.6 animals, however, estimates of 27.2 total mortality and 17.6 fishery mortality account for undetected mortality and serious injury (89 FR 5495, January 29, 2024). In October 2023, NMFS released a technical report identifying that the North Atlantic right whale population size based on sighting history through 2022 was 356 whales, with a 95 percent credible interval ranging from 346 to 363 (Linden, 2023). The North Atlantic Right Whale Consortium 2023 Report Card is available (*https://www.narwc.org/report-cards.html*), and presents the same population estimate as the NMFS 2023 technical report (Linden 2023). We note that this difference in abundance estimate does not change the estimated take of NARWs or authorized take numbers, nor does it meaningfully influence the required findings under the MMPA for the issuance of an IHA to SouthCoast Wind for the proposed survey activities.

In sum, NMFS considered the best available scientific evidence regarding both recent habitat usage patterns for the study area and up-to-date seasonality information in the notice of the proposed IHA, including consideration of existing biologically important areas (BIAs) and densities provided by Roberts *et al.* (2024). While the commenter has suggested that NMFS consider best available scientific evidence for recent habitat usage patterns and seasonality, the commenter has not offered any additional scientific information that it suggests should be considered best available scientific evidence.

*Comment 3:* Oceana noted that chronic stressors are an emerging concern for NARW conservation and recovery, and stated that chronic stress may result in energetic effects for NARWs. Oceana suggested that NMFS has not fully considered both the use of the area and the effects of both acute and chronic stressors on the health and fitness of NARWs, as disturbance responses in NARWs could lead to chronic stress or habitat displacement, leading to an overall decline in their health and fitness.

*Response:* NMFS agrees with Oceana that both acute and chronic stressors are of concern for NARW conservation and recovery. We recognize that acute stress from acoustic exposure is one potential impact of these surveys, and that chronic stress can have fitness, reproductive, *etc.* impacts at the population-level scale. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals, and recognizes that the surveys have the potential to impact marine mammals through behavioral effects and stress responses. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by SouthCoast Wind will create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. NMFS has prescribed a robust suite of mitigation measures, including extended distance shutdowns for NARW, that are expected to further reduce the duration and intensity of acoustic exposure, while limiting the potential severity of any possible behavioral disruption. The potential for chronic stress was evaluated in making the determinations presented in NMFS' negligible impact analyses.

SouthCoast Wind's survey area is near a known NARW foraging location in the New England region, as well as overlapping a small fraction of the migratory corridor used by NARW in a transitory manner for annual migratory activities. Given that the potential impacts for these types of surveys are expected to be low level, in part as a result of the brief periods where harassment-level noise exposure may be possible, we do not expect chronic effects to occur as a result of SouthCoast Wind's surveys. Furthermore, the limited range to the estimated harassment zone of the largest acoustic source (141 m (463 ft)) and the survey path within and near the SouthCoast Wind lease means that the area where NARWs are known to concentrate within Nantucket Shoals would not be impacted. Because of this, we do not expect effects to include reduced foraging opportunities for NARWs. NMFS does not expect acute or cumulative stress to be a detrimental factor to NARWs from SouthCoast Wind's described survey activities.

Lastly, NMFS does not find that the effects of SouthCoast Wind's survey may contribute to stunted growth rates as suggested by Oceana's comments. The activities associated with SouthCoast Wind's survey are outside the scope of activities described in the Stewart *et al.* (2021) paper, which finds that entanglements in fishing gear are associated with shorter whales. There is no evidence suggesting that the survey activities considered herein could have energetic effects similar to those caused by entanglement in fishing gear. Therefore, NMFS does not expect stunted growth rates to result from SouthCoast Wind's described survey activities.

*Comment 4:* Oceana asserted that NMFS must fully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed and potential activities on marine mammals and NARWs in particular and ensure that the cumulative effects are not excessive before issuing or renewing an IHA.

*Response:* Neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors. The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, this IHA, as well as

other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals (50 CFR 216.104(a)(1)). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, SouthCoast Wind was the applicant for the IHA, and we are responding to the specified activity as described in that application (and making the necessary findings on that basis).

Through the response to public comments in the 1989 implementing regulations (54 FR 40338, September 29, 1989), NMFS also indicated (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a National Environmental Protection Act (NEPA) analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations, *e.g.,* the 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; the 2017 Ocean Wind, LLC EA for site characterization surveys off New Jersey; and the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island. Cumulative impacts regarding issuance of IHAs for site characterization survey activities, such as those planned by SouthCoast Wind, have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion (CE) for issuance of SouthCoast Wind's IHA, which included consideration of extraordinary circumstances.

Separately, the cumulative effects of substantially similar activities in the northwest Atlantic Ocean have been analyzed in the past under section 7 of the ESA when NMFS has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Activities on the Atlantic Outer Continental Shelf in Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (*https://repository.library.noaa.gov/view/noaa/29291*).

Analyzed activities include those for which NMFS issued previous IHAs (82 FR 31562, July 7, 2017; 85 FR 21198, April 16, 2020; 86 FR 26465, May 10, 2021), which are similar to those planned by SouthCoast Wind under this current IHA request. This Biological Opinion determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually and cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes that, while issuance of this IHA is covered under a different consultation, this Biological Opinion remains valid. Additionally, to date, Biological Opinions have been developed and completed for several ongoing offshore wind construction projects, which all include ongoing HRG survey effort similar to that considered here (see the final Biological Opinions for Ocean Wind 1 (*https://repository.library.noaa.gov/view/noaa/49689*), Revolution Wind's original (*https://repository.library.noaa.gov/view/noaa/51759*) and reinitiated (*https://www.fisheries.noaa.gov/s3/2024-05/2024-Rev-Wind-BiOp-508.pdf*), CVOW–C (*https://repository.library.noaa.gov/view/noaa/55495*), Empire Wind (*https://repository.library.noaa.gov/view/noaa/55324*), Sunrise Wind (*https://repository.library.noaa.gov/view/noaa/55726*), New England Wind (*https://repository.library.noaa.gov/view/noaa/60610*), and Maryland Wind (*https://repository.library.noaa.gov/view/noaa/61632*)). These Biological Opinions for larger-scale construction and development projects have all assessed the cumulative activities occurring within the relevant project areas, which include HRG activities occurring under IHAs, as well as HRG surveys and other construction activities occurring under Incidental Take Regulations and associated issued Letters of Authorization. In all cases, the HRG surveys analyzed within these Biological Opinions are of substantially similar activities, using the same or similar acoustic sources as those planned for use by SouthCoast Wind under this renewal IHA. Based on this information, NMFS believes the discrete and cumulative effects have been adequately analyzed and considered under these existing documents.

*Comment 5:* Oceana states that NMFS must make an assessment of which activities, technologies, and strategies are truly necessary to achieve site characterization to inform development of the offshore wind projects and which are not critical, asserting that NMFS should prescribe the appropriate survey techniques. In general, Oceana stated that NMFS must require that all IHA applicants minimize the impacts of underwater noise to the fullest extent feasible, including through the use of best available technology and methods to minimize sound levels from geophysical surveys such as through the use of technically and commercially feasible and effective noise reduction and attenuation measures.

*Response:* The MMPA requires that an IHA include measures that will effect the least practicable adverse impact on the affected species and stocks and, in practice, NMFS agrees that the IHA should include conditions for the survey activities that will first avoid adverse effects on NARWs in and around the survey site, where practicable, and then minimize the effects that cannot be avoided. NMFS has determined that the IHA meets this requirement to effect the least practicable adverse impact. As part of the analysis for all marine site characterization survey IHAs, NMFS evaluated the effects expected as a result of the specified activity, made the necessary findings, and prescribed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to set the activities, technologies, and strategies that one may employ to meet their survey objectives.

*Comment 6:* Oceana states that SouthCoast Wind's activities will increase vessel traffic in and around the project area and that the IHA must include a vessel traffic plan to minimize the effects of increased vessel traffic.

*Response:* NMFS disagrees with Oceana's statement that the IHA must require a vessel traffic plan. During HRG surveys, there are no service vessels required. NMFS agrees that a vessel plan may be potentially appropriate for project construction, but it is not needed for marine site characterization surveys. A vessel traffic plan is not required because 24 total days of SouthCoast Wind HRG surveys are not expected to increase vessel traffic in the project area substantially in comparison to existing

vessel traffic. Vessel strike avoidance measures are required under the renewal IHA, and explained in detail in the response to comment number eight.

*Comment 7:* Oceana suggests that PSOs complement their survey efforts using additional technologies, such as infrared detection devices when in low-light conditions.

*Response:* NMFS agrees with Oceana regarding this suggestion and a requirement to utilize a thermal (infrared) device during low-light conditions was included in section 5(d)(i) of the proposed renewal's draft IHA. That requirement is included in the renewal IHA.

*Comment 8:* Oceana recommended that NMFS restrict all vessels of all sizes associated with the proposed survey activities to speeds less than 10 knots (kn) (18.5 kilometer/hour (km/hour))) at all times due to the risk of vessel strikes to NARWs and other large whales.

*Response:* While NMFS acknowledges that vessel strikes can result in injury or mortality, we have analyzed the potential for vessel strike resulting from SouthCoast Wind's activity and have determined that based on the nature of the activity and the required mitigation measures specific to vessel strike avoidance included in the IHA, potential for vessel strike is so low as to be discountable. The required mitigation measures, all of which were included in the proposed IHA and are now required in the final IHA, include: A requirement that all vessel operators comply with 10 kn (18.5 km/hour) or less speed restrictions in any seasonal management area (SMA), dynamic management area (DMA), or Slow Zone while underway, and check daily for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (SMAs, DMAs, Slow Zones) and information regarding NARW sighting locations; a requirement that all vessels greater than or equal to 19.8 m (65 ft) in overall length operating from November 1 through April 30 operate at speeds of 10 kn (18.5 km/hour) or less; a requirement that all vessel operators reduce vessel speed to 10 kn (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed near the vessel; a requirement that all survey vessels maintain a separation distance of 500 m (1,640 ft or greater from NARWs (100 m (328 ft) from any ESA-listed whales) or other unidentified large marine mammals visible at the surface while underway; a requirement that, if underway, vessels must steer a course away from any sighted ESA-listed whale at 10 kn (18.5 km/hour) or less until the 100 m (328 ft) minimum separation distance (or 500 m (1,640 ft) distance for NARWs) has been established; a requirement that, if an ESA-listed whale is sighted in a vessel's path, or within 100 m (328 ft) of an underway vessel (500 m (1,640 ft) for a NARW), the underway vessel must reduce speed and shift the engine to neutral; and, a requirement that all vessels underway must maintain a minimum separation distance of 100 m (328 ft) from all other marine mammals (excluding NARWs), with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). We have determined that the vessel strike avoidance measures in the IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have occurred for any marine site characterization surveys which were issued IHAs from NMFS during the survey activities themselves or while transiting to and from survey sites.

*Comment 9:* Oceana suggests that NMFS require vessels maintain a separation distance of at least 500 m (1,640 ft) from NARWs at all times.

*Response:* NMFS agrees with Oceana regarding this suggestion and a requirement to maintain a separation distance of at least 500 m (1,640 ft) from NARWs at all times was included in the proposed renewal's **Federal Register** notice and was included as a requirement in the issued renewal IHA. This separation requirement was also a measure in the initial 2023 IHA.

*Comment 10:* Oceana recommended that the IHA should require all vessels supporting site characterization to be equipped with and use Class A Automatic Identification System (AIS) devices at all times while on the water. Oceana suggested this requirement should apply to all vessels, regardless of size, associated with the survey.

*Response:* NMFS is generally supportive of the idea that vessels involved with survey activities be equipped with and use Class A AIS devices at all times while on the water. Indeed, there is a precedent for NMFS requiring such a stipulation for geophysical surveys in the Atlantic Ocean (83 FR 63268, December 7, 2018); however, these seismic surveys carried the potential for much more significant impacts than the marine site characterization surveys planned by SouthCoast Wind. Given the comparatively small footprint of potential effects and correspondingly low level of concern regarding HRG survey activities, NMFS has determined that the operational costs associated with a requirement to equip vessels, who would otherwise not be required to carry AIS, are not warranted under the MMPA's least practicable adverse impact standard.

*Comment 11:* Oceana asserts that the IHA must include requirements to hold all vessels associated with site characterization surveys accountable to the IHA requirements, including vessels owned by the developer, contractors, employees, and others regardless of ownership, operator, and contract. They state that exceptions and exemptions will create enforcement uncertainty and incentives to evade regulations through reclassification and redesignation. They recommend that NMFS simplify this by requiring all vessels to abide by the same requirements, regardless of size, ownership, function, contract, or other specifics.

*Response:* NMFS agrees with Oceana and the proposed IHA and final IHA has general conditions to hold SouthCoast Wind and its designees (including vessel operators and other personnel) accountable while performing operations under the authority of the IHA. The plain language of the renewal IHA indicates that the conditions contained therein apply to SouthCoast Wind and its designees. The renewal IHA requires that a copy of the IHA must be in the possession of SouthCoast Wind, the vessel operators, the lead PSO, and any other relevant designees of SouthCoast Wind operating under the authority of this IHA. The renewal IHA also states that SouthCoast Wind must ensure that the vessel operator and other relevant vessel personnel, including the PSO team, are briefed on all responsibilities, communication procedures, marine mammal monitoring protocols, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations.

*Comment 12:* Oceana stated that the renewal IHA must include a requirement for all phases of the site characterization to subscribe to the highest level of transparency, including frequent reporting to Federal agencies. Oceana recommends requirements to report all visual and acoustic detections of NARWs and any dead, injured, or entangled marine mammals to NMFS or the Coast Guard as soon as possible and no later than the end of the PSO shift. Oceana states that to foster stakeholder relationships and allow public engagement and oversight of the permitting, the renewal IHA should require all reports and data to be accessible on a publicly available website.

*Response:* NMFS agrees with the need for reporting and, indeed, the MMPA calls for IHAs to incorporate reporting requirements. As included in the proposed IHA, the final IHA includes requirements for reporting that supports Oceana's recommendations. SouthCoast Wind is required to submit a monitoring report to NMFS within 90 days after completion of survey activities that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring. PSO datasheets or raw sightings data must also be provided with the draft and final monitoring report.

Further, the draft IHA and final IHA stipulate that if a NARW is observed at any time by any survey vessels, during surveys or during vessel transit, SouthCoast Wind must immediately report sighting information to the NMFS NARW Sighting Advisory System within 2 hours of occurrence, when practicable, or no later than 24 hours after occurrence. SouthCoast Wind may also report the sighting to the U.S. Coast Guard. Additionally, SouthCoast Wind must report any discoveries of injured or dead marine mammals to the Office of Protected Resources, NMFS, and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. This includes entangled animals. All reports and associated data submitted to NMFS are included on the website for public inspection.

Daily visual and acoustic detections of NARWs and other large whale species along the Eastern Seaboard, as well as Slow Zone locations, are publicly available on WhaleMap (*https://whalemap.org/WhaleMap/*). Further, recent acoustic detections of NARWs and other large whale species are available to the public on NOAA's Passive Acoustic Cetacean Map website (*https://apps-nefsc.fisheries.noaa.gov/pacm/#/narw*).

*Comment 13:* Oceana recommended increasing the shutdown zone to 1,000 m (3,281 ft) for NARWs with requirements for HRG survey vessels to use PSOs and Passive Acoustic Monitoring (PAM) to establish and monitor these zones.

*Response:* NMFS notes that the 500 m (1,640 ft) shutdown zone for NARWs exceeds the modeled distance to the largest 160 dB Level B harassment isopleth (141 m (463 ft) during sparker use) by a conservative margin to be extra cautious. Commenters do not provide a compelling rationale for why the shutdown zone should be even larger. Given that these surveys are relatively low impact and that, regardless, NMFS has prescribed a precautionary NARW shutdown zone that is larger (500 m (1,640 ft)) than the conservatively estimated largest harassment zone (141 m (463 ft)), NMFS has determined that the shutdown zone is appropriate and an expansion of the shutdown zone to 1,000 m (3,281 ft) is not warranted.

Regarding the use of acoustic monitoring to implement the shutdown zones, NMFS does not anticipate that acoustic monitoring would be effective for a variety of reasons discussed below and therefore has not required it in this IHA. As described in the *Description of Mitigation, Monitoring and Reporting Measures* section, NMFS has determined that the prescribed mitigation and monitoring requirements are sufficient to effect the least practicable adverse impact on all affected species or stocks.

The commenters do not explain why they expect that PAM would be effective in detecting vocalizing mysticetes, nor does NMFS agree that this measure is warranted, as it is not expected to be effective for use in detecting the species of concern. It is generally accepted that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including NARWs) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 hertz (Hz) frequency range. Source levels range from about 140 to 195 decibel (dB) re 1 micropascal (μPa) at 1 meter (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.,* 2012; McKenna *et al.,* 2012; Rolland *et al.,* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m (1,640 ft) behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.,* 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m (1,640 ft) behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range, but not baleen whales, due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

There are several additional reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact during HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 141 m (463 ft)); this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low. Together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing and, many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for NARW and other low frequency cetaceans, species for which PAM has limited efficacy), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat.

*Comment 14:* Oceana recommended that when HRG surveys are allowed to resume after a shutdown event, the surveys should be required to use a ramp-up procedure to encourage any nearby marine life to leave the area.

*Response:* NMFS agrees with this recommendation and included in the **Federal Register** notice of the proposed IHA (88 FR 14335, March 8, 2023) and

this final IHA a stipulation that when technically feasible, survey equipment must be ramped up at the start or restart of survey activities. Ramp-up must begin with the power of the smallest acoustic equipment at its lowest practical power output appropriate for the survey. When technically feasible the power must then be gradually turned up and other acoustic sources added in a way such that the source level would increase gradually. NMFS notes that ramp-up would not be required for short periods where acoustic sources were shut down (*i.e.,* less than 30 minutes) if PSOs have maintained constant visual observation and no detections of marine mammals occurred within the applicable shutdown zones.

**Changes From Proposed to Final Renewal IHA**

No changes were made from the proposed renewal IHA to the final renewal IHA.

**Determinations**

SouthCoast Wind's planned activities consist of a subset of activities analyzed in the initial IHA. In analyzing the effects of the activities for the initial IHA, NMFS determined that SouthCoast Wind 's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third the abundance of all stocks). The required mitigation measures and monitoring and reporting requirements, as described above, are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the draft 2023 SAR estimated abundance of the NARW stock and other stocks, as shown in table 2 of the **Federal Register** notice for the proposed renewal IHA (89 FR 76796, September 19, 2024). NMFS has authorized two takes of NARW, by Level B harassment only, and the impacts resulting from the project's activities are neither reasonably expected nor reasonably likely to adversely affect the stock through effects on annual rates of recruitment or survival. Additionally, only about 0.59 percent of this stock's abundance is authorized to be taken by Level B harassment.

Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) SouthCoast Wind's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

**National Environmental Policy Act**

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

**Endangered Species Act**

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS Office of Protected Resources has authorized the incidental take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, and sperm whale, and has determined that these activities fall within the scope of activities analyzed in NMFS Greater Atlantic Regional Fisheries Office's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

**Renewal**

NMFS has issued a renewal IHA to SouthCoast Wind for the take of 15 species (comprising 16 stocks) of marine mammals incidental to conducting marine site characterization surveys offshore of Massachusetts and Rhode Island in the BOEM Lease Area OCS–A 0521 and associated ECR areas, which include the previously explained mitigation, monitoring, and reporting requirements.

Dated: October 22, 2024.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2024–24889 Filed 10–24–24; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XE404]**

### Gulf of Mexico 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 Gulf of Mexico Fishery Management Council will hold a one day in-person meeting of its Outreach and Education Technical Committee.

**DATES:** The meeting will convene on Wednesday, November 13, 2024, from 8:30 a.m. to 4 p.m., EST.

**ADDRESSES:** The meeting will be held in-person at the Gulf Council office. Please visit the Gulf Council website at *www.gulfcouncil.org* for meeting materials.

*Council address:* Gulf of Mexico Fishery Management Council, 4107 W. Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

**FOR FURTHER INFORMATION CONTACT:** Emily Muehlstein, Public Information Officer, Gulf of Mexico Fishery Management Council; *emily.muehlstein@gulfcouncil.org,* telephone: (813) 348–1630.

**SUPPLEMENTARY INFORMATION:**

**Wednesday, November 13, 2024; 8:30 a.m. until 4 p.m., EST**

The Meeting will begin with welcome and introductions, election of chair/vice chair, adoption of agenda, approval of December 19, 2023 meeting summary, and scope of work.

The Committee will review Recreational Initiative, *Shrimp,* and For-

Hire Reporting Outreach programs. The Committee will receive an update on Ecosystem Based Fishery Management (EBFM) Outreach, review and discuss Management Areas and Boundary Outreach, 2024 Communications Improvement Plan Progress and 2024 Analytics. The Committee will hold a discussion of Council Outreach Strategy and 2025 Communications Improvement Plan Ideas.

The Committee will discuss Other Business items and receive Public Comment before the meeting adjourns.

—Meeting Adjourns

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice 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 Council's intent to take-action to address the emergency.

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

Dated: October 21, 2024.

**Rey Israel Marquez,**

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

[FR Doc. 2024–24837 Filed 10–24–24; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XE411]**

### Research Track Assessment for Three Stocks of Yellowtail Flounder Including Cape Cod/Gulf of Maine, Southern New England/Mid-Atlantic, and Georges Bank

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

**ACTION:** Notice of public meeting.

**SUMMARY:** NMFS will convene the Research Track Assessment Peer Review Meeting for the purpose of reviewing Cape Cod/Gulf of Maine (CCGOM), Southern New England/Mid-Atlantic (SNEMA), and Georges Bank (GB) stocks of Yellowtail flounder. The Research Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. and Canadian waters of the northwest Atlantic. Assessments are prepared by the research track working group and reviewed by an independent panel of stock assessment experts from the Center of Independent Experts (CIE). The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

**DATES:** The public portion of the Research Track Assessment Peer Review Meeting will be held from November 18, 2024–November 22, 2024. The meeting will conclude on November 22, 2024 at 5 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

**ADDRESSES:** The meeting will be held in the Clark Conference Room at the Northeast Fisheries Science Center Aquarium Building: 166 Water Street, Woods Hole, MA 02543; and via Google Meet:

Google Meet joining info: *https://meet.google.com/fdr-vztn-jxd* Or dial: (US) +1 443–892–2999

PIN: 475 421 044#

**FOR FURTHER INFORMATION CONTACT:** Kristan Blackhart, (206) 289–0383; *kristan.blackhart@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information, please visit the Northeast Fisheries Science Center (NEFSC) website at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic.* For additional information about research track assessment peer review, please visit the NEFSC web page at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/research-track-stock-assessments.*

**Daily Meeting Agenda—Research Track Peer Review Meeting**

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Peer Review Chair.

*Monday, November 18, 2024*

| Time | Topic | Presenter(s) | Notes |
|---|---|---|---|
| 10 a.m.–10:15 a.m. | Welcome/Logistics | Blackhart, Chen | |
| 10:15 a.m.–10:45 a.m. | Research Track (RT) Overview | Adams | |
| 10:45 a.m.–12:15 p.m. | Terms of Reference (TOR) #1 | Cadrin | Ecosystem. |
| 12:15 p.m.–1:15 p.m. | Lunch | | |
| 1:15 p.m.–2:45 p.m. | TOR #2 | Alade, Hansell, Hodgdon | Catch. |
| 2:45 p.m.–3 p.m. | Break | | |
| 3 p.m.–3:15 p.m. | Public Comment | Public | |
| 3:15 p.m.–3:45 p.m. | Discussion/Summary | Review Panel | Conclusions, Recommendations, and Final Wrap-up for TORs 1–2 |
| 3:45 p.m. | Adjourn | | |

*Tuesday, November 19, 2024*

| Time | Topic | Presenter(s) | Notes |
|---|---|---|---|
| 10 a.m.–10:05 a.m. | Welcome/Logistics | To be determined (TBD), Chen | |
| 10:05 a.m.–11:35 a.m. | TOR #3 | Alade, Hansell, Hodgdon | Survey Data. |

| Time | Topic | Presenter(s) | Notes |
|---|---|---|---|
| 11:35 a.m.–12:05 p.m. | Woods Hole Assessment Model (WHAM) Overview. | Miller | |
| 12:05 p.m.–1:05 p.m. | Lunch | | |
| 1:05 p.m.–1:20 p.m. | Overview of approach for TORs #4–6. | Adams | All Stocks. |
| 1:20 p.m.–3:20 p.m. | TORs #4–6 | Hodgdon | SNEMA: Models, Biological Reference Points (BRPs) and Projections. |
| 3:20 p.m.–3:35 p.m. | Break | | |
| 3:35 p.m.–3:50 p.m. | Public Comment | Public | |
| 3:50 p.m.–4:20 p.m. | Discussion/Summary | Review Panel | Conclusions, Recommendations, and Final Wrap-up for TOR 3, SNEMA TORs 4–6. |
| 4:20 p.m. | Adjourn | | |

*Wednesday, November 20, 2024*

| Time | Topic | Presenter(s) | Notes |
|---|---|---|---|
| 10 a.m.–10:05 a.m. | Welcome/Logistics | TBD, Chen | |
| 10:05 a.m.–12:05 p.m. | TORs #4–6 | Hansell | GB: Models, BRPs and Projections. |
| 12:05 p.m.–1:05 p.m. | Lunch | | |
| 1:05 p.m.–3:05 p.m. | TORs #4–6 | Alade | CCGOM: Models, BRPs and Projections. |
| 3:05 p.m.–3:20 p.m. | Break | | |
| 3:20 p.m.–3:35 p.m. | Public Comment | Public | |
| 3:35 p.m.–4:05 p.m. | Discussion/Summary | Review Panel | Conclusions, Recommendations, and Final Wrap-up for GB & CCGOM TORs 4–6. |
| 4:05 p.m. | Adjourn | | |

*Thursday, November 21, 2024*

| Time | Topic | Presenter(s) | Notes |
|---|---|---|---|
| 10 a.m.–10:05 a.m. | Welcome/Logistics | TBD, Chen | |
| 10:05 a.m.–11:35 a.m. | TOR #8 | Legault | All Stocks. |
| 11:35 a.m.–12:05 p.m. | TOR #7 | Dolan | |
| 12:05 p.m.–1:05 p.m. | Lunch | | |
| 1:05 p.m.–2:05 p.m. | Wrap up TOR #7 | Dolan | |
| 2:05 p.m.–2:20 p.m. | Public Comment | Public | |
| 2:20 p.m.–2:50 p.m. | Discussion/Summary | Review Panel | Conclusions, Recommendations, and Final Wrap-up for TORs 7–8. |
| 2:50 p.m.–3:05 p.m. | Break | | |
| 3:05 p.m.–4 p.m. | Homework, if needed; else closed panel writing session. | TBD | |
| 4 p.m. | Adjourn | | |

*Friday, November 22, 2024*

| Time | Topic | Presenter(s) | Notes |
|---|---|---|---|
| 10 a.m.–4 p.m. | Closed panel writing session | Review Panel | * If necessary, revisit any remaining issues via open session. |
| 4 p.m. | Adjourn | | |

The meeting is open to the public; however, the 'Report Writing' session on Friday, November 22nd will be closed.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Special requests should be directed to Kristan Blackhart, via email.

Dated: October 21, 2024.

**Karen H. Abrams,**

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

[FR Doc. 2024–24832 Filed 10–24–24; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XE361]**

### Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

**ACTION:** Notice of SEDAR 88 Red Tide Topical Working Group Webinar III for Gulf of Mexico Red Grouper.

**SUMMARY:** The SEDAR 88 assessment of Gulf of Mexico red grouper will consist of a series of webinars. See **SUPPLEMENTARY INFORMATION.**

**DATES:** The SEDAR 88 Red Tide Topical Working Group Webinar III will be held Thursday, November 14, 2024, from 10 a.m. to 12 p.m., Eastern.

**ADDRESSES:**

*Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

*SEDAR address:* 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and State and Federal agencies.

The items of discussion in the webinar are as follows:

Participants will discuss red tide modeling work and provide recommendations for is use in the assessment of Gulf of Mexico red grouper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action 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) 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**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

*Note:* The times and sequence specified in this agenda are subject to change.

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

Dated: October 21, 2024.

**Rey Israel Marquez,**

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

[FR Doc. 2024–24836 Filed 10–24–24; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Science Advisory Board

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice sets forth the proposed schedule and agenda for a meeting of the Science Advisory Board (SAB). The members will discuss issues outlined in the section on Matters to be considered.

**DATES:** The meeting is scheduled for November 12–13, 2024, from 9:30 a.m. to 5 p.m. Eastern Standard Time (EST) on November 12th and from 8:30 a.m. to 12:45 p.m. on November 13th. The times and the agenda topics described below are subject to change. For the latest agenda please refer to the SAB website: *http://sab.noaa.gov/SABMeetings/.*

**ADDRESSES:** The meeting will be held virtually. The link for the webinar registration will be posted, when available, on the SAB website: *https://sab.noaa.gov/current-meetings/.*

**FOR FURTHER INFORMATION CONTACT:** Casey Stewart, Executive Director, SSMC3, Room 11360, 1315 East-West Hwy., Silver Spring, MD 20910; Phone Number: 240–381–0833; Email: *noaa.scienceadvisoryboard@noaa.gov;* or visit the SAB website at *https://sab.noaa.gov/current-meetings/.*

**SUPPLEMENTARY INFORMATION:** The NOAA Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

*Status:* The November 12–13, 2024 meeting will be open to public participation with a 15-minute public comment period at 4:45 p.m. EST on November 12, 2024. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three minutes. Written comments for the November 12–13, 2024 meeting should be received by the SAB Executive Director's Office (*noaa.scienceadvisoryboard@noaa.gov*) by November 5, 2024 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after these dates will be distributed to the SAB, but may not be reviewed prior to the meeting date.

*Special Accommodations:* The meeting is virtual. Requests for special accommodations may be directed to the Executive Director no later than 12pm on October 29, 2024.

*Matters to be Considered:* The meeting on November 12–13, 2024, will include the following topics, but is subject to change: (1) the SAB Consent Calendar, (2) Working Group updates and decisional items, and (3) updates from NOAA. Meeting materials, including work products and the latest agenda, will also be available on the SAB website: *https://sab.noaa.gov/current-meetings/current-meeting-documents/.*

**David Holst,**

*Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 2024–24919 Filed 10–24–24; 8:45 am]

**BILLING CODE 3510–KD–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XE414]**

### New England 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 New England Fishery Management Council (Council) is scheduling a public hybrid meeting of its Groundfish Recreational Advisory Panel Meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). This meeting will be held in-person with a webinar option. 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, November 14, 2024, at 9 a.m.

**ADDRESSES:**

*Meeting address:* This meeting will be held at the Hilton Providence, 21 Atwells Avenue, Providence, RI 02903; telephone: (401) 831–3900.

*Webinar registration URL information: https://nefmc-org.zoom.us/meeting/register/tJ0qf-urqzsvGtDr5EwG2AIrycIzpYtWpedX.*

*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 Groundfish Recreational Advisory Panel will meet to receive an overview of the data from NOAA Fisheries staff and discuss data egarding recreational fishing data for fishing year 2023 and preliminary fishing year 2024. They will also receive an overview of the bioeconomic model and an introduction to a new decision support tool that will be used for recreational measures development for fishing year 2025 from NOAA Fisheries staff. Other businesses, as 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 21, 2024.

**Rey Israel Marquez,**

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

[FR Doc. 2024–24839 Filed 10–24–24; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XE344]**

### Fisheries of the US Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

**ACTION:** Notice of SEDAR 91 Data Workshop for US Caribbean Spiny Lobster.

**SUMMARY:** The SEDAR 91 assessment process of US Caribbean spiny lobster will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION.**

**DATES:** The SEDAR 91 Data Workshop will be held from 8:30 a.m. on November 13, 2024, until 6 p.m. on November 15, 2024. The established

times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

**ADDRESSES:**

*Meeting address:* The SEDAR 91 Data Workshop will be held at the Windward Passage Hotel, 640 Veteran's Drive, Charlotte Amalie, St. Thomas, USVI 00804.

*SEDAR address:* 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data/Assessment Workshop, and (2) a series of webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Data Workshop are as follows:

An assessment data set and associated documentation will be developed during the workshop.

Participants will evaluate proposed data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action 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) 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**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

*Note:* The times and sequence specified in this agenda are subject to change.

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

Dated: October 21, 2024.

**Rey Israel Marquez,**

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

[FR Doc. 2024–24835 Filed 10–24–24; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XE409]**

### North Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of hybrid meeting.

**SUMMARY:** The North Pacific Fishery Management Council's (Council) Groundfish Plan Teams will meet in Seattle WA.

**DATES:** The meetings will be held on Tuesday, November 12, 2024 through Friday, November 15, 2024, from 9 a.m. to 5 p.m., PDT.

**ADDRESSES:** The meetings will be hybrid meetings.

*Meeting address:* The in-person component of the meetings will be held at the Alaska Fishery Science Center in the Traynor Room (2076) and Room 2079, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115.

If you plan to attend in-person you need to notify Sara Cleaver (*sara.cleaver@noaa.gov*) or Diana Stram (*diana.stram@noaa.gov)* at least two days prior to the meeting (or two weeks prior if you are a foreign national). You will also need a valid U.S. Identification Card. If you are attending virtually, join the meeting online through the link at *https://meetings.npfmc.org/Meeting/Details/3065.*

*Council address:* North Pacific Fishery Management Council, 1007 W 3rd Ave, Suite 400, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION**, below.

**FOR FURTHER INFORMATION CONTACT:** Sara Cleaver, Council staff; email: *sara.cleaver@noaa.gov* or Diana Stram, Council staff; email: *diana.stram@noaa.gov;* telephone: (907) 271–2809. For technical support, please contact our administrative staff; email: *npfmc.admin@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Agenda**

*Tuesday, November 12, 2024 Through Friday, November 15, 2024*

The Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Groundfish Plan Teams will compile and review the annual BSAI and GOA Groundfish Stock Assessment and Fishery Evaluation (SAFE) reports, and recommend final groundfish OverFishing Limits (OFLs) and Acceptable Biological Catches (ABCs) for 2025/2026. The Plan Teams will also review the Economic Report and the Ecosystem Status Reports. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/3065* prior to the meeting, along with meeting materials.

**Connection Information**

You can attend the meeting online using a computer, tablet, or smartphone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/3065.*

**Public Comment**

Public comment letters should be submitted electronically via the electronic agenda at *https://meetings.npfmc.org/Meeting/Details/3065.*

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

Dated: October 21, 2024.

**Rey Israel Marquez,**

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

[FR Doc. 2024–24838 Filed 10–24–24; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Patents for Humanity Program and Trademarks for Humanity Program

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0066 (Patents for Humanity Program and Trademarks for Humanity Program). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

**DATES:** To ensure consideration, comments regarding this information collection must be received on or before December 24, 2024.

**ADDRESSES:** Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email: InformationCollection@uspto.gov.* Include ''0651–0066 comment'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

**FOR FURTHER INFORMATION CONTACT:** Request for additional information should be directed to Soma Saha, Patent Attorney, Office of Policy and International Affairs, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–9300; or by email at *patentsforhumanity@uspto.gov* or *trademarksforhumanity@uspto.gov* with ''0651–0066 comment'' in the subject line. Additional information about this information collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

Since 2012, the United States Patent and Trademark Office (USPTO) has conducted the Patents for Humanity Program, a biannual award program to incentivize the distribution of patented technologies or products for the purpose of addressing humanitarian needs. The program is open to any patent owners or patent licensees, including inventors who have not assigned their ownership rights to others, assignees, and exclusive or non-exclusive licenses. The USPTO collects information from applicants that describe what actions they have taken with their patented technology to address the welfare of impoverished populations, or how they furthered research by others on technologies for humanitarian purposes. There are numerous categories of awards including: Medicine, Nutrition, Sanitation, Household Energy, and Living Standards. Sometimes the program includes additional categories specific for that year, for example, green energy.

The Patents for Humanity program provides winners with recognition and an acceleration certificate for one future patent matter. The applications that are chosen for an award will receive a certificate redeemable to accelerate select matters before the USPTO. The certificates can be redeemed to accelerate one of the following matters: an ex parte reexamination proceeding, including one appeal to the Patent Trial and Appeal Board (PTAB) from that proceeding; a patent application, including one appeal to the PTAB from that application; or an appeal to the PTAB of a claim twice rejected in a patent application or reissue application or finally rejected in an ex parte reexamination, without accelerating the underlying matter which generated the appeal. Finally, due to the January 2021 passage of the Patents for Humanity Program Improvement Act, winners of the Patents for Humanity program are now able to transfer their certificates to third parties, including by sale.[1]

In 2023, the USPTO added the Trademarks for Humanity Program to promote and incentivize brand owners who offer products and services that help address humanitarian issues utilizing a federally registered trademark. Applicants are required to describe how their mark and their goods or services satisfy the program criteria to address humanitarian issues. Like the Patents for Humanity Program, this trademark-focused program operates biannually and can have a variety of topics depending upon the year. Trademarks for Humanity awards are focused on recognition and do not confer transfer of awards certificates like the Patents for Humanity Program.

Applications for both programs must provide non-public contact information in order for the USPTO to notify them about their award status. Applicants may opt to provide contact information for the public to reach them with any inquiries. Applications must be submitted via email and will be posted on the USPTO website. A panel of independent judges evaluate the applications and send the top-scoring ones to reviewers from participating federal agencies to recommend award recipients. Awards are public, and recipients receive recognition for their humanitarian efforts from the USPTO and executive branch leadership. Winners of both the Patents for Humanity Program and the Trademarks for Humanity Program are invited to participate in an awards ceremony.

This information collection covers the two application forms for the Patents for Humanity Program and the single application form for the Trademarks for Humanity Program. This information collection also covers the information gathered in Patents for Humanity petitions to extend an acceleration certificate redemption beyond 12 months, as well as the transfer of awards certificates. To account for the recent addition of the Trademarks for Humanity Program, the name of this information collection has been changed from ''Patents for Humanity Program'' to ''Patents for Humanity Program and Trademarks for Humanity Program.''

#### II. Method of Collection

Items in this information collection must be submitted electronically.

#### III. Data

*OMB Control Number:* 0651–0066.

*Forms:* (PFH—Patents for Humanity, TFH—Trademarks for Humanity)

- PTO/PFH/001 (Humanitarian Use Application)
- PTO/PFH/002 (Humanitarian Research Use Application)
- PTO/PFH/003 (Petition to Extend the Redemption Period of a Patents for Humanity Program Acceleration Certificate)
- PTO/TFH/001 (Trademarks for Humanity Application)

[1] *https://www.congress.gov/116/plaws/publ316/PLAW-116publ316.pdf.*

*Type of Review:* Extension and revision of a currently approved information collection.

*Affected Public:* Private sector.

*Respondent's Obligation:* Required to obtain or retain benefits.

*Frequency:* Biannually.

*Estimated Number of Annual Respondents:* 82 respondents.

*Estimated Number of Annual Responses:* 82 responses.

*Estimated Time per Response:* The USPTO estimates that the responses in this information collection will take the public approximately between 30 minutes (0.50 hours) and 4 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed item to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 322 hours.

*Estimated Total Annual Respondent Hourly Cost Burden:* $143,934.

TABLE 1—TOTAL BURDEN HOURS AND HOURLY COSTS TO PRIVATE SECTOR RESPONDENTS

| Item No. | Item | Estimated annual respondents (a) | Responses per respondent (b) | Estimated annual responses (a) × (b) = (c) | Estimated time for response (hours) (d) | Estimated burden (hour/year) (c) × (d) = (e) | Rate [2] ($/hour) (f) | Estimated annual respondent cost burden (e) × (f) = (g) |
|---|---|---|---|---|---|---|---|---|
| 1 | Humanitarian Program Application (Humanitarian Use). | 25 | 1 | 25 | 4 | 100 | $447 | $44,700 |
| 2 | Humanitarian Program Application (Humanitarian Research). | 25 | 1 | 25 | 4 | 100 | 447 | 44,700 |
| 3 | Petition to Extend the Redemption Period of the Humanitarian Award Certificate. | 1 | 1 | 1 | 1 | 1 | 447 | 447 |
| 4 | Transfer of Awards Certificate | 1 | 1 | 1 | 0.50 (30 minutes) | 1 | 447 | 447 |
| 5 | Trademarks for Humanity Application. | 30 | 1 | 30 | 4 | 120 | 447 | 53,640 |
| Totals | | 82 | | 82 | | 322 | | 143,934 |

*Estimated Total Annual Respondent Non-hourly Cost Burden:* $0. There are no capital start-up costs, maintenance costs, recordkeeping costs, filing fees, or postage costs associated with this information collection.

## IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. The USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, the USPTO cannot guarantee that it will be able to do so.

**Justin Isaac,**

*Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.*

[FR Doc. 2024–24920 Filed 10–24–24; 8:45 am]

**BILLING CODE 3510–16–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Deletions from the Procurement List.

**SUMMARY:** This action deletes product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Date deleted from the Procurement List:* November 24, 2024.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:**

### Deletions

On 9/13/2024 (89 FR 74928) and 9/20/2024 (89 FR 77109), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

[2] 2023 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); pg. F–41. The USPTO uses the average billing rate for intellectual property work in all firms which is $447 per hour (*https://www.aipla.org/home/news-publications/economic-survey*).

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

*End of Certification*

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

*Product(s)*

*NSN(s)—Product Name(s):*
2540–00–248–4603—Blade, Windshield Wiper, HMMW Vehicle, 18″L
2540–01–262–7708—Blade, Windshield Wiper, HMMW Vehicle, 20″L
2540–01–271–8026—Blade, Windshield Wiper, HMMW Vehicle, 16″L
2540–01–454–0415—Blade, Refill, Windshield Wiper, HMMW Vehicle, 20″L
*Authorized Source of Supply:* Georgia Industries for the Blind, Bainbridge, GA
*Contracting Activity:* DLA LAND AND MARITIME, COLUMBUS, OH

*Service(s)*

*Service Type:* Mailing Service
*Mandatory for:* US Army Corp of Engineers, Patrick V. McNamara Federal Building, Detroit, MI
*Authorized Source of Supply:* Gesher Human Services, Southfield, MI
*Contracting Activity:* DEPT OF THE ARMY, W072 ENDIST DETROIT

*Service Type:* Administrative Services
*Mandatory for:* Post Wide, Fort Campbell, KY
*Authorized Source of Supply:* Huntsville Rehabilitation Foundation, Inc., Huntsville, AL
*Contracting Activity:* DEPT OF THE ARMY, W6QM MICC–FT CAMPBELL

*Service Type:* Custodial Service
*Mandatory for:* US Army, Asymmetric Warfare Training Center, Fort A.P. Hill, VA
*Authorized Source of Supply:* Rappahannock Goodwill Industries, Inc., Fredericksburg, VA
*Contracting Activity:* DEPT OF THE ARMY, W6QK ACC–APG

*Service Type:* Military Environment Support
*Mandatory for:* US Army, Program Executive Office for Simulation, Training and Instrumentation, Orlando, FL
*Authorized Source of Supply:* Global Connections to Employment, Inc., Pensacola, FL
*Contracting Activity:* DEPT OF THE ARMY, W6QK ACC–ORLANDO

*Service Type:* Hospital Housekeeping
*Mandatory for:* Department of Veterans Affairs, VA Maryland Health Care System, 10 North Greene Street, Baltimore, MD
*Authorized Source of Supply:* Global Connections to Employment, Inc., Pensacola, FL
*Contracting Activity:* VETERANS AFFAIRS, DEPARTMENT OF, 613–MARTINSBURG (00613)

*Service Type:* Custodial Service
*Mandatory for:* Department of Veterans Affairs, Veteran Affairs Outpatient Clinic, Charlotte, NC
*Authorized Source of Supply:* OE Enterprises, Inc., Hillsborough, NC
*Contracting Activity:* VETERANS AFFAIRS, DEPARTMENT OF, 246–NETWORK CONTRACTING OFFICE 6

*Service Type:* Laundry Service
*Mandatory for:* US Army, Mission and Installation Contracting Command, Fort Belvoir, VA
*Authorized Source of Supply:* Louise W. Eggleston Center, Inc., Norfolk, VA
*Contracting Activity:* DEPT OF THE ARMY, W6QM MICC–FT BELVOIR

*Service Type:* Laundry Service
*Mandatory for:* US Army, Medical Research Institute of Chemical Defense, Chemical Casualty Care Division, Aberdeen Proving Ground-South, MD
*Authorized Source of Supply:* Elwyn of Pennsylvania and Delaware, Aston, PA
*Contracting Activity:* DEPT OF THE ARMY, W4PZ USA MED RSCH ACQUIS ACT

*Service Type:* Custodial Service
*Mandatory for:* US Army Reserve, Wetzel County Memorial USARC, New Martinsville, WV
*Authorized Source of Supply:* PACE Enterprises of West Virginia, Inc., Morgantown, WV
*Contracting Activity:* DEPT OF THE ARMY, W6QK ACC–PICA

*Service Type:* Custodial & Grounds Maintenance
*Mandatory for:* US Army Reserve, CPT Alden D. Allen Armed Forces Reserve Center, Horseheads, NY
*Authorized Source of Supply:* Mozaic Chapter, NYSARC, Inc., Waterloo, NY
*Contracting Activity:* DEPT OF THE ARMY, W6QK ACC–PICA

*Service Type:* Laundry Service
*Mandatory for:* US Army, Joint Base Myer-Henderson Hall, Arlington, VA
*Authorized Source of Supply:* Louise W. Eggleston Center, Inc., Norfolk, VA
*Contracting Activity:* DEPT OF THE ARMY, W6QM MICC–FT BELVOIR

*Service Type:* Mess Attendant Service
*Mandatory for:* US Air Force, 128th Air Refueling Wing, Wisconsin Air National Guard Dining Facility, Milwaukee, WI
*Authorized Source of Supply:* Ada S. McKinley Community Services, Inc., Chicago, IL
*Contracting Activity:* DEPT OF THE ARMY, W7N8 USPFO ACTIVITY WI ARNG

*Service Type:* Food Service Attendant
*Mandatory for:* US Air Force, 182nd Airlift Wing, Illinois Air National Guard Reserve Center, Peoria, IL
*Authorized Source of Supply:* Community Workshop and Training Center, Inc., Peoria, IL
*Contracting Activity:* DEPT OF THE ARMY, W7M6 USPFO ACTIVITY IL ARNG

*Service Type:* Janitorial/Custodial
*Mandatory for:* US Army Reserve, Prince George's County Memorial USARC, 6601 Baltimore Avenue, Riverdale, MD
*Mandatory for:* US Army Reserve, Southern Maryland Memorial USARC, 5550 Dowerhouse Road, Upper Marlboro, MD
*Authorized Source of Supply:* WeAchieve, Inc., Silver Spring, MD
*Contracting Activity:* DEPT OF THE ARMY, W6QK ACC–PICA

*Service Type:* Administrative Support Service
*Mandatory for:* Department of Veterans Affairs, Atlanta VA Medical Center, Health Administrative Services Office, Decatur, GA
*Authorized Source of Supply:* Bobby Dodd Institute, Inc., Atlanta, GA
*Contracting Activity:* VETERANS AFFAIRS, DEPARTMENT OF, 247–NETWORK CONTRACT OFC 7(00247)

*Service Type:* Custodial Services
*Mandatory for:* Department of Veterans Affairs, York Community Based Outpatient Clinic, York, PA
*Authorized Source of Supply:* Goodwill Services, Inc., Harrisburg, PA
*Contracting Activity:* VETERANS AFFAIRS, DEPARTMENT OF, 595–LEBANON

*Service Type:* Grounds & Cemetery Facilities Maintenance
*Mandatory for:* US Army, Fort McClellan Veterans and Prisoner of War Cemeteries, Fort McClellan, AL
*Authorized Source of Supply:* The Opportunity Center Easter Seal Facility—The Ala ES Soc, Inc., Anniston, AL
*Contracting Activity:* DEPT OF THE ARMY, W0LX ANNISTON DEPOT PROP DIV

*Service Type:* Custodial Services
*Mandatory for:* Department of Veterans Affairs, Mid-South Consolidated Mail Outpatient Pharmacy, 5171 Sam Jared Drive, Murfreesboro, TN
*Authorized Source of Supply:* Bobby Dodd Institute, Inc., Atlanta, GA
*Contracting Activity:* VETERANS AFFAIRS, DEPARTMENT OF, NATIONAL CMOP OFFICE (NCO)

*Service Type:* Laundry Service
*Mandatory for:* US Air force, Hazardous Waste Recycling Facility, Hill Air Force Base, Hill AFB, UT
*Authorized Source of Supply:* EnableUtah, Ogden, UT
*Contracting Activity:* DEPT OF THE AIR FORCE, FA8224 OL H PZI PZIM

*Service Type:* Administrative Services
*Mandatory for:* U.S. Army Corps of Engineers, Nashville District: Estes Kefauver Building & Adjacent Buildings
*Contracting Activity:* DEPT OF THE ARMY, W072 ENDIST NASHVILLE

**Michael R. Jurkowski,**

*Director, Business Operations.*

[FR Doc. 2024–24875 Filed 10–24–24; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to delete service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Comments must be received on or before:* November 24, 2024.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit comments contact: Michael R. Jurkowski, telephone: (703) 489–1322, or email *CMTEFedReg@AbilityOne.gov*.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

### Deletions

The following service(s) are proposed for deletion from the Procurement List:

*Service(s)*

*Service Type:* Janitorial/Custodial
*Mandatory for:* USDA, ARS, Avian Disease & Oncology Research Laboratory, East Lansing, MI
*Authorized Source of Supply:* Peckham Vocational Industries, Inc., Lansing, MI
*Contracting Activity:* AGRICULTURAL RESEARCH SERVICE, USDA ARS

*Service Type:* Janitorial/Custodial Service
*Mandatory for:* GSA PBS Region 4, T. G. Abernethy Federal Building, Courthouse and Post Office, Aberdeen, MS
*Authorized Source of Supply:* Alabama Goodwill Industries, Inc., Birmingham, AL
*Contracting Activity:* PUBLIC BUILDINGS SERVICE, ACQUISITION DIVISION/SERVICES BRANCH

*Service Type:* Grounds Maintenance
*Mandatory for:* US Coast Guard, Townsends Inlet Recreational Facility, Sea Isle, NJ
*Authorized Source of Supply:* Fedcap Rehabilitation Services, Inc., New York, NY
*Contracting Activity:* U.S. COAST GUARD, TRACEN CAPE MAY(00042)

*Service Type:* Administrative Service
*Mandatory for:* US Army Corps of Engineers, Huntsville Engineering and Support Center, Huntsville, AL
*Authorized Source of Supply:* Huntsville Rehabilitation Foundation, Inc., Huntsville, AL
*Contracting Activity:* DEPT OF THE ARMY, W2V6 USA ENG SPT CTR HUNTSVIL

**Michael R. Jurkowski,**

*Director, Business Operations.*

[FR Doc. 2024–24873 Filed 10–24–24; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

**DATES:** Comments must be submitted on or before November 25, 2024.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0007, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, prescreen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Catherine Brescia, Attorney Advisor, Market Participants Division, Commodity Futures Trading Commission, telephone: (202) 418–6236; email: *cbrescia@cftc.gov,* and refer to OMB Control No. 3038–0007.

**SUPPLEMENTARY INFORMATION:**

*Title:* Regulation of Domestic Exchange-Traded Options, OMB Control Number 3038–0007. This is a request for extension of a currently approved collection.

*Abstract:* Commission Regulations 33.7 and 33.8,[2] respectively, require futures commission merchants (FCMs) and introducing brokers (IBs): (1) to provide retail (*i.e.,* non-eligible contract participant)[3] customers with, and retain, standard risk disclosure

[1] 17 CFR 145.9.

[2] 17 CFR 33.7 and 33.8.

[3] Commission Regulation 33.7 does not require FCMs or IBs to provide the disclosure or obtain a related acknowledgment from institutional customers. *See* 17 CFR 33.7(a)(1). Commission Regulation 1.3 provides that ''institutional customer'' has the same meaning as ''eligible contract participant'' (''ECP'') as defined in section 1a(18) of the Commodity Exchange Act (''CEA''). Under the CEA, an ECP includes, for example, a financial institution, an insurance company, and a corporation with $10 million in assets.

statements concerning the risk of trading certain domestic exchange-traded commodity options; [4] and (2) to retain all related promotional material and the source of authority for information contained therein. These requirements help assure that these customers are not fraudulently induced to invest in these commodity options by persons who misrepresent the risks of such transactions. The recordkeeping requirements assist the Commission and the National Futures Association (NFA) in verifying registrants' compliance with their disclosure obligations and ensuring that related promotional material is not fraudulent or misleading.

This information collection contains the third-party disclosure and recordkeeping requirements needed to ensure regulatory compliance by FCMs and IBs with these Commission Regulations.

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. On August 12, 2024, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 89 FR 65606 (''60-Day Notice''). The Commission did not receive any relevant comments on the 60-Day Notice.

*Burden Statement:* The Commission estimates the burden of this collection of information as follows:

*Estimated Number of Annual Respondents:* 983.

*Estimated Average Annual Burden Hours per Respondent:* 34.2.

*Estimated Total Annual Burden Hours:* 33,619.

*Frequency of Collection:* On occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: October 22, 2024.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

[FR Doc. 2024–24857 Filed 10–24–24; 8:45 am]

**BILLING CODE 6351–01–P**

[4] *See* Commission Regulation 33.2(b). 17 CFR 33.2(b) (providing that Part 33 of the Commission's Regulations applies to commodity option transactions that are options on contracts of sale of a commodity for future delivery except for commodity option transactions that are options on contracts of sale of a commodity for future delivery conducted or executed on or subject to the rules of a foreign board of trade).

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10:00 a.m. EDT, Tuesday, October 29, 2024.

**PLACE:** CFTC Headquarters Conference Center, Three Lafayette Centre, 1155 21st Street NW, Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') will hold this meeting to consider the following matters:

- Final Rule—Operational Resilience Framework for Futures Commission Merchants, Swap Dealers, and Major Swap Participants;
- Final Rule—Investment of Customer Funds by Futures Commission Merchants and Derivatives Clearing Organizations;
- Final Rule—Derivatives Clearing Organizations Recovery and Orderly Wind-down Plans; Information for Resolution Planning;
- Commission Fall 2024 Unified Agenda Submission; and
- CFTC Executive and Supervisor Compensation Structures.

The agenda for this meeting will be available to the public and posted on the Commission's website at *https://www.cftc.gov.* Members of the public are free to attend the meeting in person, or have the option to listen by phone or view a live stream. Instructions for listening to the meeting by phone and connecting to the live video stream will be posted on the Commission's website.

In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

**CONTACT PERSON FOR MORE INFORMATION:** Christopher Kirkpatrick, Secretary of the Commission, 202–418–5964.

*Authority:* 5 U.S.C. 552b.

Dated: October 22, 2024.

**Christopher Kirkpatrick,**

*Secretary of the Commission.*

[FR Doc. 2024–24959 Filed 10–23–24; 11:15 am]

**BILLING CODE 6351–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Global Markets Advisory Committee

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) announces that on November 21, 2024, from 9:30 a.m. to 10:30 a.m. Eastern Time, the Global Markets Advisory Committee (GMAC or Committee) will hold a virtual public meeting.

At this meeting, the GMAC will hear a presentation from the GMAC's Digital Asset Markets Subcommittee on expanding use of non-cash collateral through use of distributed ledger technology and consider a recommendation from the Subcommittee.

**DATES:** The meeting will be held on November 21, 2024, from 9:30 a.m. to 10:30 a.m. Eastern Time. Please note that the meeting may end early if the GMAC has completed its business. Members of the public who wish to submit written statements in connection with the meeting should submit them by November 26, 2024.

**ADDRESSES:** The meeting will take place virtually. You may submit public comments, identified by ''Global Markets Advisory Committee,'' through the CFTC website at *https://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the website. If you are unable to submit comments online, contact Harry Jung, Designated Federal Officer, via the contact information listed below to discuss alternate means of submitting your comments. Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, *https://www.cftc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Harry Jung, GMAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC; (202) 394–3995; or *HJung@cftc.gov.*

**SUPPLEMENTARY INFORMATION:** The entire virtual meeting will be open to the public. Registration for this meeting is not required. Members of the public may listen to the meeting by telephone by calling a domestic or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll and Toll-Free Numbers:

+1 669 254 5252 US (San Jose)
+1 646 828 7666 US (New York)
+1 646 964 1167 US (US Spanish Line)
+1 669 216 1590 US (San Jose)
+1 415 449 4000 US (US Spanish Line)
+1 551 285 1373 US (New Jersey)

833 435 1820 US Toll Free

833 568 8864 US Toll Free

International Numbers are available here: *https://cftc-gov.zoomgov.com/u/apUhB8EuL* and will be posted on the CFTC's website, *https://www.cftc.gov,* on the page for the meeting, under Related Links.

Call-In/Webinar ID: 161 533 1062

Pass Code/Pin Code: 990545

Members of the public may also view a live webcast of the meeting via the *https://www.cftc.gov* website. The meeting agenda may change to accommodate other Committee priorities. For agenda updates and meeting materials, please visit *https://www.cftc.gov/About/AdvisoryCommittees/GMAC.*

After the meeting, a transcript of the meeting will be published through a link on the CFTC's website, *https://www.cftc.gov.* Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

(Authority: 5 U.S.C. 1009(a)(2).)

Dated: October 22, 2024.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

[FR Doc. 2024–24918 Filed 10–24–24; 8:45 am]

**BILLING CODE 6351–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** Tuesday, October 29, 2024—9 a.m.

**PLACE:** Meeting will be at 4330 East West Highway, Bethesda, Maryland, Room 420.

**STATUS:** Commission Meeting—Closed to the Public.

**MATTERS TO BE CONSIDERED:**

*Meeting Matter:* Briefing Matter.

**CONTACT PERSON FOR MORE INFORMATION:** Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: October 22, 2024.

**Alberta Mills,**

*Commission Secretary.*

[FR Doc. 2024–24950 Filed 10–23–24; 11:15 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Fulbright-Hays Group Projects Abroad Program

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2025 for the Fulbright-Hays Group Projects Abroad (GPA) Program.

**DATES:**

*Applications Available:* October 25, 2024.

*Deadline for Transmittal of Applications:* January 21, 2025.

*Pre-Application Webinar information:* The Department will hold a pre-application webinar for prospective applicants. Detailed information regarding this webinar will be provided on the GPA website at *https://www.ed.gov/grants-and-programs/grants-higher-education/ifle/fulbright-hays-group-projects-abroad-program.*

Additionally, for prospective applicants that have never received a grant from the Department and those that are interested in learning more about the process, please review the grant funding basics resource at *https://www.ed.gov/sites/ed/files/documents/funding-101/funding-101-basics.pdf.*

*Note:* For new potential grantees unfamiliar with grantmaking at the Department, please consult our ''Getting Started with Discretionary Grant Applications'' web page at *https://www.ed.gov/grants-and-programs/apply-grant/getting-started-discretionary-grant-applications.*

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

**FOR FURTHER INFORMATION CONTACT:** Cory Neal, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 704–3437. Email: *GPA@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

**SUPPLEMENTARY INFORMATION:**

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purpose of the Fulbright-Hays GPA Program is to promote, improve, and develop the study of modern foreign languages and area studies in the United States. The program provides opportunities for faculty, teachers, and undergraduate and graduate students to conduct group projects overseas. Projects may include either (1) short-term seminars, curriculum development, or group research or study, or (2) long-term advanced intensive language programs.

This competition invites applicants to submit an application to request support for either a Fulbright-Hays GPA short-term project (GPA short-term project 84.021A) or a Fulbright-Hays GPA long-term project (GPA long-term project 84.021B). Applicants must clearly indicate on the SF 424, the Application for Federal Assistance cover sheet, whether they are applying for a GPA short-term project (84.021A) or a GPA long-term project (84.021B). Additional submission requirements are included in the application package.

There are three types of GPA short-term projects: (1) short-term seminar projects of 4 to 6 weeks in length designed by the applicant to help participants integrate international studies into the curriculum at an institution of higher education (IHE) or a school system when they return to the United States, by focusing on a particular aspect of area studies, such as the culture of an area or country of study (34 CFR 664.11); (2) curriculum development projects of 4 to 8 weeks in length that provide participants the opportunity to acquire resource materials for curriculum development in modern foreign language and area studies for use and dissemination in the United States (34 CFR 664.12); and (3) group research or study projects of 3 to 12 months in duration designed to give participants the opportunity to undertake research or study in a foreign country (34 CFR 664.13).

GPA long-term projects are advanced overseas intensive language programs designed by the applicant that may be carried out during a full year, an academic year, a semester, a trimester, a quarter, or a summer. GPA long-term projects provide participants an opportunity to use and strengthen their advanced language training while experiencing the culture in the foreign country. Participants should have

successfully completed at least 2 academic years of training in the language to be studied to be eligible to participate in a GPA intensive advanced language training program. In addition, the language to be studied must be indigenous to the host country and maximum use must be made of local institutions and personnel (34 CFR 664.14).

*Assistance Listing Numbers:* 84.021A and 84.021B.

*OMB Control Number:* 1840–0792.

*Priorities:* This notice contains one absolute priority and five competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priority is from the regulations for this program (34 CFR 664.32). Competitive Preference Priorities 1 and 2 are from the Notice of Final Priorities and Definitions published in the **Federal Register** on June 16, 2016 (81 FR 39196) (the 2016 NFP); Competitive Preference Priorities 3 and 5 are from the regulations for this program (34 CFR 664.32); and Competitive Preference Priority 4 is from the Notice of Final Priorities published in the **Federal Register** on September 24, 2010 (75 FR 59050) (the 2010 NFP)).

*Absolute Priority:* For FY 2025, and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*Specific Geographic Regions of the World.*

A group project that focuses on one or more of the following geographic regions of the world: Africa, East Asia, South Asia, Southeast Asia and the Pacific, the Western Hemisphere (Central and South America, Mexico, and the Caribbean), Eastern and Central Europe and Eurasia, and the Near East.

*Competitive Preference Priorities:* For FY 2025, there are five competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award 3 additional points to an application that meets Competitive Preference Priority 1; 2 additional points to an application that meets Competitive Preference Priority 2; 2 additional points for short-term projects or 4 additional points for long-term projects to an application that meets Competitive Preference Priority 3; 2 additional points to an application that meets Competitive Preference Priority 4; and 2 additional points to an application that meets Competitive Preference Priority 5. Applicants for GPA short-term projects may address Competitive Preference Priorities 1, 3, 4, and 5. Applicants for GPA long-term projects may address Competitive Preference Priorities 2 and 3. In the application narrative, an applicant must indicate the priority or priorities being addressed, provide a substantive description of how the proposed activities support the applicant's selected priority or priorities, and provide documentation supporting such claims.

These priorities are:

*Competitive Preference Priority 1—Applications for GPA Short-Term Projects from Selected Institutions and Organizations* (3 Points).

Applications for GPA short-term projects from the following types of institutions and organizations:

- Minority-Serving Institutions (MSIs) (as defined in this notice);
- Community colleges (as defined in this notice);
- New applicants (as defined in this notice); or
- State educational agencies (SEAs) (as defined in this notice).

*Competitive Preference Priority 2—Applications for GPA Long-Term Projects from MSIs* (2 Points).

Applications for GPA long-term advanced overseas intensive language training projects from MSIs.

*Competitive Preference Priority 3—Substantive Training and Thematic Focus on Less Commonly Taught Languages* (2 Points for short-term projects or 4 Points for long-term projects).

Applications that propose GPA short-term projects (2 points) or GPA long-term projects (4 points) that provide substantive training and thematic focus on any modern foreign language except French, German, or Spanish.

*Competitive Preference Priority 4—Inclusion of K–12 Educators* (2 Points).

Applications that propose short-term projects abroad that develop and improve foreign language studies, area studies, or both at elementary and secondary schools by including K–12 teachers or K–12 administrators as at least 50 percent of the project participants.

*Competitive Preference Priority 5—Thematic Focus on Academic Fields* (2 Points).

Applications that propose short-term projects abroad in modern foreign languages and area studies with an academic focus on any of the following academic fields: science, technology, engineering, mathematics, computer science, education (comparative or international), international development, political science, public health, psychology, or economics.

*Definitions:* The following definitions are from the 2016 NFP and apply to this competition.

*Community college* means an institution that meets the definition in section 312(f) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1058(f)); or an IHE (as defined in section 101 of the HEA (20 U.S.C. 1001)) that awards degrees and certificates, more than 50 percent of which are not bachelor's degrees (or an equivalent).

*Minority-serving institution (MSI)* means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA.

*Note:* Historically Black Colleges and Universities that meet the criteria in 34 CFR 608.2, Hispanic-Serving Institutions that meet the criteria in 34 CFR 606.2(a), and institutions that meet the definition of Tribal Colleges or Universities in section 316(b)(3) of the HEA, are, among other qualifying institutions, ''minority-serving institutions.''

*New applicant* means any applicant that has not received a discretionary grant from the Department of Education under the Fulbright-Hays Act prior to the deadline date for applications under this program.

*State educational agency (SEA)* means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law.

*Program Authority:* 22 U.S.C. 2452(b)(6).

*Note:* Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Guidance for Federal Financial Assistance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 664. (e) The 2010 NFP. (f) The 2016 NFP.

*Note:* The regulations in 34 CFR part 86 apply to IHEs only.

*Note:* As of October 1, 2024, grant applicants must follow the provisions stated in the OMB Guidance for Federal Financial Assistance (89 FR 30046,

April 22, 2024) when preparing an application. For more information about these regulations please visit: *https://www.cfo.gov/resources-coffa/uniform-guidance/.*

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* The Administration has requested $8,249,000 for awards for the Fulbright-Hays Overseas program for FY 2025, of which we intend to use an estimated $3,350,510 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in future fiscal years from the list of unfunded applications from this competition.

*Estimated Range of Awards:*

*GPA short-term projects:* $50,000–$180,000.

*GPA long-term projects:* $50,000–$300,000.

*Estimated Average Size of Awards:*

*GPA short-term projects:* $120,000.

*GPA long-term projects:* $250,000.

*Maximum Award:* We will not make a GPA short-term award exceeding $180,000 for a single project period of 18 months. We will not make a GPA long-term project award exceeding $300,000 for a single project period of 24 months.

*Estimated Number of Awards:* 20.

*GPA short-term projects:* 13.

*GPA long-term projects:* 7.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:*

*GPA short-term projects:* Up to 18 months.

*GPA long-term projects:* Up to 24 months.

## III. Eligibility Information

1.a. *Eligible Applicants:* (1) IHEs, (2) State departments of education, (3) private nonprofit educational organizations, and (4) consortia of these entities.

b. *Eligible Participants:* Citizens, nationals, or permanent residents of the United States, who are (1) faculty members who teach modern foreign languages or area studies at an IHE; (2) teachers in elementary or secondary schools; (3) experienced education administrators responsible for planning, conducting, or supervising programs in modern foreign language or area studies at the elementary, secondary, or postsecondary levels; or (4) graduate students, or juniors or seniors in an IHE, who plan teaching careers in modern foreign languages or area studies.

*Note:* If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Build America, Buy America Act:* This program is not subject to the Build America, Buy America Act (Pub. L. 117–58) domestic sourcing requirements.

## IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 664.33. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 40 pages and (2) use the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet or budget section, including the narrative budget justification; the assurance and certifications; or the one-page abstract, the resumes, the biography, or letters of support. However, the recommended page limit does apply to all of the application narrative.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 664.31 and are as follows:

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information to determine the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information to determine the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows that the facilities, equipment, and supplies that the applicant plans to use are adequate.

(f) *Specific program criteria.* (35 points)

(1) In addition to the general selection criteria contained in this section, the Secretary reviews each application for information that shows that the project meets the specific program criteria.

(2) The Secretary looks for information that shows—

(i) The potential impact of the project on the development of the study of modern foreign languages and area studies in American education. (15 points)

(ii) The project's relevance to the applicant's educational goals and its relationship to its program development in modern foreign languages and area studies. (10 points)

(iii) The extent to which direct experience abroad is necessary to achieve the project's objectives and the effectiveness with which relevant host country resources will be utilized. (10 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For FY 2025, proposed GPA short-term and GPA long-term projects will be reviewed by peer review panels with expertise in the geographic area that is the focus of the application. The International and Foreign Language Education office will prepare separate rank order slates for GPA short-term projects and GPA long-term projects recommended for new awards in FY 2025. Each slate will include the peer reviewers' scores for all applications evaluated, from the highest score to the lowest score. In cases where several applications have the same final numerical score in the rank order listing, and there are insufficient funds to support all tied applications, the scores under selection criterion (f)(2)(iii) will be used as a tiebreaker. If the scores remain tied, then the scores under selection criterion (f)(2)(i) will be used to break the tie.

Finally, please note that in accordance with 34 CFR 664.30(c), the Secretary does not recommend a project to the J. William Fulbright Foreign Scholarship Board if the applicant proposes to carry it out in a country in which the United States does not have diplomatic representation.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management (SAM). You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Guidance for Federal Financial Assistance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the

National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

**VI. Award Administration Information**

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *https://www.ed.gov/grants-and-programs/apply-grant/grant-application-and-other-forms.*

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, the following measure will be used by the Department to evaluate the success of the GPA short-term program: the percentage of GPA short-term project participants who disseminated information about or materials from their group project abroad through more than one outreach activity within 6 months of returning to their home institution. The following measure will be used by the Department to evaluate the success of the GPA long-term program: the percentage of GPA long-term project participants who increased their reading, writing, and/or listening/speaking foreign language scores by one proficiency level. The efficiency of the GPA long-term program will be measured by considering the cost per GPA participant who increased his/her foreign language score in reading, writing, and/or listening/speaking by at least one proficiency level.

The information provided by grantees in their performance reports submitted via the International Resource Information System (IRIS) will be the source of data for this measure. Reporting screens for institutions can be viewed at: *http://iris.ed.gov/iris/pdfs/gpa_director.pdf* and *http://iris.ed.gov/iris/pdfs/gpa_participant.pdf.*

**VII. Other Information**

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Nasser H. Paydar,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 2024–24900 Filed 10–24–24; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Notice of Availability: Opportunity for Public Feedback on the Government-Creditor Agreement

**AGENCY:** Office of Infrastructure, Department of Energy.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Energy (DOE or the Department) Office of Infrastructure is providing notice to the public of an informal opportunity to comment on DOE's Government-Creditor Agreement (GCA), which is a proposed agreement setting forth the relative rights and responsibilities between DOE and entities having a secured interest in DOE-funded tangible property or property provided as cost share in a DOE financial assistance award. The Department seeks input from interested stakeholders but especially encourages lenders and their counsels to provide feedback, particularly on whether there are aspects of the GCA that may prevent lenders from participating in a financing that includes a DOE financial assistance award. This is an informal opportunity to comment on the GCA, but DOE intends to make public a summary of comments received by general topic area as well as the finalized version of the GCA.

**DATES:** Written comments on the GCA are requested no later than 11:59 p.m. (ET) on November 26, 2024.

**ADDRESSES:** Interested parties may submit comments electronically to *GCA@hq.doe.gov* in accordance with the Response Guidelines in section IV of this document.

**FOR FURTHER INFORMATION CONTACT:** Questions may be addressed to Rachel Gould, *GCA@hq.doe.gov* or (202) 586–6116.

**SUPPLEMENTARY INFORMATION:**

## I. General Overview

In May 2024, Under Secretary for Infrastructure David Crane issued a commercialization and financing memorandum,[1] affirming the imperative to mobilize private sector investment in DOE-funded projects. One issue discussed in the memorandum is DOE's tangible property interest in connection with its financial assistance awards. The memorandum notes the following: ''DOE will enter into one or more standardized Consent Agreement(s) with recipients and third-party lenders clarifying that DOE's interest in the property will not be senior to that of the lender but is expected to be on a pari passu basis.'' Currently, many DOE Federal financial assistance recipients have terms in their cooperative agreements or grants that are consistent with this memorandum.

DOE has developed a standardized Consent Agreement (currently referred to as the ''Government-Creditor Agreement'' (GCA)) which, among other things, provides clarification on lenders rights and remedies with respect to DOE's interest in the property, and expectations and other reasonable protections in a DOE-funded project. DOE is providing an opportunity for informal public comment on the GCA. The GCA and additional context for comment is available on the Government-Creditor Agreement web page.[2]

Prior to reviewing the GCA, it is important to understand the basis of DOE's tangible property interest, which is not a typical security interest. DOE has prepared a ''User's Guide to DOE's Property Interest in DOE Financial Assistance Awards'' [3] to assist in understanding DOE's approach to the relevant financial assistance regulations and policies regarding DOE's property interest, and DOE also encourages commenters to review this User's Guide prior to providing comments.

## II. Government-Creditor Agreement Overview

The GCA open for public comment is primarily targeted at nonrecourse or limited-recourse project financings with a single lender. DOE recognizes that there may be other financing structures and that technical adjustments will need to be made to accommodate these different forms of financing. Following the finalization of this document after the public comment, DOE will develop subsequent versions that account for other potential financing structures, such as multiple lenders with collateral agents, new or existing corporate level debt, etc.

The GCA contains three articles: Article 1 outlines the rights and remedies between the parties, Article 2 outlines notices, and Article 3 outlines other miscellaneous items. DOE acknowledges that lenders look to protect themselves in a downside scenario. In a similar way, DOE looks to protect itself and the taxpayer's interests in both the property itself and the performance of the award which may depend on the continued use of the property. Accordingly, DOE is including provisions in the GCA designed to preserve the lender's ability to protect its collateral, exercise its fundamental rights under its security document, and provide clarity on any sharing of proceeds, if applicable, within the confines of the applicable regulatory framework for financial assistance awards and DOE policy.

## III. Requested Information From Respondents

DOE is opening the GCA for public comment to gather input in the development of a standard GCA template. DOE aims to release a standard GCA template by end of Q4 2024 or beginning Q1 2025. DOE may host a webinar to explain the GCA and address commonly asked questions approximately 15 days into this public comment period. Commenters will not receive individual responses. DOE has sole discretion over any changes made to the GCA prior to finalizing the GCA. DOE intends to provide a summary of comments by general topic as well as publishing the final standardized GCA template.

In reviewing the GCA, DOE encourages commenters to recognize that DOE is not a creditor in the traditional commercial sense, which is reflected in the GCA. DOE is familiar with long-form intercreditor and similar agreements and has carefully considered relevant provisions to include in this GCA in the context of financial assistance awards. Accordingly, comments that request significant portions of a standard intercreditor agreement be incorporated in the GCA without taking into account the nature of the DOE-lender relationship or without considering the restrictions contained in the financial assistance regulatory framework, will not be incorporated. DOE is particularly interested in feedback regarding any specific provisions that may not have been incorporated in the GCA, or additions or variations to any of the included provisions that, without change, would likely prevent lenders from participating in a financing that includes a DOE financial assistance award. The GCA should be reviewed with this in mind as well as a thorough understanding of DOE's undivided reversionary interest.[4]

## IV. Response Guidelines

Interested parties may submit comments electronically to *GCA@hq.doe.gov* no later than 11:59 p.m. (ET) on November 26, 2024. Comments received after this date or submitted anonymously will not be considered. Responses must be provided as attachments to an email.

Responses must include respondent name and organization and, if possible, include the specific connection(s) to DOE-funded projects. DOE recommends that attachments with file sizes exceeding 25 MB be compressed (*i.e.,* zipped) to ensure message delivery. Responses must be provided as a Microsoft Word (*.docx) or Adobe Acrobat (*.pdf) attachment to the email, and *no more than 10 pages in length, 12-point font, 1-inch margins. Only electronic responses will be accepted.*

DOE strongly prefers that commenters provide narrative comments organized by topic area, and not a suggested redline of the GCA.

Responses including confidential business information should not be submitted but will be handled per the following guidance in section V of this document.

## V. Confidential Business Information

Because comments are sought for the development of a standard GCA template intended for use in a variety of different DOE financial assistance

[1] *www.energy.gov/sites/default/files/2024-05/Office%20of%20Infrastructure%20Commercialization%20and%20Financing%20Memo%20052324.pdf.*

[2] *https://www.energy.gov/infrastructure/government-creditor-agreement.*

[3] *www.energy.gov/sites/default/files/2024-10/User's%20Guide%20to%20DOE's%20Property%20Interest%20in%20DOE%20Financial%20Assistance%20Awards.pdf.*

[4] *www.energy.gov/sites/default/files/2024-10/User's%20Guide%20to%20DOE's%20Property%20Interest%20in%20DOE%20Financial%20Assistance%20Awards.pdf.*

awards, respondents are strongly advised NOT to include any information in their responses that might be considered business sensitive, proprietary, or otherwise confidential. DOE may reject any submissions containing confidential business information.

Pursuant 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. Failure to comply with these marking requirements may result in the disclosure of the unmarked information under the Freedom of Information Act or otherwise. The U.S. Government is not liable for the disclosure or use of unmarked information and may use or disclose such information for any purpose.

If your response contains confidential, proprietary, or privileged information, you must include a cover sheet marked as follows identifying the specific pages containing confidential, proprietary, or privileged information:

*Notice of Restriction on Disclosure and Use of Data:* Pages [*list applicable pages*] of this response may contain confidential, proprietary, or privileged information that is exempt from public disclosure. Such information shall be used or disclosed only for the purposes described in this RFI. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.

In addition, (1) the header and footer of every page that contains confidential, proprietary, or privileged information must be marked as follows: ''Contains Confidential, Proprietary, or Privileged Information Exempt from Public Disclosure'' and (2) every line and paragraph containing proprietary, privileged, or trade secret information must be clearly marked with [[double brackets]] or highlighting.

**Signing Authority**

This document of the Department of Energy was signed on October 18, 2024, by David Crane, Under Secretary for Infrastructure, Office of Infrastructure, 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 22, 2024.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

[FR Doc. 2024–24848 Filed 10–24–24; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Notice of Intent To Prepare an Environmental Impact Statement for the Proposed North Plains Connector Project, Colstrip, Montana to Center/St. Anthony, North Dakota

**AGENCY:** Grid Deployment Office, Department of Energy.

**ACTION:** Notice of intent to prepare an environmental impact statement and request for comments.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Federal Land Policy and Management Act of 1976, as amended, and the Federal Power Act (FPA), as amended, the Grid Deployment Office (GDO), Department of Energy (DOE), in coordination with Federal cooperating agencies—the Bureau of Land Management (BLM) Miles City Field Office, Miles City, MT; the United States Forest Service (USFS), an agency of the Department of Agriculture (USDA), Dakota Prairie Grasslands, Bismarck, ND; and the Agricultural Research Service (ARS) Fort Keogh Livestock and Range Research Laboratory, Miles City, MT—intends to prepare jointly, with the Montana Department of Environmental Quality (Montana DEQ), an environmental impact statement (EIS; DOE/EIS–0568) to analyze the potential environmental impacts of granting authorizations to North Plains Connector LLC for siting, constructing, operating, and maintaining the North Plains Connector Project (''the proposed Project''), an up to 525-kilovolt (kV) high-voltage direct-current (HVDC) electrical transmission line connecting the Eastern and Western Interconnections (also referred to as the eastern and western grids). By this notice, GDO is announcing the beginning of the scoping process to solicit public comments and identify issues, impacts, and possible need for mitigation.

**DATES:** This notice initiates the public-scoping process for the EIS. GDO requests that the public submit comments concerning the scope of the analysis, potential alternatives and impacts, and identification of relevant information, analyses, and studies by December 9, 2024. GDO will hold five scoping meetings on the following dates at the following locations:

| Date | Time | Location/format |
|---|---|---|
| Wednesday, November 6, 2024 ..... | 4–7 p.m. CT ..... | Venue Twenty5, 3796 ND Hwy. 25, Mandan, ND 58554. |
| Thursday, November 7, 2024 ..... | 6–9 p.m. MT ..... | Astoria Event Center, 363 15 St. W, Dickinson, ND 58601. |
| Tuesday, November 12, 2024 ..... | 4–7 p.m. MT ..... | Custer County Event Center, 42 Garryowen Road RC, Miles City, MT 59301. |
| Wednesday, November 13, 2024 ... | 6–9 p.m. MT ..... | Colstrip City Hall, 12 Cherry Street, Colstrip, MT 59323. |
| Tuesday, November 19, 2024 ..... | 12–3 p.m. MT ... | VIRTUAL via Webex, register here: *https://bit.ly/NorthPlainsVirtual.* |

If any additional scoping meetings are scheduled, the date(s) and location(s) of those meetings will be announced at least 15 days in advance through the GDO North Plains Connector Project website: *https://www.energy.gov/nepa/doeeis-0568-north-plains-connector-multiple-locations.*

**ADDRESSES:** You can comment on the proposed Project by contacting Rebecca ''RJ'' Boyle, NEPA Document Manager, by any of the following methods:

- *Email: northplainsconnector@hq.doe.gov.*
- *Mail:* Rebecca ''RJ'' Boyle, NPC NEPA Document Manager, U.S. Department of Energy, Grid Deployment Office, 1000 Independence Avenue SW, Washington, DC 20585.

Documents pertinent to this NOI may be examined online at *https://www.energy.gov/nepa/doeeis-0568-north-plains-connector-multiple-locations.*

**FOR FURTHER INFORMATION CONTACT:** Rebecca ''RJ'' Boyle, GDO NEPA

Document Manager, *northplainsconnector@hq.doe.gov;* (301) 550–0364. Contact Ms. Boyle to have your name added to the EIS mailing list.

**SUPPLEMENTARY INFORMATION:** The proposed Project would traverse both private and public lands administered by various local, state, and Federal agencies and would require authorizations for the crossing of Federal lands managed by BLM, USFS, and ARS, as well as authorizations from Montana DEQ, North Dakota Public Service Commission (NDPSC), and six counties in North Dakota.

The proposed Project is currently expected to require a right-of-way (ROW) authorization from the BLM for the portion of the proposed Project that crosses approximately ten miles (about 240 acres) of lands administered by the Miles City Field Office (MCFO) in Montana as well as a mineral materials sales contract for any Federal minerals access necessary for the construction of the ROW, whether those minerals occur in Montana or in North Dakota; a special-use permit (SUP) from USFS for the portion of the proposed Project that crosses approximately ten miles (about 250 acres) of lands administered by the Dakota Prairie Grasslands (DPG) in North Dakota; and an easement from the ARS for the portion of the proposed Project that crosses approximately eight miles (about 200 acres) of lands administered by the Fort Keogh Livestock and Range Research Laboratory in Montana. The developer of the proposed Project, North Plains Connector LLC (the ''Project Proponent'' or ''North Plains''), a wholly-owned, single-purpose indirect subsidiary of Grid United, LLC (''Grid United''), has filed applications with the BLM, the USFS, and ARS proposing to construct, operate, and maintain the proposed Project.

This proposed Project would also cross state-managed public lands in both Montana and North Dakota.[1] North Plains has submitted an Application for a Certificate of Compliance under the Montana Major Facility Siting Act (MFSA) with the Montana DEQ. The MFSA review allows Montana agencies to review the Project, ensure protection of Montana's environmental resources, consider socioeconomic impacts, provide for public participation in the siting decisions, and coordinate amongst agencies and the various required authorizations for the Project. This process requires compliance with the Montana Environmental Policy Act (MEPA), which includes an environmental review. The Joint Lead Agencies will ensure that the EIS meets the requirements of both NEPA and MEPA.

[1] North Plains will submit a Consolidated Application for a Certificate of Corridor Compatibility and Transmission Facility Route Permit with the North Dakota Public Service Commission (NDPSC). The NDPSC will conduct its own review process separate from the coordinated Montana-Federal environmental review.

**Identification of Cooperating and Participating Agencies**

While GDO is the Lead Federal Agency for the EIS, GDO does not have the authority or responsibility to make decisions on North Plains' applications to BLM, USFS, and ARS. Under Federal law, BLM, USFS, and ARS each remain responsible for responding to authorization applications for lands within their respective jurisdictions. Pursuant to interagency agreements, and in accordance with section 216(h) of the FPA, GDO is the Lead Federal Agency responsible for coordinating the various Federal authorizations and related environmental reviews needed for this proposed Project. GDO and the Montana DEQ are Joint Lead Agencies for this Project's EIS in accordance with section 107(a)(1)(B) of NEPA and CEQ regulations (40 CFR 1501.7(b)). The Joint Lead Agencies will ensure that the EIS meets the requirements of both NEPA and MEPA. BLM, USFS, and ARS will participate as cooperating agencies as defined at 40 CFR 1501.8. On November 6, 2023, BLM, USFS, and ARS signed cooperating agency agreements with GDO outlining the respective roles and responsibilities of each agency during the proposed Project.

In addition to the Joint Lead Agency (Montana DEQ) and the three cooperating agencies (BLM, USFS, and ARS) already participating in the Project, per 40 CFR 1501.8, GDO will invite other Federal agencies with jurisdiction by law, or those Tribal, State, or local governments with special expertise related to the relevant environmental issues, to collaborate as cooperating agencies. GDO will provide cooperating agencies with a written summary of expectations, including schedules, milestones, responsibilities, scope, and details of agency expected contributions. Governmental agencies that are not designated cooperating or participating agencies will have the opportunity to provide information, comments, and consultation to GDO during the public input stages of the NEPA process.

**Proposed Project Details**

The proposed Project would consist of approximately 420 total miles of overhead electrical transmission line connecting the eastern and western grids. The 420-mile route described in this section will be known as the Proposed Route Alternative. In addition to 420-mile route described, the Project proposes to include the following:

- A new 500-kilovolt (kV) extra high voltage (EHV) alternating current (AC) electrical transmission line in Rosebud County, Montana (Rosebud Transmission Line). The new line would consist of two separate, parallel circuits, each approximately 3 miles long with an associated right-of-way approximately 320 feet wide. The Rosebud Transmission Line would extend east from the existing Colstrip Substation owned by a third-party, to a new AC/direct current (DC) converter station in Rosebud County. The Colstrip Substation would serve as the interconnection point to the Western Electricity Coordinating Council (WECC) power system for the western grid. NorthWestern Energy Group, Inc., a utility company that serves South Dakota, Nebraska, and Montana, is currently upgrading this substation to allow for additional interconnections into the region. These modifications are ongoing independent of the proposed Project, but the proposed Project would utilize these upgrades for interconnection.
- One new AC/DC converter station in Rosebud County, Montana (Rosebud County Converter Station). The converter station would connect the eastern terminus of the Rosebud Transmission Line to the western terminus of the new high voltage direct current (HVDC) electrical transmission line.
- An approximately 341-mile, up to 525-kV, HVDC transmission line from Montana into North Dakota with an associated 200-foot-wide right-of-way (HDVC Transmission Line).
  - *Montana:* North Plains would install approximately 172 miles of the HVDC Transmission Line in Rosebud, Custer, and Fallon counties. The line would extend east from the new Rosebud County Converter Station to the Montana-North Dakota state line in Fallon County.
  - *North Dakota:* North Plains would install approximately 169 miles of the HVDC Transmission Line in Golden Valley, Slope, Hettinger, Grant, and Morton counties. The line would extend east from the Montana-North Dakota border in Golden Valley County to the new AC/DC Converter Station in Morton County, North Dakota.

• One new AC/DC converter station in Morton County, North Dakota (Morton County Converter Station). The converter station would connect the eastern terminus of the new HVDC Transmission Line to the western terminus of two new 345-kV EHV AC electric transmission line segments.

• Approximately 51 miles of new 345-kV EHV AC transmission line located in Morton and Oliver counties, North Dakota, within an associated right-of-way approximately 200 feet wide (Oliver Transmission Line). The line would extend east and north from the Morton County Converter Station in Morton County to a separately planned Oliver County Substation in Oliver County, North Dakota. Minnesota Power has proposed and would develop the Oliver County Substation as part of the Minnesota Power HVDC Modernization Project, which is modernizing the existing Square Butte HVDC System between North Dakota and Minnesota that was built in the 1970s. The Oliver County Substation would serve as the interconnection point to the Midcontinent Independent System Operator (MISO) for the eastern grid.

• Approximately 22 miles of new 345-kV EHV AC transmission line near St. Anthony in Morton County, North Dakota (Morton Transmission Line). The line would extend east and southeast from the Morton County Converter Station to a new Morton County Switchyard, which connects or isolates lines for fault clearance and maintenance. The Morton County Switchyard would serve as the interconnection point to the Southwest Power Pool (SPP) system for the eastern grid.

The Project would also include associated facilities, including temporary and permanent access roads, telecommunication systems, and grounding components.

The Project would require temporary workspaces during the construction phase to access the construction site, stage equipment and material, and install the various Project components. (*See https://www.energy.gov/nepa/doeeis-0568-north-plains-connector-multiple-locations* for a map of the proposed Project).

**Purpose and Need**

While GDO is the Lead Federal Agency for the EIS, GDO does not have the authority or responsibility to make decisions on North Plains' applications to BLM, USFS, and ARS. Those Federal agencies retain their respective decision-making authority and responsibilities with respect to North Plains' applications on their respectively managed lands. Accordingly, each of those agencies has provided its own purpose and need in addition to the general purpose and need and GDO's purpose and need to establish the basis for their individual decisions to be made for this Project.

*General Purpose and Need*

The Joint Lead Agencies, along with BLM, USFS, and ARS, all agree on the general purpose and need for North Plains' proposed transmission line Project, which is to enhance the reliability, capacity, and efficiency between the Eastern and Western Interconnections of the electric grid. Construction of the proposed Project aims to increase wholesale energy market access for generation resources; provide services and technology to help maintain operational flexibility of the grid; and provide a highly controllable electric transmission pathway that can quickly and efficiently shift power to meet real-time system needs, including mitigating weather-driven and system outage conditions that can otherwise affect the reliable provision of electricity. The new transmission line would provide a more resilient and flexible infrastructure, ensuring a stable supply of electricity to residential, commercial, and industrial consumers.

The proposed transmission line Project seeks to address several needs found in the project area, including meeting and balancing increasing demands for electricity found in both the eastern and western grids, integrating diversified sources of energy, increasing the reliability and resilience of the electrical grid, and promoting regional economic development by expanding opportunities for market access for electricity generators throughout the region. A 2020 National Renewable Energy Laboratory Study ''The Value of Increased HVDC Capacity Between Eastern and Western U.S. Grids: The Interconnections Seam Study'' [2] showed that increased transfer capability between the eastern and western grids could result in a 35-year benefit-to-cost ratio as high as 2.89 and net present value consumer savings of up to $28.8 billion.

*GDO Purpose and Need*

GDO's purpose is to fulfill its responsibilities under the FPA to coordinate a single environmental review that follows a standard, two-year permitting schedule for transmission infrastructure projects that require Federal permitting. In fulfilling its responsibilities, GDO seeks to streamline the Federal permitting process for qualifying electric transmission projects to expand and accelerate development of electric transmission capacity in the United States and, in turn, ensure Americans have access to reliable, affordable, and clean energy; promote grid resilience and reliability; modernize the United States grid; reduce permitting delays; and promote economic growth.

*BLM Purpose and Need*

BLM's purpose is to respond to North Plains' request for right-of-way access across about ten miles of Federal lands administered by the Miles City Field Office, Montana, for the siting, construction, and operation of an up to 525-kV-rated, bi-directional HVDC transmission facility and associated support facilities within a 200-foot right-of-way which would be part of a system of high voltage AC and DC facilities over approximately 400 miles between Colstrip, Montana and Oliver and Morton Counties, North Dakota. This request for a right-of-way may include necessary access of Federal mineral materials in Montana and North Dakota for the construction of project-related infrastructure.

The need for the action is established through BLM's responsibility under the Federal Land Policy Management Act (FLPMA) to respond to requests for rights-of-way across BLM-managed lands, as well as the Surfaces Resources Act of 1955 and the Act of July 31, 1947 (Disposal of Materials on Public Lands) for any necessary mineral material sales contracts.

*USFS Purpose and Need*

The proposed Project would require the issuance of a special use permit for the crossing of about ten miles of Federal lands managed by the USFS on the Little Missouri National Grasslands, North Dakota. For this crossing, the proposed Project would entail siting, construction, and operation of an up to 525-kV-rated, bi-directional HVDC transmission facility and associated support facilities within a 200-foot right-of-way which would be part of a system of high voltage AC and DC facilities over approximately 10.3 miles (3.1 miles Golden Valley County; 7.2 miles Slope County) on the Little Missouri National Grassland.

Section 368(c) of the Energy Policy Act of 2005 directs USFS to establish procedures for identifying and designating additional energy corridors on Federal lands and to expedite applications for energy transmission and distribution facilities within those corridors. USFS is mandated to

[2] *www.nrel.gov/docs/fy21osti/76850.pdf.*

cooperate and coordinate with other Federal agencies to optimize siting of rights-of-way for energy corridors on National Forest System lands (30 U.S.C. 185(p); 43 U.S.C. 1763), and to endeavor to expedite applications for energy transmission and distribution facilities on National Forest System lands through coordination with other affected Federal agencies.

*ARS Purpose and Need*

ARS's purpose is to respond to North Plains' request for an easement access across about eight miles of Federal land managed by ARS in Montana for the siting, construction, and operation of an up to 525-kV-rated, bi-directional HVDC transmission facility and associated support facilities within a 200-foot right-of-way. The need for the action is established through 43 U.S.C. 961, Rights-of-Way for Power and Communications Facilities.

**Alternatives**

Several alternatives have been identified for potential analysis in the forthcoming EIS. These alternatives include different routing options, as well as variations in routing and transmission technology. GDO welcomes comments on all preliminary alternatives as well as suggestions for additional alternatives. The alternatives currently under consideration for the proposed Project are as follows:

*The No Action Alternative*

Under the No Action Alternative, the Agency permits and authorizations would not be granted and the agencies will assume for purposes of the EIS that the Project would not be constructed. The existing transmission infrastructure would remain unchanged, and any associated improvements or upgrades to address current and future demand, reliability, and rapid changes in generation would not be implemented. This alternative serves as a baseline against which the impacts of the other alternatives can be compared.

*Proposed Route Alternative*

The Proposed Route Alternative for the proposed Project is currently anticipated to include an approximately 420-mile, up to 525-kV electrical transmission line connecting the eastern and western grids, with an associated ROW that would generally be approximately 200 feet wide. According to North Plains, this route attempts to best balance use of existing road and transmission line corridors while avoiding national and state parks; national historic landmarks and National Register of Historic Places-listed or -eligible archaeological sites; inventoried roadless areas; most major waterbodies; greater sage grouse (GRSG) [3] habitat; visually sensitive areas; congested utility corridors; and urban development. The public is encouraged to provide other alternatives for consideration along with any information and analyses they have on such suggested alternatives.

*Other Alternatives*

The following discussion describes the five major route alternatives considered during Project planning. Subject to comments received during scoping, these alternatives may either be dismissed from further analysis or evaluated in detail in the EIS. They are identified as the following:

- Northern Route Alternative (Rosebud, Custer, and Fallon Counties, Montana)
- Central Route Alternative (Rosebud, Custer, and Fallon Counties, Montana)
- Southern Route Alternative (Rosebud, Custer, and Fallon Counties, Montana)
- Tongue River Route Alternative (Custer County, Montana)
- Eastern Route Alternative (Slope, Stark, Morton, and Oliver Counties, North Dakota)

See *https://www.energy.gov/nepa/doeeis-0568-north-plains-connector-multiple-locations* for a detailed map of these route alternatives.

*Northern Route Alternative*

This route was developed to maximize co-location with existing linear utilities near Interstate 94 and to minimize routing within the GRSG General Habitat Management Area (GHMA) in accordance with the BLM's MCFO Approved Resource Management Plan (ARMP).

The Northern Route Alternative diverges from the Proposed Route Alternative by leaving directly north from the Colstrip Substation and generally running on a more northerly path through Rosebud and Custer Counties, Montana. From Fallon County, Montana, to the endpoints in North Dakota, the route is the same as that seen in the Proposed Route Alternative.

The Northern Route Alternative is 8.5 miles shorter than the Proposed Route Alternative and crosses 2 fewer perennial waterbodies, and almost 40 miles less GRSG general habitat. The Northern Route Alternative also crosses 2.8 miles more of ARS-administered land and more intermittent or ephemeral waterbodies, and 0.4 mile more BLM-administered Visual Resources Management (VRM) Class II land. Further, the Northern Route Alternative is within 1 mile of 59 more identified cultural resources sites; is within 0.5 mile of the Strawberry Hill Designated Recreation Area; and crosses 9 more transmission lines than the Proposed Route Alternative. This route's northern passage out of Colstrip also crosses several parcels with underlying energy development easements that would conflict with siting an electric transmission line. Finally, this alternative nears the Yellowstone River, contains numerous occurrences of sensitive species, including bats, fish, and eagles, sensitive riparian habitats, and could present increased Tribal and cultural concerns.

*Central Route Alternative*

This route was designed to avoid the challenges associated with the Yellowstone River valley, congested highway corridors, and urban development areas near Miles City. It resembles the Northern Route Alternative but leaves Colstrip, Montana, in a more northeasterly direction. The Central Route Alternative then maintains a generally central alignment between the Northern Route Alternative and the Southern Route Alternative. The Central Route Alternative aims to strike a balance by incorporating stakeholder feedback associated with co-location of the transmission line with other infrastructure. The Central Route Alternative also avoids the easements north of Colstrip noted in the Northern Alternative.

The Central Route Alternative crosses conservation easements to conserve, protect, and enhance native wildlife habitat. This alternative also crosses conservation easements northeast of Colstrip that include terms that are intended to conserve, protect, and enhance native wildlife habitat. This alternative also crosses Tongue River near 12 Mile Dam, which is a heavily used recreational area for fishing and camping about 0.6 mile to the north, existing residential development, and more irrigated cropland than the Proposed Route Alternative.

*Southern Route Alternative*

This route intends to take advantage of the gentler topography east of Colstrip compared to the other routes.

[3] The GRSG is a sagebrush species that is in decline across its range due to habitat loss and has been recognized as threatened or near threatened by several national and international organizations Federal agencies manage protection of the species through several habitat designations, which protect GRSG habitat based on value.

Further, this route is not within 0.5 miles of a designated recreation area. This route additionally also avoids ARS-administered lands and is about 25 miles shorter than the Proposed Route.

This route avoids some resources, like perennial and ephemeral waterbodies, but crosses others, like VRM Class II areas near the Tongue River, Pumpkin Creek, and east of the Powder River in Custer County, Montana, as well as sites of Tribal and cultural significance. There are also accessibility constraints east of the Powder River that would require engineered roadways and long access roads, which could increase the Project impacts during construction and operation.

*Tongue River Route Alternative*

The Tongue River Route Alternative passes through the Tongue River Valley. The route is not within 0.25 mile of a GRSG no occupancy zone nor within 0.5 miles of a designated recreation area. The Tongue River Route is almost 30 miles shorter than the Proposed Route Alternative, does not cross ARS-administered lands, and avoids almost 50 miles of GRSG habitat. The Tongue River Route Alternative, however, crosses 5.3 miles more VRM Class II land, is within 1.0 mile of 110 more cultural resource sites, crosses 2 more conservation lands/easements, and crosses 40 more county and local roads than the Proposed Route Alternative.

Several Tribal resources and protected species along the Tongue River have been previously identified during surveys.

*Eastern Route Alternative*

The Eastern Route Alternative was designed prior to the addition of the 22 miles of EHV AC Morton Transmission Line in Morton County, North Dakota, to the Project scope and objectives. Therefore, this route does not include the SPP interconnection near St. Anthony as described in the Proposed Route Alternative.

The Eastern Route Alternative diverges from the Proposed Route Alternative in Slope County just east of the Montana-North Dakota state line. To achieve a route that balances all potential impacts from the proposed Project, the Eastern Route Alternative heads slightly northeast and east from the North Dakota-Montana state line before it heads southwest to cross the Little Missouri River and generally east through the North Dakota badlands.

The primary considerations for the Eastern Route Alternative design were aligning with existing linear utilities, paralleling Interstate 94 along a more direct route, adhering to the recommendation provided by the USFS to cross the Little Missouri River on private lands, and avoidance of GRSG primary range designated by the North Dakota Game and Fish Department.

*Minor Route Variations*

During Project planning, North Plains incorporated many minor route variations into its Proposed Route Alternative. Minor route variations are different from major route alternatives in that they are usually shorter and are often designed to accommodate a particular landowner request or to avoid a site-specific environmental resource or engineering constraint. Although minor route variations may range from a few hundred feet long to several miles long, minor route variations typically remain within the same area as the Proposed Route. Examples of route variations include realigning the route from a hay field to pastureland on a ranch to avoid disruption to cultivation; moving a structure location to avoid placing it in a wetland; and adjusting the centerline alignment along a slope to improve constructability.

*Endpoint Alternatives*

As described in the Proposed Project Details, North Plains determined the proposed Project would connect the existing Colstrip Substation in Rosebud County, Montana, to the Oliver County Substation approximately 6 miles southeast of Center, North Dakota, and a new Morton County Switchyard near St. Anthony, North Dakota. The Project Proponent considered another facility as a potential Western interconnection point: the other nearest potential endpoint in Montana, the existing Broadview Substation in Yellowstone County. This alternative facility would add about 100 miles of transmission line to the Project. In North Dakota, the Project Proponent determined the proposed Project endpoints are the most reasonable connection locations to existing infrastructure on the Eastern Interconnection grid without adding considerable length.

*Converter Station Alternatives*

As described in the Proposed Project Details, North Plains proposes to use two converter stations near the Project endpoints. The siting of converter stations is constrained insofar as the stations need to be located near the Project endpoints and they must occur along the transmission line route. A converter station site that is not on the proposed transmission line route necessitates proposing a new transmission line route. North Plains is in the process of evaluating alternatives to its proposed converter station sites.

Summary of Expected Impacts

Field investigations, environmental surveys, and other studies are being conducted for the proposed Project to evaluate anticipated impacts to air, noise, climate, geologic hazards, mineral and energy resources, paleontological resources, soils, water, vegetation, wildlife, threatened and endangered species, cultural resources, visual resources, Federal projects, recreation activities, wilderness, and other resources. North Plains is currently conducting field surveys for wetlands/waterbodies, vegetation, general habitat, threatened and endangered and special status species, cultural and tribal resources, architectural history, and paleontological resources. North Plains is also preparing a Phase 1 bat hibernacula assessment, whooping crane habitat assessment, impact assessments for bald and golden eagles (to support Bald and Golden Eagle Protection Act compliance), and GRSG (to support the Montana GRSG mitigation plan), migratory bird habitat assessment (to support the Migratory Bird Treaty Act compliance plan), and species and habitat assessments for federally listed and proposed species to support compliance with section 7 of the Endangered Species Act.

GDO and the cooperating agencies will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to resources from the proposed Project and all analyzed reasonable alternatives [4] and, in accordance with 40 CFR 1502.14(e), include appropriate mitigation measures not already included in the proposed route alternative or other alternatives.

Potential impacts on built, human, and natural environments from the proposed Project will be studied during the Federal, State, and local environmental review processes. These review processes and potential impacts will be analyzed in the EIS. The public is invited to participate in the scoping process to identify potential alternatives and impacts, information, studies, and analyses relevant to the proposed Project and Alternatives.

**Anticipated Permits and Authorizations**

The Project Proponent will need to secure permits and authorizations from several Federal and state agencies, which include but are not limited to those listed below.

[4] ''Reasonable alternatives'' means a reasonable range of alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.

| Agency | Permit/authorization |
|---|---|
| Bureau of Land Management | Right-of-way grant, short-term right-of-way grant, and mineral materials sales contract. |
| Forest Service | Special Use Permit. |
| Agricultural Research Service | Easement. |
| Federal Highway Administration | Permits to cross Federal Aid Highway. |
| U.S. Army Corps of Engineers | General easement, Section 10 permit, and Section 404 permit. |
| Montana Department of Environmental Quality | Certificate of Compliance under the Major Facility Siting Act. |
| North Dakota Public Service Commission | Certificate of Corridor Compatibility and Transmission Facility Route Permit. |
| North Dakota County Governments (Golden Valley, Grant, Hettinger, Morton, Oliver, and Slope Counties). | Conditional Use Permits. |

**Schedule for the Decision-Making Process**

This notice of intent initiates the scoping period for the EIS. GDO will provide additional opportunities for public participation consistent with DOE NEPA regulations (10 CFR part 1021) and CEQ NEPA regulations (40 CFR parts 1500–1508), including a 45-day comment period on the Draft EIS. Please note that, when commenting during either the scoping or the public comment period, your comment and personal information, if provided, will be retained as a part of the single, consolidated, public record for the project. GDO will allow for anonymous comments.

GDO plans to publish the Draft EIS for public review in Fall 2025 and the Final EIS in Fall 2026. BLM, ARS, and DEQ will release respective decision documents no sooner than 30 days after release of the Final EIS. The USFS will release its own Draft Record of Decision (ROD) alongside the Final EIS, and upon conclusion of the objections process required under USFS regulations, will release a final ROD. Following the issuance of each agency's individual RODs, GDO will issue a determination that the duration for each land-use authorization is commensurate with the anticipated use of the facility, per FPA Section 216(h)(3).

USFS would not issue a ROD concerning applicable USFS authorizations until after completion of the objections process in 36 CFR part 218, subparts A and B. Objections will be accepted only from those who have previously submitted specific written comments regarding the proposed Project during scoping or other designated opportunity for public comment in accordance with 36 CFR 218.5(a). Issues raised in objections must be based on previously submitted timely, specific written comments regarding the proposed Project unless based on new information arising after designated opportunities, and objectors must make a connection between issues raised in comment in their objections. Objections must be filed within 45 days, after the Final EIS and draft ROD. The objection must include specific issues related to the proposed Project; if applicable, how the objector believes the decision violates law, regulation, or policy; and suggested remedies that would resolve the objection. USFS reviews objections and may engage in discussions with objectors to resolve issues. The Reviewing Officer (a USFS official) will issue a written response to the objections, which may include instructions to the responsible official must complete before signing the decision. After the objection process is complete, the Dakota Prairie Grasslands Forest Supervisor would issue the ROD.

**Responsible Official and Nature of Decision To Be Made**

While GDO is the Lead Federal Agency for the Project EIS, GDO does not have authority or responsibility to make decisions on North Plains' applications to BLM, USFS, and ARS. Those Federal agencies retain their respective decision-making authorities and responsibilities with respect to North Plains' applications. Accordingly, each Federal agency's deciding officials and the scope of decisions to be made are listed here:

*BLM:* The Field Manager of the Miles City Field Office (MCFO) is the Responsible Official. The Field Manager as the Responsible Official will decide whether to grant the ROW for the portion of the transmission line and associated infrastructure located on public lands administered by the MCFO, and if so, under what terms and conditions. Any necessary mineral materials sales contracts would be granted by either the Field Manager for the Miles City Field Office or the North Dakota Field Office, depending on where the mineral materials are located.

*USFS:* The Dakota Prairie Grasslands Forest Supervisor is the Responsible Official. The Forest Supervisor as the Responsible Official will decide whether to issue a SUP for the proposed Project for the portion of the project Proposed on USFS-managed land.

*ARS:* The Plains Area Real Estate Lease Contracting Officer is the Responsible Official. The Plains Area Real Estate Lease Contracting Officer as the Responsible Official will decide whether to grant an easement for the portion of the transmission line and associated infrastructure the proposed Project proposes to place on Federal lands under the control of ARS.

**Additional Information**

GDO and the cooperating agencies will utilize and coordinate the NEPA process to help support compliance with applicable procedural requirements under Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of Section 106. GDO and the cooperating agencies will consult with Indian Tribal Nations on a government-to-government basis in accordance with relevant Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, state, and local agencies, along with Indian Tribal Nations and other stakeholders that may be interested in or affected by the proposed Project, are invited to participate in the scoping process and, if eligible, may request or be requested by the GDO to participate in the development of the EIS as a cooperating agency.

**Signing Authority**

This document of the Department of Energy was signed on October 21, 2024, by Maria D. Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document evidencing this delegation of authority 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 22, 2024.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

[FR Doc. 2024–24879 Filed 10–24–24; 8:45 am]

**BILLING CODE 6450–01–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:* EC25–10–000.

*Applicants:* Number Three Wind LLC.

*Description:* Application for Authorization Under Section 203 of the Federal Power Act of Number Three Wind LLC.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5221.

*Comment Date:* 5 p.m. ET 11/8/24.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER24–2447–002.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Compliance filing: Compliance related to Capacity Obligations for Load Adjustments to be effective 8/31/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5147.

*Comment Date:* 5 p.m. ET 11/12/24.

*Docket Numbers:* ER24–2843–003.

*Applicants:* Atrisco Solar SF LLC.

*Description:* Tariff Amendment: Third Amendment to the Amended and Restated Lease Agreement to be effective 8/24/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5028.

*Comment Date:* 5 p.m. ET 10/31/24.

*Docket Numbers:* ER25–150–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Compliance filing: 2024–10–18_Request for Waiver of COD re: 2018–2019 Projects to be effective N/A.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5172.

*Comment Date:* 5 p.m. ET 11/8/24.

*Docket Numbers:* ER25–151–000.

*Applicants:* Duff Solar Park LLC.

*Description:* Baseline eTariff Filing: Market-Based Rate Application to be effective 12/18/2024.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5173.

*Comment Date:* 5 p.m. ET 11/8/24.

*Docket Numbers:* ER25–152–000.

*Applicants:* Pleasantville Solar Park LLC.

*Description:* Baseline eTariff Filing: Market-Based Rate Application to be effective 12/18/2024.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5176.

*Comment Date:* 5 p.m. ET 11/8/24.

*Docket Numbers:* ER25–153–000.

*Applicants:* Riverstart Solar Park IV LLC.

*Description:* Baseline eTariff Filing: Market-Based Rate Application to be effective 12/18/2024.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5184.

*Comment Date:* 5 p.m. ET 11/8/24.

*Docket Numbers:* ER25–154–000.

*Applicants:* Sandrini BESS Storage LLC.

*Description:* Baseline eTariff Filing: Market-Based Rate Application to be effective 12/18/2024.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5189.

*Comment Date:* 5 p.m. ET 11/8/24.

*Docket Numbers:* ER25–155–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Notice of Cancellation of WMPA, SA No. 6088; AF1–209 to be effective 12/18/2024.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5194.

*Comment Date:* 5 p.m. ET 11/8/24.

*Docket Numbers:* ER25–156–000.

*Applicants:* Peregrine Energy Storage, LLC.

*Description:* Baseline eTariff Filing: Peregrine Energy Storage, LLC MBR Tariff to be effective 12/18/2024.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5197.

*Comment Date:* 5 p.m. ET 11/8/24.

*Docket Numbers:* ER25–157–000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Notice of Termination of Service Agreement No. 69 under PG&E's FERC Electric Tariff Volume No. 5.

*Filed Date:* 10/16/24.

*Accession Number:* 20241016–5246.

*Comment Date:* 5 p.m. ET 11/6/24.

*Docket Numbers:* ER25–158–000

*Applicants:* Constellation Energy Generation, LLC.

*Description:* Constellation Energy Generation, LLC requests a limited one-time waiver of the must-offer exception deadline in PJM Interconnection, L.L.C.'s Open Access Transmission Tariff Attachment DD Section 6.6(g).

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5229.

Comment Date: 5 p.m. ET 11/8/24.

*Docket Numbers:* ER25–160–000.

*Applicants:* Morris Solar, LLC.

*Description:* Baseline eTariff Filing: Morris Solar, LLC MBR Tariff to be effective 11/1/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5067.

*Comment Date:* 5 p.m. ET 11/12/24.

*Docket Numbers:* ER25–161–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6278; Queue No. AD2–048 to be effective 12/21/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5072.

*Comment Date:* 5 p.m. ET 11/12/24.

*Docket Numbers:* ER25–162–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* 205(d) Rate Filing: 2024–10–21_SA 4368 ATC–WPL GIA (S1017) to be effective 10/10/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5081.

Comment Date: 5 p.m. ET 11/12/24.

*Docket Numbers:* ER25–163–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* 205(d) Rate Filing: 2024–10–21_SA 4370 ATC–WPL GIA (S1018) to be effective 10/11/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5085.

*Comment Date:* 5 p.m. ET 11/12/24.

*Docket Numbers:* ER25–164–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* 205(d) Rate Filing: 2024–10–21_SA 2687 Termination of METC-New Covert FCA (T94) to be effective 10/22/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5088.

*Comment Date:* 5 p.m. ET 11/12/24.

*Docket Numbers:* ER25–165–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* 205(d) Rate Filing: 2024–10–21_SA 4369 ATC–EDP Renewables North America GIA (J1502) to be effective 10/10/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5097.

*Comment Date:* 5 p.m. ET 11/12/24.

*Docket Numbers:* ER25–166–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Notice of Cancellation—WMPA Service

Agreement No. 5722; Queue No. AF1–210 to be effective 12/21/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5104.

*Comment Date:* 5 p.m. ET 11/12/24.

*Docket Numbers:* ER25–167–000.

*Applicants:* The United Illuminating Company, ISO New England Inc.

*Description:* 205(d) Rate Filing: The United Illuminating Company submits tariff filing per 35.13(a)(2)(iii: United Illuminating Request for Approval of Transmission Rate Incentives to be effective 12/18/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5113.

*Comment Date:* 5 p.m. ET 11/12/24.

*Docket Numbers:* ER25–168–000.

*Applicants:* Canal Marketing LLC.

*Description:* 205(d) Rate Filing: Revised IROL–CIP Costs Rate Schedule to be effective 10/28/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5129.

*Comment Date:* 5 p.m. ET 11/12/24

*Docket Numbers:* ER25–169–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* 205(d) Rate Filing: 2024–10–21 TCA Amendment Filing and Request for Waivers to be effective 12/21/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5150.

*Comment Date:* 5 p.m. ET 11/12/24.

*Docket Numbers:* ER25–170–000.

*Applicants:* SunZia Transmission, LLC.

*Description:* Initial rate filing: Transmission Owner Tariff to be effective 12/31/9998.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5164.

*Comment Date:* 5 p.m. ET 11/12/24.

*Docket Numbers:* ER25–171–000.

*Applicants:* SunZia Transmission, LLC.

*Description:* 205(d) Rate Filing: Service Agreement No. 3—LGIA with SunZia Wind South and CAISO to be effective 12/31/9998.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5165.

*Comment Date:* 5 p.m. ET 11/12/24.

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: October 21, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024–24902 Filed 10–24–24; 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:* RP25–83–000.

*Applicants:* Natural Gas Pipeline Company of America LLC.

*Description:* 4(d) Rate Filing: Negotiated Rate Agreements—Various Shippers November 2024 to be effective 11/1/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5030.

*Comment Date:* 5 p.m. ET 11/4/24.

*Docket Numbers:* RP25–84–000.

*Applicants:* Transwestern Pipeline Company, LLC.

*Description:* 4(d) Rate Filing: Negotiated Rate Filing—Tenaska_2 to be effective 11/1/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5047.

*Comment Date:* 5 p.m. ET 11/4/24.

*Docket Numbers:* RP25–85–000.

*Applicants:* Texas Eastern Transmission, LP.

*Description:* 4(d) Rate Filing: Negotiated Rates—UGI 911966 eff 11–1–24 to be effective 11/1/2024.

*Filed Date:* 10/21/24.

*Accession Number:* 20241021–5084.

*Comment Date:* 5 p.m. ET 11/4/24.

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: October 21, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024–24903 Filed 10–24–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 3240–040]**

### Briar Hydro Associates; Notice of Intent To Prepare an Environmental Assessment

On November 30, 2022, the Briar Hydro Associates filed a new license application for the 4.3-megawatt Rolfe Canal Hydroelectric Project No. 3240 (project). The project is located on the Contoocook River in City of Concord, Merrimack County, New Hampshire.

In accordance with the Commission's regulations, on June 20, 2024,

Commission staff issued a notice that the project was ready for environmental analysis (REA Notice). Based on the information in the record, staff does not anticipate that licensing the project would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to license the project.[1]

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

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*.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Commission issues EA. | March 4, 2025. |

Any questions regarding this notice may be directed to Jeanne Edwards at (202) 502–6181 or *jeanne.edwards@ferc.gov*.

Dated: October 18, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024–24805 Filed 10–24–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14787–004]**

### Black Canyon Hydro, LLC; Notice of Revised Schedule for the Seminoe Pumped Storage Project

This notice revises the Federal Energy Regulatory Commission's (Commission) schedule for processing Black Canyon Hydro, LLC's license application for the Seminoe Pumped Storage Project. A prior notice issued on January 10, 2024, identified an anticipated schedule for issuance of draft and final National Environmental Policy Act (NEPA) documents and a final order for the project. On September 4, 2024, Black Canyon Hydro, LLC requested an extension of time to file its historic properties management plan by October 31, 2024. Commission staff issued a letter approving the extension of time on September 11, 2024. To account for the additional time needed for Black Canyon Hydro, LLC to file the required information, the application will be processed according to the following revised schedule.

*Notice of Ready for Environmental Analysis:* January 2025.

*Draft NEPA Document:* September 2025.

*Final NEPA Document:* April 13, 2026.

In addition, in accordance with title 41 of the Fixing America's Surface Transportation Act, enacted on December 4, 2015, agencies are to publish completion dates for all federal environmental reviews and authorizations. This notice identifies the Commission's anticipated schedule for issuance of the final order for the project, which is based on the revised issuance date for the final NEPA document. Accordingly, we currently anticipate issuing a final order for the project no later than:

*Issuance of Final Order:* July 16, 2026.

If a schedule change becomes necessary, an additional notice will be provided so that interested parties and government agencies are kept informed of the project's progress.

Dated: October 18, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024–24802 Filed 10–24–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP24–514–000]**

### National Fuel Gas Supply Corporation; Notice of Schedule for the Preparation of an Environmental Assessment for the Tioga Pathway Project

On August, 21, 2024, National Fuel Gas Supply Corporation filed an application in Docket No. CP24–514–000 requesting a Certificate of Public Convenience and Necessity pursuant to section 7(c) and Authorization pursuant to section 7(b) of the Natural Gas Act to construct and operate and abandon certain natural gas pipeline facilities. The proposed project is known as the Tioga Pathway Project (Project), and would provide 190,000 dekatherms per day of firm transportation service from the Tioga County, Pennsylvania natural gas production area to downstream delivery points with other interstate pipelines, which reach various end-use markets and demand centers in the United States and Canada, and modernize a portion of National Fuel's existing Line Z20 pipeline system.

On August 30, 2024, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing Federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a Federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1] The EA will be issued for a 30-day comment period.

**Schedule for Environmental Review**

Issuance of EA—February 13, 2025
90-day Federal Authorization Decision Deadline [2]—May 14, 2025

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

**Project Description**

The Tioga Pathway would consist of the following facilities:

- *Line Z20:* Replace approximately 3.8 miles of 12-inch-diameter 1936-vintage bare steel pipeline with new 20-inch-diameter coated steel pipeline and perform modifications to an existing valve setting on Line Z20 in National

[1] In accordance with the Council on Environmental Quality's regulations, the unique identification number for documents relating to this environmental review is 3240. 40 CFR 1501.5(c)(4) (2024).

[1] In accordance with the Council on Environmental Quality's regulations, the unique identification number for documents relating to this environmental review is EAXX–019–20–000–1728990440. 40 CFR 1501.5(c)(4) (2024).

[2] The Commission's deadline applies to the decisions of other Federal agencies, and state agencies acting under federally delegated authority, that are responsible for Federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by Federal law.

Fuel's existing right-of-way in Potter County, Pennsylvania;

- *Line YM59:* Install approximately 19.5 miles of new 20-inch-diameter coated steel pipeline beginning at the east end of the 3.8-mile Z20 Pipeline replacement, traversing Potter and Tioga Counties, Pennsylvania, and ending at the NFG Midstream Covington, LLC (Midstream) Lee Hill Interconnect;
- *McCutcheon Hill OPP Station:* Construct a new over-pressure protection (OPP) station at the interconnection between the eastern terminus of the Z20 Pipeline replacement and the western terminus of the YM59 Pipeline in Potter County;
- *Measurement equipment at Midstream's Lee Hill Interconnect:*[3] [4] The Lee Hill Interconnect is a proposed producer interconnect with Midstream at the terminus of the proposed YM59 Pipeline in Tioga County;
- Perform minor modifications at National Fuel's existing Ellisburg Compressor Station,[5] in Potter County, including replacing/installing measurement, OPP devices, flow control, and other associated appurtenances; and
- Construct one new remote-control valve setting and install a new cathodic protection ground bed along the Line YM59 Pipeline in Tioga County.

**Background**

On October 4, 2024, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Tioga Pathway Project and Notice of Public Scoping Session* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. All substantive comments will be addressed in the EA.

**Additional Information**

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP24–514–000), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: October 18, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024–24809 Filed 10–24–24; 8:45 am]

**BILLING CODE 6717–01–P**

[3] This interconnect would be designed, installed, owned, operated, and maintained by Midstream, except for the interconnect's gas measurement, gas quality, over pressure protection devices and a pig launcher, which would be owned, operated, and maintained by National Fuel.

[4] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline, conducting internal inspections, or other purposes.

[5] National Fuel does not propose any changes to compressor units or to the certificated capacity at the Ellisburg Compressor Station.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2509–051]**

### PE Hydro Generation, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2509–051.

c. *Date filed:* January 3, 2022.

d. *Applicant:* PE Hydro Generation, LLC.

e. *Name of Project:* Shenandoah Hydroelectric Project (P–2509–051).

f. *Location:* The project is located on the South Fork of the Shenandoah River near the Town of Shenandoah in Page and Rockingham, Counties, Virginia. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Jody Smet, Vice President, Regulatory Affairs, PE Hydro Generation, LLC, 7315 Wisconsin Ave., Suite 1100W, Bethesda, MD 20814; Phone at (804) 382–1764 or email at *jody.smet@eaglecreekre.com.*

i. *FERC Contact:* Kristine Sillett at (202) 502–6575; or email at *kristine.sillett@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* 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, please send a paper copy via U. S. Postal Service to: Debbie-Anne A. Reese, 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, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Shenandoah Project (P–2509–051).

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *The Shenandoah Project consists of:* (1) a 15-foot-high, 495-foot-long reinforced concrete dam; (2) a 30-acre impoundment with a storage capacity of 190 acre feet; (3) a 91-foot-long, 38-foot-wide powerhouse adjacent to the north end of the dam, with four generating units having a total installed capacity of 862 kW; (4) 180-foot-long, 2.4-kilovolt (kV) project generator lines; (5) a substation containing a 3-phase, 2.4/34.5-kV transformer where interconnection with the grid occurs and; (6) other appurtenances.

The project operates in a run-of-river mode with a minimum flow of 44 cubic feet per second. The project had an average annual generation of 2,037 megawatt-hours between 2011 and 2016.

m. 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. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicants and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicants. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding in accordance with 18 CFR 4.34(b) and 385.2010.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595, or at *OPP@ferc.gov.*

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. The applicant must file no later than 60 days from the issuance date of this notice: (1) copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of a waiver of water quality certification.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

| Milestones | Target date |
|---|---|
| Deadline for filing comments, recommendations, terms and conditions, and prescriptions | December 17, 2024. |
| Deadline for filing reply comments | January 31, 2025. |

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: October 18, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024–24806 Filed 10–24–24; 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 exempt wholesale generator filings:

*Docket Numbers:* EG25–12–000.

*Applicants:* Azalea Springs Solar Park LLC.

*Description:* Azalea Springs Solar Park LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5138.

*Comment Date:* 5 p.m. ET 11/8/24.

*Docket Numbers:* EG25–13–000.

*Applicants:* Duff Solar Park LLC.

*Description:* Duff Solar Park LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5140.

*Comment Date:* 5 p.m. ET 11/8/24.

*Docket Numbers:* EG25–14–000.

*Applicants:* Pleasantville Solar Park LLC.

*Description:* Pleasantville Solar Park LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5142.

*Comment Date:* 5 p.m. ET 11/8/24.

*Docket Numbers:* EG25–15–000.

*Applicants:* Riverstart Solar Park IV LLC.

*Description:* Riverstart Solar Park IV LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5143.

*Comment Date:* 5 p.m. ET 11/8/24.

*Docket Numbers:* EG25–16–000.

*Applicants:* Sandrini BESS Storage LLC.

*Description:* Sandrini BESS Storage LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5144.

*Comment Date:* 5 p.m. ET 11/8/24.

*Docket Numbers:* EG25–17–000.

*Applicants:* Peregrine Energy Storage, LLC.

*Description:* Peregrine Energy Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5147.

*Comment Date:* 5 p.m. ET 11/8/24.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER24–417–001.

*Applicants:* Flat Ridge Interconnection LLC.

*Description:* Compliance filing: Compliance Filing Reflecting Rate Schedule Effective Date to be effective N/A.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5026.

*Comment Date:* 5 p.m. ET 11/8/24.

*Docket Numbers:* ER24–422–001.

*Applicants:* Flat Ridge 2 Wind Energy LLC.

*Description:* Compliance filing: Compliance Filing Reflecting Certiciate of Concurrence Effective Date to be effective N/A.

*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5024.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER24–425–001.
*Applicants:* Flat Ridge 4 Wind, LLC.
*Description:* Compliance filing: Compliance Filing Reflecting Amended CFA Actual Rate Schedule Effective Date to be effective N/A.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5118.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER24–426–001.
*Applicants:* Flat Ridge 5 Wind Energy LLC.
*Description:* Compliance filing: Compliance Filing Reflecting Amended CFA Actual Rate Schedule Effective Date to be effective N/A.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5121.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER24–427–001.
*Applicants:* Flat Ridge 3 Wind Energy, LLC.
*Description:* Compliance filing: Compliance Filing Reflecting Certificate of Concurrence Effective Date to be effective N/A.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5116.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER24–2843–001.
*Applicants:* Atrisco Solar SF LLC.
*Description:* Tariff Amendment: Amendment to the Amended and Restated Lease Agreement to be effective 8/24/2024.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5000.
*Comment Date:* 5 p.m. ET 10/28/24.
*Docket Numbers:* ER24–2843–002.
*Applicants:* Atrisco Solar SF LLC.
*Description:* Tariff Amendment: Second Amendment to the Amended and Restated Lease Agreement to be effective 8/24/2024.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5123.
*Comment Date:* 5 p.m. ET 10/28/24.
*Docket Numbers:* ER25–136–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: Notice of Cancellation of WMPA, SA No. 5626; AE1–160 re: withdrawal to be effective 12/17/2024.
*Filed Date:* 10/17/24.
*Accession Number:* 20241017–5163.
*Comment Date:* 5 p.m. ET 11/7/24.
*Docket Numbers:* ER25–137–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: Notice of Cancellation of WMPA, SA No. 6085; AF2–275 re:withdrawal to be effective 12/17/2024.
*Filed Date:* 10/17/24.
*Accession Number:* 20241017–5166.
*Comment Date:* 5 p.m. ET 11/7/24.
*Docket Numbers:* ER25–138–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: Price Formation During Load Shed and Emergency Assistance Events to be effective 12/31/9998.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5034.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER25–139–000.
*Applicants:* American Electric Power Service Corporation, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits update to attachment 1 of ILDSA, SA No. 1336 (10/1/24) to be effective 10/1/2024.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5047.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER25–140–000.
*Applicants:* Atlantic City Electric Company, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Atlantic City Electric Company submits tariff filing per 35.13(a)(2)(iii: ACE Order No. 898 Update to Tariff Attachment H–1A to be effective 1/1/2025.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5052.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER25–141–000.
*Applicants:* Delmarva Power & Light Company, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Delmarva Power & Light Company submits tariff filing per 35.13(a)(2)(iii: DPL Order No. 898 Update to Tariff Attachment H–3D to be effective 1/1/2025.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5055.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER25–142–000.
*Applicants:* PECO Energy Company, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: PECO Energy Company submits tariff filing per 35.13(a)(2)(iii: PECO Order No. 898 Update to Tariff Attachment H–7A to be effective 1/1/2025.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5061.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER25–143–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) Rate Filing: 2024–10–18_SA 4366 ATC-Paris Solar Energy Center GIA (J1778) to be effective 10/9/2024.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5062.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER25–144–000.
*Applicants:* Potomac Electric Power Company, PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Potomac Electric Power Company submits tariff filing per 35.13(a)(2)(iii: PEPCO Order No. 898 Update to Tariff Attachment H–9A to be effective 1/1/2025.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5066.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER25–145–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) Rate Filing: 2024–10–18_SA 4367 ATC-Koshkonong Solar Energy Center GIA (J1779) to be effective 10/9/2024.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5075.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER25–146–000.
*Applicants:* PacifiCorp.
*Description:* § 205(d) Rate Filing: Tri-State Master Installation, O&M Agmt for Metering (Rev 6) (RS No. 716) to be effective 12/18/2024.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5113.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER25–147–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: Notice of Cancellation of WMPA, SA No. 6081; AF2–426 re: withdrawal to be effective 12/18/2024.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5132.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER25–148–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: Cancellation of WMPA, SA No. 6268; AG2–391 to be effective 12/18/2024.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5139.
*Comment Date:* 5 p.m. ET 11/8/24.
*Docket Numbers:* ER25–149–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Tariff Amendment: Notice of Cancellation of WMPA, SA No. 5812; AF1–166 to be effective 12/18/2024.
*Filed Date:* 10/18/24.
*Accession Number:* 20241018–5153.
*Comment Date:* 5 p.m. ET 11/8/24.

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: October 18, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024–24811 Filed 10–24–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2425–057]**

### PE Hydro Generation, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2425–057.

c. *Date filed:* January 3, 2022.

d. *Applicant:* PE Hydro Generation, LLC.

e. *Name of Project:* Luray and Newport Hydroelectric Project (P–2425–057).

f. *Location:* The two-development Luray and Newport Project is located on the South Fork of the Shenandoah River near the Towns of Luray (Luray Development) and Newport (Newport Development) in Page County, Virginia. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Jody Smet, Vice President, Regulatory Affairs, PE Hydro Generation, LLC, 7315 Wisconsin Ave., Suite 1100W, Bethesda, MD 20814; Phone at (804) 382–1764 or email at *jody.smet@eaglecreekre.com.*

i. *FERC Contact:* Kristine Sillett at (202) 502–6575; or email at *kristine.sillett@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* 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, please send a paper copy via U.S. Postal Service to: Debbie-Anne A. Reese, 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, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Luray and Newport Project (P–2425–057).

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *The Luray Development consists of:* (1) a 21.9-foot-high, 530-foot-long reinforced concrete dam; (2) a 126-acre impoundment with a storage capacity of 880 acre-feet; (3) a 100-foot-long, 27.5-foot-wide powerhouse, adjacent to the south end of the dam, containing three Francis turbine/generating units having a total installed capacity of 1,600 kW; (4) 35-foot-long, 2.4-kilovolt (kV) project generator lines; (5) a substation containing a 3-phase, 2.4/34.5-kV transformer where interconnection with the grid occurs; and (6) other appurtenances.

*The Newport Development consists of:* (1) a 28.8-foot-high, 443-foot-long reinforced concrete dam; (2) a 103-acre impoundment with a storage capacity of 1,090 acre-feet; (3) a 73.5-foot-long, 21.2-foot-wide powerhouse adjacent to the north end of the dam, with three Francis turbine/generating units with a total installed capacity of 1,400 kW; (4) 150-foot-long, 2.4-kilovolt (kV) project generator lines; (5) a substation containing a 3-phase, 2.4/34.5-kV transformer where interconnection with the grid occurs; and (5) other appurtenances.

Both developments operate in run-of-river mode with minimum flows of 47 cubic feet per second (cfs) and 40 cfs, at the Luray and Newport Developments, respectively. The project had an average annual generation of 10,928 megawatt-hours between 2011 and 2016.

m. 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. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicants and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicants. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding in accordance with 18 CFR 4.34(b) and 385.2010.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595, or at *OPP@ferc.gov.*

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *The applicant must file no later than 60 days from the issuance date of this notice:* (1) copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of a waiver of water quality certification.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

| Milestones | Target date |
|---|---|
| Deadline for filing comments, recommendations, terms and conditions, and prescriptions. | December 17, 2024. |
| Deadline for filing reply comments ... | January 31, 2025. |

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: October 18, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024–24807 Filed 10–24–24; 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:* PR25–5–000.

*Applicants:* Questar Gas Company.

*Description:* § 284.123 Rate Filing: Questar dba Enbridge Utah Gas SOC filing October 17, 2024 to be effective 10/1/2024.

*Filed Date:* 10/17/24.

*Accession Number:* 20241017–5117.

*Comment Date:* 5 p.m. ET 11/7/24.

*Docket Numbers:* RP25–78–000.

*Applicants:* Centra Pipelines Minnesota Inc.

*Description:* § 4(d) Rate Filing: Updated Index of Shippers December 2024 to be effective 12/1/2024.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5068.

*Comment Date:* 5 p.m. ET 10/30/24.

*Docket Numbers:* RP25–79–000.

*Applicants:* Portland Natural Gas Transmission System.

*Description:* § 4(d) Rate Filing: Notice Address Update to be effective 11/18/2024.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5073.

*Comment Date:* 5 p.m. ET 10/30/24.

*Docket Numbers:* RP25–80–000.

*Applicants:* Guardian Pipeline, L.L.C.

*Description:* § 4(d) Rate Filing: Update to Part 8, Section 38, Removal of Non-Conforming Agreements to be effective 11/20/2024.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5079.

*Comment Date:* 5 p.m. ET 10/30/24.

*Docket Numbers:* RP25–81–000.

*Applicants:* Guardian Pipeline, L.L.C.

*Description:* § 4(d) Rate Filing: Combined Update to Remove Non-Conforming and Expired Agreements—October 2024 to be effective 11/20/2024.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5091.

*Comment Date:* 5 p.m. ET 10/30/24.

*Docket Numbers:* RP25–82–000.

*Applicants:* TransCameron Pipeline, LLC.

*Description:* Compliance filing: TransCameron Cost Revenue Study re CP15–551–000 to be effective N/A.

*Filed Date:* 10/18/24.

*Accession Number:* 20241018–5099.

*Comment Date:* 5 p.m. ET 10/30/24.

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: October 18, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024–24810 Filed 10–24–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 6689–018]**

### Briar Hydro Associates; Notice of Intent to Prepare an Environmental Assessment

On November 30, 2022, the Briar Hydro Associates filed a new license application for the 3.0-megawatt Penacook Upper Falls Hydroelectric Project No. 6689 (project). The project is located on the Contoocook River in City of Concord, and Town of Boscawen, Merrimack County, New Hampshire.

In accordance with the Commission's regulations, on June 20, 2024, Commission staff issued a notice that the project was ready for environmental analysis (REA Notice). Based on the information in the record, staff does not anticipate that licensing the project would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to license the project.[1]

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be

[1] In accordance with the Council on Environmental Quality's regulations, the unique identification number for documents relating to this environmental review is EAXX–019–20–000–1729248223. 40 CFR 1501.5(c)(4) (2024).

analyzed by staff and considered in the Commission's final licensing decision.

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.*

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Commission issues EA. | March 4, 2025. |

Any questions regarding this notice may be directed to Jeanne Edwards at (202) 502–6181 or *jeanne.edwards@ferc.gov.*

Dated: October 18, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024–24803 Filed 10–24–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 3342–025]**

## Briar Hydro Associates; Notice of Intent To Prepare an Environmental Assessment

On November 30, 2022, the Briar Hydro Associates filed a new license application for the 4.6-megawatt Penacook Lower Falls Hydroelectric Project No. 3342 (project). The project is located on the Contoocook River in City of Concord, and Town of Boscawen, Merrimack County, New Hampshire.

In accordance with the Commission's regulations, on June 20, 2024, Commission staff issued a notice that the project was ready for environmental analysis (REA Notice). Based on the information in the record, staff does not anticipate that licensing the project would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to license the project.[1]

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

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.*

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Commission issues EA. | March 4, 2025. |

Any questions regarding this notice may be directed to Jeanne Edwards at (202) 502–6181 or *jeanne.edwards@ferc.gov.*

Dated: October 18, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024–24804 Filed 10–24–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2391–053]**

## PE Hydro Generation, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2391–053.

c. *Date filed:* January 3, 2022.

d. *Applicant:* PE Hydro Generation, LLC.

e. *Name of Project:* Warren Hydroelectric Project (P–2391–053).

f. *Location:* The project is located on the Shenandoah River near the Town of Front Royal in Warren County, Virginia. The project does not occupy any Federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Jody Smet, Vice President, Regulatory Affairs, PE Hydro Generation, LLC, 7315 Wisconsin Ave., Suite 1100W, Bethesda, MD 20814; Phone at (804) 382–1764 or email at *jody.smet@eaglecreekre.com.*

i. *FERC Contact:* Kristine Sillett at (202) 502–6575; or email at *kristine.sillett@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* 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, please send a paper copy via U. S. Postal Service to: Debbie-Anne A. Reese, 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, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Warren Project (P–2391–053).

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

[1] In accordance with the Council on Environmental Quality's regulations, the unique identification number for documents relating to this environmental review is EAXX–019–20–000–1729248238. 40 CFR 1501.5(c)(4) (2024).

l. *The Warren Project consists of:* (1) a 15.3-foot-high, 527-foot-long, reinforced concrete dam; (2) a 105-acre impoundment with a storage capacity of 900 acre-feet; (3) a 44-foot-wide headgate structure with four 4.5-foot by 8-foot gates; (4) a 350-foot-long headrace canal; (5) an 82-foot-long, 30-foot-wide powerhouse containing 3 Francis turbine/generating units with a total installed capacity of 750 kW; (6) 360-foot-long, 2.4-kilovolt (kV) project generator lines; (7) a substation containing a 3-phase, 2.4/34.5-kV transformer where interconnection with the grid occurs; and (8) other appurtenances. The project creates an approximately 550-foot-long bypassed reach of the Shenandoah River.

The project operates in run-of-river mode with a minimum flow of 56 cubic feet per second provided by a 1-inch veil flow over the dam into the bypassed reach. The project had an average annual generation of 3,456 megawatt-hours between 2013 and 2017.

m. 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. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicants and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicants. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding in accordance with 18 CFR 4.34(b) and 385.2010.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595, or at *OPP@ferc.gov.*

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *The applicant must file no later than 60 days from the issuance date of this notice:* (1) copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of a waiver of water quality certification.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

| Milestones | Target date |
|---|---|
| Deadline for filing comments, recommendations, terms and conditions, and prescriptions. | December 17, 2024. |
| Deadline for filing reply comments ... | January 31, 2025. |

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: October 18, 2024.

**Debbie-Anne A. Reese,**

*Secretary.*

[FR Doc. 2024–24808 Filed 10–24–24; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OLEM–2024–0477; FRL 12345–01–OLEM]**

### Agency Information Collection Activities; Proposed Information Collection Request; Comment Request; Brownfields Program—Accomplishment Reporting in Assessment, Cleanup and Redevelopment Exchange System (ACRES) (Revision)

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), Brownfields Program—Accomplishment Reporting in Assessment, Cleanup and Redevelopment Exchange System (ACRES) (EPA ICR Number 2104.10, OMB Control Number 2050–0192) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through March 31, 2026. This notice allows for 60 days for public comments.

**DATES:** Comments must be submitted on or before December 24, 2024.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–HQ–OLEM–2024–0477, to EPA online using *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:** Nicole Wireman, Office of Brownfields and Land Revitalization, (5105T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–2649; email address: *wireman.nicole@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This is a proposed extension of the ICR, which is currently approved through March 31, 2026. 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 *http://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:* This ICR covers the collection of information from those organizations that receive cooperative agreements, contracts, and Targeted Brownfields Assessment (TBA) funds from EPA under the authority of the section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Brownfields Utilization, Investment, and Local Development (BUILD) Act (Pub. L. 115–141). CERCLA 104(k), as amended, authorizes EPA to award grants or cooperative agreements and contract funding to states, tribes, local governments, other eligible entities, and nonprofit organizations to support the assessment and cleanup of brownfields sites. Under section 101(39) of CERCLA, a brownfields site means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Cooperative agreement recipients (''recipients'') have general reporting and record keeping requirements as a condition of their cooperative agreement that result in burden. A portion of this reporting and record keeping burden is authorized under 2 CFR part 1500 and identified in the EPA's general grants ICR (OMB Control Number 2030–0020). EPA requires Brownfields program recipients to maintain and report additional information to EPA on the uses and accomplishments associated with funded brownfields activities. EPA has expanded programmatic reporting requirements to include TBA contractors and technical assistance contractors. EPA will use several forms to assist recipients and contractors in reporting the information and to ensure consistency of the information collected. EPA uses this information to meet Federal stewardship responsibilities to manage and track how program funds are being spent, to evaluate the performance of the Brownfields Cleanup and Land Revitalization Program, to meet the Agency's reporting requirements under the Government Performance and Results Act, and to report to Congress and other program stakeholders on the status and accomplishments of the program.

*Form Numbers:* EPA ICR No. 2104.10, OMB Control No. 2050–0192.

*Respondents/affected entities:* State/local/tribal governments; Non-Profits; Contractors.

*Respondent's obligation to respond:* Required to obtain or Retain Benefits (2 CFR part 1500).

*Estimated number of respondents:* 2,697 (total).

*Frequency of response:* Varies but generally bi-annual for subtitle CERCLA 128 recipients and quarterly for CERCLA 104(k) recipients.

*Total estimated burden:* 11,548 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $1,622,953 (per year), which includes $0 annualized capital or operation & maintenance costs.

*Changes in the Estimates:* There is an increase of 7,740 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The increase in reporting hours and cost is due to the introduction of electronic quarterly and annual progress reporting forms in ACRES for six cooperative agreement types. Recipients have always been required to submit quarterly and annual progress reports per their cooperative agreement terms and conditions, but this is the first time an electronic form option is available in ACRES. Including these forms in ACRES enables several fields to be prefilled with existing ACRES data, saving the recipient significant time compared to completing progress reporting outside of ACRES. This reporting enhancement will enable a larger number of respondents to use forms under this ICR, resulting in an overall increase in the total burden hours. Yet the electronic forms are anticipated to result in an overall decrease in burden hours per individual respondent. With respect to ACRES forms previously submitted as part of this ICR, recipients interviewed during the last few years have self-reported data entry times at half the burden hours compared to previous estimates. This can be attributed to the tremendous improvements in the ACRES database to streamline reporting requirements over the past several years. The new quarterly and annual reporting forms continue such efforts and will help ensure recipients comply with their cooperative agreement terms and conditions.

**Patricia Overmeyer,**

*Acting Director, Office of Brownfields and Land Revitalization.*

[FR Doc. 2024–24843 Filed 10–24–24; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 12353–01–OW]**

### Notice of Public Environmental Financial Advisory Board Webinar

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

**ACTION:** Notice of public webinar.

**SUMMARY:** The United States Environmental Protection Agency (EPA) announces a public webinar of the Environmental Financial Advisory Board (EFAB). The purpose of the webinar is to explore strategies for mobilizing private capital in distributed energy generation projects to leverage the government's recent historic $27 billion Greenhouse Gas Reduction Fund (GGRF). This webinar will feature a discussion on the conditions required to attract private capital into distributed generation projects and leveraging GGRF resources, including innovative financing models, risk mitigation strategies, and opportunities for scaling up investments. This webinar is the third in a three-part series that explores strategies for leveraging GGRF resources to attract private capital into GGRF priority sectors. The first webinar, held on July 30, 2024, addressed Net Zero Buildings projects. The second webinar, held on September 19, 2024, addressed Zero Emission Transportation. Written public comments may be provided in advance. No oral public comments will be accepted during the webinar. Please see the **SUPPLEMENTARY INFORMATION** section for further details.

**DATES:** The webinar will be held on November 12, 2024, from 2 p.m. to 3:30 p.m. Eastern Time.

**ADDRESSES:** The webinar will be conducted in a virtual format via webcast only. Information to access the webinar will be provided upon registration in advance.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wants information about the webinar may contact Tara Johnson via telephone/voicemail at (202) 809–7368 or email to *efab@epa.gov.* General information concerning the EFAB is available at *https://www.epa.gov/waterfinancecenter/efab.*

**SUPPLEMENTARY INFORMATION:** *Background:* The EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. 10, to provide advice and recommendations to the EPA on innovative approaches to funding environmental programs, projects, and activities. Administrative support for the EFAB is provided by the Water Infrastructure and Resiliency Finance Center within the EPA's Office of Water. Pursuant to FACA and EPA policy, notice is hereby given that the EFAB will hold a public webinar for the following purpose: to explore strategies for mobilizing private capital in distributed energy generation projects to leverage the government's recent historic $27 billion GGRF.

*Registration for the Webinar:* To register for the webinar, please visit *https://www.epa.gov/waterfinancecenter/efab#meeting.* Interested persons who wish to attend the webinar must register by November 8, 2024. Pre-registration is strongly encouraged.

*Availability of Webinar Materials:* Webinar materials, including the agenda and associated materials, will be available on the EPA's website at *https://www.epa.gov/waterfinancecenter/efab.*

*Procedures for Providing Public Input:* Public comment for consideration by the EPA's Federal advisory committees has a different purpose from public comment provided to the EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees provide independent advice to the EPA. Members of the public may submit comments on matters being considered by the EFAB for consideration as the Board develops its advice and recommendations to the EPA.

*Written Statements:* Written statements should be received by November 5, 2024, so that the information can be made available to the EFAB for its consideration prior to the webinar. Written statements should be sent via email to *efab@epa.gov.* Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the EFAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

*Accessibility:* For information on access or services for individuals with disabilities or to request accommodations for a disability, please register for the webinar and list any special requirements or accommodations needed on the registration form at least 10 business days prior to the webinar to allow as much time as possible to process your request.

**Andrew D. Sawyers,**

*Director, Office of Wastewater Management, Office of Water.*

[FR Doc. 2024–24786 Filed 10–24–24; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–12288–01–OAR]**

## Announcing Upcoming Meeting of Mobile Sources Technical Review Subcommittee

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

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, the Environmental Protection Agency (EPA) announces an upcoming meeting of the Mobile Sources Technical Review Subcommittee (MSTRS), which is a subcommittee under the Clean Air Act Advisory Committee (CAAAC). This is a virtual meeting and open to the public. The meeting will include discussion of current topics and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. MSTRS listserv subscribers will receive notification when the agenda is available on the Subcommittee website. To subscribe to the MSTRS listserv, send an email to *MSTRS@epa.gov.*

**DATES:** EPA will hold a virtual public meeting on Friday, December 13, 2024, from 10 a.m. to 4:30 p.m. eastern standard time (EST). Please monitor the website *https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac* for any changes to meeting logistics. The final meeting agenda will be posted on the website.

**ADDRESSES:** The meeting is currently scheduled to be held virtually on Zoom. However, this date and location are subject to change and interested parties should monitor the Subcommittee website (above) for the latest logistical information. For information on the public meeting or to register to attend, please contact *MSTRS@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Further information concerning this public meeting and general information concerning the MSTRS can be found at: *https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac.* Other MSTRS inquiries can be directed to Clayton Batko, the Designated Federal Officer for MSTRS, Office of Transportation and Air Quality, at *MSTRS@epa.gov* or by phone at 202–564–3908.

**SUPPLEMENTARY INFORMATION:** During the meeting, the Subcommittee may also hear progress reports from its workgroups as well as updates and announcements on Office of Transportation and Air Quality activities of general interest to attendees.

*Participation in virtual public meetings:* The virtual public meeting will provide interested parties the opportunity to participate in this Federal Advisory Committee meeting. *For individuals with disabilities:* For information on access or services for individuals with disabilities, please email *MSTRS@epa.gov.* To request accommodations, please email *MSTRS@epa.gov,* preferably at least 10 business days prior to the meeting, to give EPA as much time as possible to process your request.

EPA is asking all meeting attendees, even those who do not intend to speak, to register for the meeting via the Zoom registration link posted on the website listed in the **FOR FURTHER INFORMATION CONTACT** section above, by Friday, November 29, 2024. This will help EPA ensure that sufficient participation capacity will be available.

Please note that any updates made to any aspect of the meeting logistics, including potential additional sessions, will be posted online at *https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac.* While EPA expects the meeting to go forward as set forth above, please monitor the website for any updates.

**Clayton Batko,**

*Designated Federal Officer, Mobile Source Technical Review Subcommittee, Office of Transportation and Air Quality.*

[FR Doc. 2024–24784 Filed 10–24–24; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL OP–OFA–149]**

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed October 11, 2024 10 a.m. EST Through October 21, 2024 10 a.m. EST

Pursuant to 40 CFR 1506.9.

*Notice:* Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

*EIS No. 20240189, Draft, USAF, AZ,* 492nd Special Operations Wing Beddown, Comment Period Ends: 12/09/2024, Contact: Nick Post 210–925–3516.

*EIS No. 20240190, Draft, MDA, GU,* Enhanced Integrated Air and Missile Defense System on Guam, Comment Period Ends: 01/08/2025, Contact: Mark Wright 571–231–8212.

*EIS No. 20240191, Final, BOEM, NY,* New York Bight Final Programmatic Environmental Impact Statement, Review Period Ends: 11/25/2024, Contact: Jill Lewandowski 703–787–1703.

Dated: October 21, 2024.

**Nancy Abrams,**

*Associate Director, Office of Federal Activities.*

[FR Doc. 2024–24858 Filed 10–24–24; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2024–0463; FRL–12347–01–OCSPP]**

### Metamitron; Receipt of Applications for Emergency Exemptions, Solicitation of Public Comment

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

**ACTION:** Notice.

**SUMMARY:** EPA has received specific exemption requests from the Colorado, Idaho, Nebraska, Oregon, and Wyoming Departments of Agriculture to use the pesticide metamitron (CAS No. 41394–05–2) to treat up to 116,902 acres of sugar beets (22,468 in CO; 14,400 in ID; 47,025 in NE; 1,629 in OR; and 31,380 in WY), to control the invasive weed, Palmer amaranth. The applicants propose the use of a new chemical which has not been registered by EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments must be received on or before November 12, 2024.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2024–0463, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–2875; 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. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *https://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets#tips.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

#### II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Colorado, Idaho, Nebraska, Oregon, and Wyoming Departments of Agriculture have requested the EPA Administrator to issue specific exemptions for the use of metamitron on sugar beets to control Palmer amaranth. Information in accordance with 40 CFR part 166 was submitted as part of the requests.

As part of this request, the applicants assert that emergency conditions exist due to insufficient means to control Palmer amaranth in sugar beets, and the use of metamitron will help avert significant economic losses.

The Applicants propose to make up to two applications of 64 fluid ounces of the unregistered product, Goltix 700 SC (containing 58.3% metamitron, equivalent to 5.84 lbs. of metamitron per gallon of product) on up to a total of 116,902 acres of sugar beets (22,468 in CO; 14,400 in ID; 47,025 in NE; 1,629 in OR; and 31,380 in WY), from April 1 to May 31, 2025. If a maximum of two applications are made to the maximum

requested acreage, a potential of 116,902 gallons of product (equivalent to 682,708 pounds of metamitron) could be used.

This notice does not constitute decisions by EPA on the applications themselves. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (*i.e.,* an active ingredient) which has not been registered by EPA. This notice provides an opportunity for public comment on the applications.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Colorado, Idaho, Nebraska, Oregon, and Wyoming Departments of Agriculture.

*Authority:* 7 U.S.C. 136 *et seq.*

Dated: October 21, 2024.

**Charles Smith,**

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

[FR Doc. 2024–24795 Filed 10–24–24; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0773; FR ID 257123]**

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

**DATES:** Written PRA comments should be submitted on or before December 24, 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 Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

**SUPPLEMENTARY INFORMATION:**

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

*OMB Control Number:* 3060–0773.

*Title:* Marketing and Importing of RF Devices Prior to Equipment Authorization—Sections 2.803 and 2.1204.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents and Responses:* 10,000 respondents and 10,000 responses.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* Recordkeeping, third-party disclosure requirement, on occasion and one-time reporting requirements.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 301, 302a, 303(c), 303(f), and 303(r).

*Total Annual Burden:* 10,000 hours.

*Total Annual Cost:* No Cost.

*Needs and Uses:* The Commission will submit this extension of this information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance from them.

The Commission adopted rules intended to target enhancements to our marketing and importation rules, the Commission part 2 rules will allow equipment manufacturers to better gauge consumer interest and prepare for new product launches.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2024–24906 Filed 10–24–24; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1307; FR ID 257125]**

### Information Collection Being Submitted for Review and Approval to Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments and recommendations for the proposed information collection should be submitted on or before November 25, 2024.

**ADDRESSES:** Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

*OMB Control Number:* 3060–1307.

*Title:* Performance Evaluation of Numbering Administration Vendor(s).

*Form Number:* N/A.

*Type of Review:* Revision of a currently information collection.

*Respondents:* Business or other for-profit entities, Not-for-profit entities, and State, Local and Tribal governments.

*Number of Respondents and Responses:* 6,237 respondents and 6,237 responses.

*Estimated Time per Response:* 0.25 hours.

*Frequency of Response:* Annual reporting requirement.

*Obligation to Respond:* Voluntary. Statutory authority for this information is contained in 47 U.S.C. 251(e)(1).

*Total Annual Burden:* 1,561 hours.

*Total Annual Cost:* No cost.

*Needs and Uses:* The Commission is requesting Office of Management and Budget (OMB) approval this revised information collection. This collection of information is an annual performance satisfaction survey of its vendor(s) acting as administrators for various telephone number management functions. These functions may be performed by one or multiple vendors under one or multiple contracts. The vendor(s) act pursuant to their contract(s) with the Federal Communications Commission (FCC) and the FCC's numbering rules. *See* 47 CFR 52.1 *et seq.*

The survey will be designed and administered by the Numbering Administration Oversight Working Group (NAOWG) of the North American Numbering Council (NANC). The NANC is a Federal Advisory Committee established under the Federal Advisory Committee Act. The NANC advises the FCC and makes recommendations, reached through consensus, that foster efficient and impartial number administration. The NANC is composed of representatives of telecommunications carriers, regulators, cable providers, Voice Over Internet Protocol (VoIP) providers, industry associations, vendors, and consumer advocates. Working groups, including the NAOWG, made up of industry experts, have been established by the NANC to assist in its efforts. The NANC charter can be found at *https://www.fcc.gov/files/charter-north-american-numbering-council.*

The relevant contract(s) require that the Commission and/or its designee shall develop and conduct a performance survey for each administrator. The results of this consumer satisfaction survey will provide the FCC with indicators on how well the vendor(s) are acting as the North American Numbering Program Administrator (NANPA), Pooling Administrator (PA), Routing Number Administrator (RNA) and Reassigned Numbering Database Administrator (RNDA) is meeting its contractual obligations and accomplishing its mission as the NANPA/PA/RNA/RNDA.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2024–24901 Filed 10–24–24; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1122; FR ID 257008]**

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before December 24, 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 Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–1122.

*Title:* Preparation of Annual Reports to Congress for the Collection and Expenditure of Fees or Charges for Enhanced 911 (E911) Services under the NET 911 Improvement Act of 2008.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* State, local, and tribal governments.

*Number of Respondents and Responses:* 66 Respondents; 66 Responses.

*Estimated Time per Response:* 55 hours.

*Frequency of Response:* Annual and one-time reporting requirement.

*Obligation to Respond:* Voluntary. Statutory authority for this information collection is contained in New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, 122 Stat. 2620 (2008) (NET 911 Act), and the Consolidated Appropriations Act, 2021, Public Law 116–260, Division FF, Title IX, Section 902, Don't Break Up the T-Band Act of 2020 (section 902).

*Total Annual Burden:* 3,630 hours.

*Total Annual Cost:* No Cost.

*Needs and Uses:* The Federal Communications Commission (Commission) is directed by statute (New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, 122 Stat. 2620 (2008) (NET 911 Act), as amended by the Consolidated Appropriations Act, 2021, Public Law 116–260, Division FF, Title IX, Section 902, Don't Break Up the T-Band Act of 2020 (section 902), to submit an annual ''Fee Accountability Report'' to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives ''detailing the status in each State of the collection and distribution of [911 fees or charges], and including findings on the amount of revenues obligated or expended by each State or political subdivision thereof for any purpose or function other than the purposes and functions designated in the final rules issued under paragraph (3) as purposes and functions for which the obligation or expenditure of any such fees or charges is acceptable.'' 47 U.S.C. 615a–1(f)(2), as amended. Section 615a–1(f)(3) of the statute directs the Commission, not later than 180 days after December 27, 2020, to ''issue final rules designating purposes and functions for which the obligation or expenditure of 9–1–1 fees or charges, by any State or taxing jurisdiction authorized to impose such a fee or charge, is acceptable.'' 47 U.S.C. 615a–1(f)(3), as amended. The statute directs the Commission to submit its first annual report within one year after the date of enactment of the NET 911 Act. Given that the NET 911 Act was enacted on July 23, 2008, the first annual report was due to Congress on July 22, 2009. In addition, the statute provides that ''[i]f a State or taxing jurisdiction . . . receives a grant under section 942 of this title after December 27, 2020, such State or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare [the annual Fee Accountability Report to Congress].'' 47 U.S.C. 615a–1(f)(4), as amended.

*Description of Information Collection:* The Commission will collect information for the annual preparation of the Fee Accountability Report via a web-based survey that appropriate state officials (*e.g.,* state 911 administrators and budget officials) will be able to access to submit data pertaining to the collection and distribution of fees or charges for the support or implementation of 911 or enhanced 911 services, including data regarding whether their respective state collects and distributes such fees or charges, as well as the nature (*e.g.,* amount and method of assessment or collection) and the amount of revenues obligated or expended for any purpose or function other than the purposes and functions designated as acceptable in the Commission's final rules. Consistent with 47 U.S.C. 615a–1(f)(3)(D)(iii), the Commission will request that state officials report this information with respect to 911 fees or charges within their state, including any political subdivision, Indian tribe, and/or village or regional corporation serving any region established pursuant to the Alaska Native Claims Settlement Act within their state boundaries. 47 U.S.C. 615a–1(f)(3)(D)(iii). In addition, consistent with the definition of ''State'' set out in 47 U.S.C. 615b, the Commission will collect this information from the District of Columbia and the inhabited U.S. territories and possessions. 47 U.S.C. 615b.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2024–24907 Filed 10–24–24; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FR ID: 256495]**

## Privacy Act of 1974; System of Records

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** The Federal Communications Commission (FCC, Commission, or Agency) has modified an existing system of records, FCC/OET–2, Equipment Authorization Electronic Filing System (EAS) (formerly ''Equipment Authorization Records and Files''), subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the Agency. The FCC's Office of Engineering and Technology (OET) uses the information in this system to verify that radio frequency equipment proposed for marketing complies with FCC requirements and to determine the interference potential of radio frequency equipment proposed for marketing.

**DATES:** This modified system of records will become effective on October 25, 2024. Written comments on the routine uses are due by November 25, 2024. The routine uses in this action will become effective on November 25, 2024 unless comments are received that require a contrary determination.

**ADDRESSES:** Send comments to Brendan McTaggart, Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554, or to *privacy@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Brendan McTaggart, (202) 418–1738, or *privacy@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This notice serves to update and modify FCC/OET–2 as a result of various necessary changes and updates. The substantive changes and modifications to the previously published version of the FCC/OET–2 system of records include:

1. Renaming the system ''Equipment Authorization Electronic Filing System (EAS)'';

2. Updating the Authority, Purpose, Categories of Individuals, and Record Source Categories of this system for accuracy and clarity;

3. Adding three new routines (listed by the routine use number provided in this notice): (7) Breach Notification, the addition of which is as required by

OMB Memorandum No. M–17–12; (8) Assistance to Federal Agencies and Entities Related to Breaches, the addition of which is required by OMB Memorandum No. M–17–12; and (9) Non-Federal Personnel;

4. Updating and/or revising language in five routine uses (listed by the routine use number provided in this notice): (2) Litigation and (3) Adjudication (now two separate routine uses); (4) Law Enforcement and Investigation; (5) Congressional Inquiries; and (6) Government-wide Program Management and Oversight;

5. Updating the SORN to include the relevant National Archives and Records Administration (NARA) Records Schedule, DAA–0173–2019–0001, Office of Engineering and Technology—Laboratory Division Records.

The system of records is also updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

**SYSTEM NAME AND NUMBER:**

FCC/OET–2, Equipment Authorization Electronic Filing System (EAS).

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

OET, Laboratory Division, Federal Communications Commission (FCC), 7435 Oakland Mills Road, Columbia, MD 21046.

**SYSTEM MANAGER:**

Chief, Laboratory Division, OET, FCC, 7435 Oakland Mills Road, Columbia, MD 21046.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

47 U.S.C. 302a; 47 U.S.C. 1601 note.

**PURPOSES OF THE SYSTEM:**

The records in this system document the compliance with FCC requirements and interference potential of radio frequency equipment proposed for marketing. The system also permits the FCC to collect and maintain information necessary for FCC staff to perform key activities, including analyzing the effectiveness and efficiency of FCC programs and informing rule-making and policy-making activities.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who have applied for or been granted an authorization to market radio frequency equipment, in accordance with Part 2 of the Federal Communications Commission's (FCC) rules; individuals who are responsible for testing and determining compliance of the equipment that is subject to the relevant authorization; and individuals responsible for assessing, accrediting, and designating those individuals responsible for testing and determining compliance of equipment.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

1. FCC Form 731, Application for Equipment Authorization, and any exhibits, test reports, and other supporting documentation submitted by an applicant that demonstrates compliance with the rules for radio frequency equipment.

2. Entity management information (collected by webform) and attachments regarding accrediting bodies, designating authorities, and conformity assessment bodies (which includes both Telecommunication Certification Bodies (TCBs) and test labs).

**RECORD SOURCE CATEGORIES:**

Information in this system is supplied by individuals applying to receive equipment authorization, individuals who are responsible for testing and determining compliance of the equipment that is subject to the relevant authorization, and individuals responsible for assessing, accrediting, and designating those individuals who are responsible for testing and determining compliance of equipment.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may routinely be disclosed as follows:

1. Public Access—Information from this system related to granted equipment authorizations or any individuals associated with entities covered by this system may be disclosed to the public if it is routinely available for public inspection under 47 CFR 0.457(d)(1)(ii) and a request has not been made or granted to give the information confidential treatment under 47 CFR 0.459. Pending equipment authorization requests are specifically excluded from disclosure prior to the effective date of the authorization, as specified in 0.457(d)(1)(ii).

2. Litigation—Records may be disclosed to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the FCC collected the records.

3. Adjudication—Records may be disclosed in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

4. Law Enforcement and Investigation—When the FCC investigates any violation or potential violation of a civil or criminal law, regulation, policy, executed consent decree, order, or any other type of compulsory obligation and determines that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law, regulation, policy, consent decree, order, or other compulsory obligation, the FCC may disclose pertinent information as it deems necessary to the target of an investigation, as well as with the appropriate Federal, state, local, Tribal, international, or multinational agencies, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order.

5. Congressional Inquiries—Records may be provided to a Congressional office in response to an inquiry from that Congressional office made at the written request of that individual to whom the records pertain.

6. Government-wide Program Management and Oversight—Records may be disclosed to DOJ to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

7. Breach Notification—Records may be disclosed to appropriate agencies, entities, and persons when: (a) The Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. Assistance to Federal Agencies and Entities Related to Breaches—Records may be disclosed to another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

9. Non-Federal Personnel—Records may be disclosed to non-Federal personnel, including contractors, other vendors (*e.g.,* identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

This an electronic system of records that resides on the FCC or a vendor's network.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Scanned images, electronic records of data elements, and electronic copies of granted equipment authorizations, as well as information about individuals associated with entities covered by the system, may be retrieved from the OET EAS website at *https://apps.fcc.gov/tcb/TcbHome.do* by clicking on the desired link in the Reports section on the left hand side of the page. Records may be retrieved using a variety of parameters.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

The information in this system is maintained and disposed of in accordance with NARA Records Schedule DAA–0173–2019–0001, Office of Engineering and Technology—Laboratory Division Records.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

OET makes all records, documents, and files available to the public except: (1) files that are not routinely available for public inspection as defined in 47 CFR 0.457(d)(1)(ii); and/or (2) files that have been submitted in compliance with the confidentiality request requirement of 47 CFR 0.459. When not publicly available, the electronic records, files, and data are stored within FCC or a vendor's accreditation boundaries and maintained in a database housed in the FCC's or vendor's computer network databases. Access to the electronic files is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST).

**RECORDS ACCESS PROCEDURES:**

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedures below.

**CONTESTING RECORD PROCEDURES:**

Individuals wishing to request an amendment of records about themselves should follow the Notification Procedures below.

**NOTIFICATION PROCEDURES:**

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to *privacy@fcc.gov.* Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity to gain access to the records (47 CFR part 0, subpart E).

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

65 FR 17242 (April 5, 2006).

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2024–24893 Filed 10–24–24; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FR ID: 256494]**

## Privacy Act of 1974; System of Records

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** The Federal Communications Commission (FCC, Commission, or Agency) has modified an existing system of records, FCC/OET–1, Experimental Licensing System (ELS) (formerly ''Experimental Radio Station License Files''), subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the Agency. The FCC's Office of Engineering and Technology (OET) uses the information in this system to determine: (a) an applicant's eligibility to operate a station in the experimental radio service; (b) the interference potential to other radio services; and/or (c) the permissibility of the applicant's proposed operations under section 5.3 of the Commission's rules.

**DATES:** This modified system of records will become effective on October 25, 2024. Written comments on the routine uses are due by November 25, 2024. The routine uses in this action will become effective on November 25, 2024 unless comments are received that require a contrary determination.

**ADDRESSES:** Send comments to Brendan McTaggart, Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554, or to *privacy@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Brendan McTaggart, (202) 418–1738, or *privacy@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This notice serves to update and modify FCC/OET–1 as a result of various necessary changes and updates. The substantive changes and modifications to the previously published version of the FCC/OET–1 system of records include:

1. Renaming the system of records ''Experimental Licensing System (ELS),'' which is the name of the Commission's electronic filing system for licensing for the Experimental Radio service;

2. Updating language in the Authority, Categories of Individuals, Categories of Records, and Record Source Categories to document additional relevant authority, involvement of public commenters, and the current names of forms used by the Commission;

3. Adding one new routine use, (2) NTIA, to permit disclosures to the National Telecommunications and Information Administration (NTIA) for the purpose of coordinating spectrum use; and

4. Updating and/or revising language in five routine uses (listed by the routine use number provided in this notice: (3) Litigation and (4) Adjudication (now two separate routine uses); (5) Law Enforcement and Investigation; (7) Government-wide Program Management and Oversight; and (10) Non-Federal Personnel.

The system of records is also updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

**SYSTEM NAME AND NUMBER:**

FCC/OET–1, Experimental Licensing System (ELS).

**SECURITY CLASSIFICATION:**

No information in ELS is classified. Experimental license applications that contain classified material are treated in a bifurcated manner, with unclassified data filed in ELS, and the classified portion filed with the FCC's Security Operations Staff and processed consistent with the FCC's security regulations. The material filed with the Security Operations Staff is maintained separately from and does not become part of ELS.

**SYSTEM LOCATION:**

OET, FCC, 45 L Street NE, Washington, DC 20554.

**SYSTEM MANAGER(S):**

Experimental Licensing Branch, OET, FCC, 45 L Street NE, Washington, DC 20554.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

47 U.S.C. 301, 303, 307, 308.

**PURPOSE(S) OF THE SYSTEM:**

FCC staff use the information in this system to determine (a) a license applicant's eligibility to operate a station in the experimental radio service; (b) the interference potential to other radio services; and/or (c) the permissibility of the applicant's proposed operations under section 5.3 of the Commission's rules. The system also permits the FCC to collect and maintain information necessary for FCC staff to perform key activities, including analyzing the effectiveness and efficiency of FCC programs and informing rule-making and policy-making activities.

**CATEGORIES OF INDIVDUALS COVERED BY THE SYSTEM:**

The categories of individuals in this system include individuals who have themselves, or who are associated with entities that have, applied for or have been granted a license to operate an experimental radio station under 47 CFR part 5 of the Commission's rules; and individuals who have themselves, or who are associated with entities that have, contested applications for licenses, transfers, assignments, and construction, or petitioned to deny or to cancel applicants on behalf of other parties.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The categories of records in this system include:

1. These FCC Forms, any supporting exhibits or documents submitted by the applicant(s) and/or licensee(s), and related documentation: (a) FCC Form 159 Remittance Advice and FCC Form 159–C Continuation Sheet; (b) FCC Form 405, Application for Renewal of Radio Station License in Specified Services; (c) FCC Form 442, Application for New or Modified Radio Station Authorization Under Part 5 of FCC Rules—Experimental Radio Service (Other than Broadcast); (d) FCC Form 702, Application for Consent to Assign an Experimental Authorization; (e) FCC Form 703, Application for Consent to Transfer Control of Corporation Holding Station License; and (f) Special Temporary Authority (STA) under 47 CFR 5.61 of the Commission's rules.

2. Personally identifiable information (PII) included in experimental project reports submitted by the applicant(s) and/or licensee(s) as required by 47 CFR part 5 of the Commission's rules, including name, mailing address, email address(es), and telephone number(s).

3. Information included in comments from other FCC bureaus/offices and the National Telecommunications and Information Administration (NTIA) on frequency interference potential, coordination of operation(s), validity of a project or experiment, and use of a project or experiment in rulemakings.

4. Contested applications for licenses, transfers, assignments, and construction, or petitions to deny or to cancel applicants on behalf of other parties.

**RECORD SOURCE CATEGORIES:**

The sources of information in this system of records are applicants and licensees, who provide the information on one or more FCC forms, special temporary authorities (STAs), and/or any supporting exhibits submitted by the applicants and/or licensees or other related documentation; individuals who have contested applications for licenses, transfers, assignments, and construction, or petitioned to deny or to cancel applicants on behalf of other parties; and FCC bureau and office staff and NTIA staff generating relevant data during the normal processing of the application.

**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 to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. Public Access—Information from this system is posted at: *https://www.fcc.gov/els* for public inspection, in response to a request, and in connection with new experimentation. The information will not be disclosed if a request that the information be given confidential treatment is pending or has been granted under 47 CFR 0.459.

2. NTIA—Records from this system may be shared with the National Telecommunications and Information Administration (NTIA) for purposes of coordinating spectrum use that could affect federal government spectrum bands and their assigned users.

3. Litigation—Records may be disclosed to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use

of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the FCC collected the records.

4. Adjudication—Records may be disclosed in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

5. Law Enforcement and Investigation—When the FCC investigates any violation or potential violation of a civil or criminal law, regulation, policy, executed consent decree, order, or any other type of compulsory obligation and determines that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law, regulation, policy, consent decree, order, or other compulsory obligation, the FCC may disclose pertinent information as it deems necessary to the target of an investigation, as well as with the appropriate Federal, State, local, Tribal, international, or multinational agencies, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order.

6. Congressional Inquiries—Records may be provided to a Congressional office in response to an inquiry made at the written request of the individual to whom the records pertain.

7. Government-wide Program Management and Oversight—Records may be disclosed to DOJ to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

8. Breach Notification—Records may be disclosed to appropriate agencies, entities, and persons when: (a) The Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. Assistance to Federal Agencies and Entities Related to Breaches—Records may be disclosed to another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

10. Non-Federal Personnel—Records may be disclosed to non-Federal personnel, including contractors, other vendors (*e.g.,* identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Electronic records in this system reside on the FCC or a vendor's network.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records can be retrieved by, among other things, the licensee name. If there is more than one station per licensee, then the files may be also retrieved by call sign. Scanned images, electronic records of data elements, and electronic copies of licenses may be retrieved from the OET Experimental Licensing Branch Report electronic filing and reporting website using various search fields, including name and call sign, at: *https://apps.fcc.gov/els.*

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

The information in this system is maintained and disposed of in accordance with the National Archives and Records Administration (NARA) Records Schedule DAA–0173–2016–0003, Experimental Licensing System (ELS).

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

OET makes all records available to the public at: *https://www.fcc.gov/els,* except files that have been submitted in compliance with the confidentiality request requirement of 47 CFR 0.459. When not publicly available, the electronic records, files, and data are stored within FCC or a vendor's accreditation boundaries and maintained in a database housed in the FCC's or vendor's computer network databases. Access to the electronic files is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST).

**RECORDS ACCESS PROCEDURES:**

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedures below.

**CONTESTING RECORD PROCEDURES:**

Individuals wishing to request an amendment of records about themselves should follow the Notification Procedures below.

**NOTIFICATION PROCEDURES:**

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to *privacy@fcc.gov.* Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity to gain access to the records (47 CFR part 0, subpart E).

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

84 FR 27115 (June 11, 2019).

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2024–24892 Filed 10–24–24; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1299; FR ID 257124]**

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. 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 24, 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:* 3060–1299.

*Title:* Section 20.23(b)(1), (3)–(5), (7); (c)(1)–(2), (3), (3)(iii)–(iv), (4)(i)–(ii), (v); and (d), Contraband wireless devices in correctional facilities.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities, and state, local or tribal.

*Estimated Number of Respondents and Responses:* 54 respondents and 4,740 responses.

*Estimated Time per Response:* 1–10 hours.

*Frequency of Response:* One-time application and self-certification response, one-time DCFO authorization request response, on occasion qualifying request response, on occasion reversal response, recordkeeping requirement, third party notification requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for the currently approved information collection is contained in sections 1, 2, 4(i), 4(j), 301, 302, 303, 307, 308, 309, 310, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 310, and 332.

*Estimated Total Annual Burden:* 21,767 hours.

*Total Annual Costs:* No costs.

*Needs and Uses:* On July 13, 2021, the Commission released a Second Report and Order and Second Further Notice of Proposed Rulemaking, Promoting Technological Solutions to Combat Contraband Wireless Devices in Correctional Facilities, GN Docket No. 13–111, in which the Commission took further steps to facilitate the deployment and viability of technological solutions used to combat contraband wireless devices in correctional facilities. In the Second Report and Order, the Commission adopted a framework requiring the disabling of contraband wireless devices detected in correctional facilities upon satisfaction of certain criteria. The Commission further addressed issues involving oversight, wireless provider liability, and treatment of 911 calls. Finally, the Commission adopted rules requiring advance notice of certain wireless provider network changes to promote and maintain contraband interdiction system effectiveness.

In establishing rules requiring wireless providers to disable contraband wireless devices in correctional facilities and adopting a framework to enable designated correctional facility officials (DCFOs) relying on an authorized Contraband Interdiction System (CIS) to submit qualifying requests to wireless providers to disable contraband wireless devices in qualifying correctional facilities, the Commission found that a rules-based process will provide a valuable additional tool for departments of corrections to address contraband wireless device use. The framework includes a two-phase authorization process: (1) CIS applicants will submit applications to the Wireless Telecommunications Bureau (Bureau) describing the legal and technical qualifications of the systems; and (2) CIS applicants will perform on-site testing of approved CISs at individual correctional facilities and file a self-certification with the Commission. After both phases are complete, DCFOs will be authorized to submit qualifying requests to wireless providers to disable contraband devices using approved CISs at each correctional facility. In addition, the Commission adopted rules requiring wireless providers to notify certain types of CIS operators of major technical changes to ensure that CIS effectiveness is maintained. The Commission found that these rules will provide law enforcement with the tools necessary to disable contraband wireless devices, which, in turn, will help combat the serious threats posed by the illegal use of such devices.

The new information collection in 47 CFR 20.23(b)(1) regarding the application to obtain new CIS certification will be used by the Bureau to determine whether to certify a system and ensure that the systems are designed to support operational readiness and minimize the risk of disabling a non-contraband device, and ensure, to the greatest extent possible, that only devices that are in fact contraband will be identified for disabling. Bureau certification will also enable targeted industry review of solutions by allowing interested stakeholders to provide feedback on the application for certification, including the proposed test plan.

The new collections in 47 CFR 20.23(b)(3) include the requirement that the CIS operator must file with the Bureau a self-certification that complies with paragraph (b)(3)(ii) of section 20.23, confirming that the testing at that specific correctional facility is complete and successful, and the CIS operator must serve notice of the testing on all relevant wireless providers prior to testing and provide such wireless providers a reasonable opportunity to participate in the tests. Self-certification will help the Bureau to ensure that qualifying requests identify contraband wireless devices accurately and in accordance with legal requirements. In addition to being used by the Bureau, the self-certification will be relied upon by the DCFO in conjunction with

qualifying requests for disabling at a particular correctional facility. The serving of notice to the wireless providers will give them awareness and an opportunity to participate in the process.

The new information collections in 47 CFR 20.23(b)(4) requires that wireless providers objecting to the certification filing submit objections to the Bureau within five business days and serve the DCFO and the CIS operator, which allows all stakeholders to participate in the process and raise objections. Section 20.23(b)(5) requires that CIS operators retest and recertify their systems at least every three years and comply with the same requirements as for initial self-certification. This requirement will enable the Bureau to ensure the ongoing accuracy and reliability of a given CIS at a particular facility. Section 20.23(b)(7) requires that a CIS operator retain records for at least five years and provide them upon request to the Bureau, which will support the Bureau's efforts to identify issues with CIS operations, resolve interference issues, and resolve complaints related to misidentification of contraband devices.

The new collections in 47 CFR 20.23(c)(1)–(2) include the requirement that individuals that seek to be recognized on the Commission's DCFO list must sent a letter to the Contraband Ombudsperson in order for the Commission to approve that person for the qualified DCFO list and provide certainty to wireless providers that disabling requests are made by duly authorized individuals. Qualifying requests that include the required information will be used by wireless carriers to prevent use of contraband devices on their network and on other wireless provider networks.

The new collections 47 CFR 20.23(c)(3)(iii)–(iv) provide that, upon receiving a disabling request from a DCFO, the wireless provider must verify the request, may reject the request and must notify the DCFO whether it is accepting or rejecting the request. This process ensures that a wireless provider responds to a DCFO within a reasonable timeframe—while giving the provider an opportunity to determine if there is an error—and to give the DCFO time to respond quickly if the request has been rejected. The wireless provider may contact the customer of record to notify them of the disabling and involve them in the process.

The new collections in 47 CFR 20.23(c)(4) provide that a wireless provider may reverse a disabled device where it determines that the device was erroneously identified as contraband, and the wireless provider must notify the DCFO of the reversal. The wireless provider may choose to involve the DCFO in the review and reversal process. The DCFO must also provide notice to the Contraband Ombudsperson of the number of erroneously disabled devices. This process ensures the integrity of the contraband device disabling process by giving the wireless provider the opportunity to reverse a disabled device—with the ability to extend review to the DCFO—and by creating safeguards to make sure that the process is efficient and reliable.

The new collections in 47 CFR 20.23(d) regarding notification from CMRS licensees to MAS operators of technical changes to their network are required so that MAS operators are given sufficient time to make necessary adjustments to maintain the effectiveness of their interdiction systems. In order to ensure that issues regarding notification to solutions providers of more frequent, localized wireless provider network changes are appropriately considered, CMRS licensees and MAS operators must negotiate in good faith to reach an agreement for notification for those types of network adjustments not covered by the notice requirement. CMRS licensees must provide notice of technical changes associated with an emergency immediately after the exigency to ensure that MAS operators continue to be notified of network changes that could impact MAS effectiveness.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2024–24905 Filed 10–24–24; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1222; FR ID 254149]**

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

**DATES:** Written PRA comments should be submitted on or before December 24, 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 Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

**SUPPLEMENTARY INFORMATION:** The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

*OMB Control Number:* 3060–1222.

*Title:* Incarcerated People's Communications Services (IPCS) Provider Annual Reporting, Certification, and Other Requirements, WC Docket Nos. 23–62, 12–375.

*Form Number(s):* FCC Form 2301(a) and FCC Form 2301(b).

*Type of Review:* Revision of a currently approved information collection.

*Respondents:* Business or other for-profit.

*Number of Respondents and Responses:* 35 respondents; 47 responses.

*Estimated Time per Response:* 5–240 hours.

*Frequency of Response:* Annual reporting requirements, third party disclosure requirements, and on-occasion reporting requirements.

*Obligation to Respond:* Mandatory. Statutory authority for this collection of information is contained in sections 1,

2, 4(i)–(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Public Law 117–338, 136 Stat. 6156.

*Total Annual Burden:* 17,555 hours.

*Total Annual Cost:* No cost.

*Needs and Uses:* On January 5, 2023, the President signed into law the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act), which expands the Commission's statutory authority over communications between incarcerated people and the non-incarcerated to include ''any audio or video communications service used by inmates . . . regardless of technology used.'' The new Act also amends section 2(b) of the Communications Act of 1934, as amended (Communications Act), to make clear that the Commission's authority extends to intrastate as well as interstate and international communications services used by incarcerated people.

The Act directs the Commission to ''promulgate any regulations necessary to implement'' it, including the mandate that the Commission establish a ''compensation plan'' ensuring that all rates and charges for IPCS ''are just and reasonable,'' not earlier than 18 months and not later than 24 months after the Act's January 5, 2023, enactment date. The Act also requires the Commission to consider, as part of its implementation, the costs of ''necessary'' safety and security measures, as well as ''differences in costs'' based on facility size, or ''other characteristics.'' It also allows the Commission to ''use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider'' in determining just and reasonable rates.

Pursuant to the directive that the Commission implement the new Act and ensure just and reasonable rates for IPCS, the Commission released the *2023 IPCS Notice of Proposed Rulemaking,* FCC 23–19, 88 FR 20804 (April 7, 2023), seeking comment on how to interpret the Act's language to ensure that the Commission implements the statute in a manner that fulfills Congress's intent On July 22, 2024, the Commission released the *2024 IPCS Order,* FCC 24–75, 89 FR 77244 (September 20, 2024), which implements the expanded authority granted to the Commission by the Martha Wright-Reed Act to establish a compensation plan that ensures both just and reasonable rates and charges for incarcerated people's audio and video communications services and fair compensation for incarcerated people's communications service providers. The Order fundamentally reforms the regulation of IPCS in all correctional facilities, regardless of the technology used to deliver these services, and significantly lowers the IPCS rates that incarcerated people and their loved ones will pay.

Among other actions, the Commission revised its rules to incorporate terms used in the Martha Wright-Reed Act and to implement its actions in the Order. These revisions include the addition of new rules addressing disability access, alternate pricing plans, and inactive accounts; and changes to the rules addressing consumer disclosure, annual reporting and certification rules, waiver reporting, rate cap, site commission, and ancillary service charges. In this 60-day Notice, we are beginning the process seeking PRA approval of the paperwork burdens arising from the new rules addressing disability access, alternate pricing plans and inactive accounts, and the revisions to the consumer disclosure rules and waiver reporting requirements. We will address any paperwork burdens arising from the revisions to the current annual reporting and certification rules in a subsequent 60-day Notice.

*New Rules Requiring OMB Review:*

47 CFR 64.6040(f) (Accessible formats)—requiring, other among information collection requirements, that the information and documentation IPCS providers furnish to current or potential consumers of IPCS is accessible;

47 CFR 64.130(d) through (f) and (h) through (k) (Protection of consumer funds in inactive accounts)—requiring, among other information collection requirements, that providers follow certain specified procedures when an IPCS account is deemed inactive, including contacting account holders when an incarcerated person is released or transferred; and

47 CFR 64.6140(c) and (d), (e)(2) through (4), and (f)(2) and (4) (Alternate Pricing Plans)—requiring, among other information collection requirements, that providers choosing to offer alternate pricing plans comply with the rules generally applicable to all IPCS, in addition to specific consumer protection and disclosure rules.

*Revised Rules Requiring OMB Review:*

47 CFR 64. 6110(a) and (c) through (g) (Consumer Disclosure of Incarcerated People's Communications Services Rates)—requiring, among other information collection requirements, that providers post on their public websites clear, accurate, and conspicuous information about their IPCS offerings, including information on rates, charges, and associated practices; and

47 CFR 64.6120 (Waiver process)—requiring, among other information collection requirements, that providers follow certain procedures when filing waiver requests, including a showing that the request will not result in unjust and unreasonable IPCS rates and charges.

*Previously-Approved Information Collection Requirements:*

47 CFR 64.6040(c) (Communications Access for Incarcerated People with Communications Disabilities)—requiring, among other information collection requirements, that providers, as part of their obligation to provide access to Telecommunications Relay Service (TRS), notify the TRS provider(s) when an incarcerated person who has individually registered to use Video Relay Service (VRS), Internet Protocol Relay Service (IP Relay), or Internet Protocol Captioned Telephone Service (IP CTS) is released from incarceration or transferred to another correctional facility.

47 CFR 64.6060 (Annual Reporting and Certification Requirements)—requiring IPCS providers, among other information collection requirements, to file certain pricing and related data and information annually to promote transparency and heighten IPCS providers' accountability. In 2015, the Wireline Competition Bureau (WCB) created a standardized reporting template (FCC Form No. 2301(a)) and a related certification of accuracy (FCC Form No. 2301(b)), as well as instructions to guide providers through the reporting process. *See* Inmate Calling Services (ICS) Annual Reporting Form Word Template (Appendix A) (Current), WC Docket No. 12–375 *https://www.fcc.gov/general/ics-data-collections* (last visited October 10, 2024) (Word Template); ICS Annual Reporting Form Excel Template (Appendix B) (Current), WC Docket No. 12–375, *https://www.fcc.gov/general/ics-data-collections* (last visited October 10, 2024) (Excel Template); ICS Annual Reporting and Certification Instructions (Current), WC Docket No. 12–375, *https://www.fcc.gov/general/ics-data-collections* (last visited October 10, 2024) (Instructions) (Certification Instructions); ICS Annual Report Certification Form (Appendix C) (Current), WC Docket No. 12–375, *https://www.fcc.gov/general/ics-data-collections* (last visited October 10, 2024) (Certification Form).

In the *2023 IPCS Order,* FCC 23–19, 88 FR 19001 (March 30, 2023), the Commission, among other things, reaffirmed and updated the Commission's prior delegation of authority to WCB and the Consumer and Governmental Affairs Bureau (CGB) to revise the instructions and reporting template for the Annual Reports that all IPCS providers are required to file each year. Specifically, the Commission delegated authority to WCB and CGB to modify, supplement, and update the instructions and template as appropriate.

On August 3, 2023, in DA 23–656, 88 FR 53850 (August 9, 2023) and 88 FR 54318 (August 10, 2023) (document DA 23–656), WCB and CGB sought comment on proposed revisions to the instructions and templates, including any paperwork burdens, for the annual reports and annual certifications to implement the Martha Wright-Reed Act and reflect the changes that were adopted in the *2022 ICS Order,* FCC 22–76, 87 FR 75496 (December 9, 2022). Commenters generally supported the Commission's efforts to track trends in the IPCS marketplace as long as the reporting requirements were not unduly burdensome. However, one commenter argued that it was premature to require reports on video and the expanded TRS obligations, because the Commission had not adopted video IPCS regulations, and the expanded TRS regulations had not yet gone into effect.

In the *2024 IPCS Order,* FCC 24–75, the Commission modified the scope and content of the requirements for the annual reports and certifications to reflect the Martha Wright-Reed Act's expansion of Commission authority over other communications services in carceral facilities to include video IPCS and certain other advanced communications services, as well as intrastate IPCS, and the providers that offer these services.

On September 11, 2024, in DA 24–918, 89 FR 80449 (October 3, 2024) (document DA 24–918), WCB and CGB invited supplemental comment to refresh and expand upon the record developed in response to document DA 24–918 to reflect the Commission's expanded jurisdiction and the reforms adopted in the *2024 IPCS Order.*

WCB and CGB have not yet issued an order adopting changes to the instructions, templates, and certification form for the annual reports and certifications, as proposed in document DA 23–656 and document DA 24–918. Upon release of an order adopting any such changes, we will address any paperwork burdens arising from those changes in a subsequent 60-day Notice under the PRA.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2024–23990 Filed 10–24–24; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

**[OMB Control No. 3064–0215]**

### Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the survey collection instrument for its ninth biennial survey of households, the FDIC National Survey of Unbanked and Underbanked Households (Household Survey). This survey is assigned OMB Control No. 3064–0215. The 2025 Household Survey is scheduled to be conducted in partnership with the U.S. Census Bureau as a supplement to its June 2025 Current Population Survey (CPS). The survey collects information on U.S. households' use of bank accounts, prepaid cards, nonbank online payment services and other nonbank financial transaction services, and bank and nonbank credit. The results of these biennial surveys will be published by the FDIC, and help inform policymakers, bankers, and researchers about bank account ownership and household use of the banking system and nonbank financial products and services to meet their financial needs.

**DATES:** Comments must be submitted on or before December 24, 2024.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to ''Household Survey.'' A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** The FDIC is requesting OMB approval for the following collection of information:

*Title:* FDIC National Survey of Unbanked and Underbanked Households.

*OMB Number:* 3064–0215.

*Frequency of Response:* Once.

*Affected Public:* Individuals residing in U.S. households.

*Estimated Number of Respondents:* 40,000.

*Average Time Per response:* 9 minutes (0.15 hours) per respondent.

*Estimated Total Annual Burden:* 6,000 hours.

*General Description of Collection:* The FDIC is committed to expanding Americans' access to safe, secure, and affordable banking services, which is integral to the FDIC's mission of maintaining the stability of, and public confidence in, the U.S. financial system. The Household Survey is one avenue by which the FDIC responds to a congressional mandate contained in section 7 of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Reform Act) (Pub. L. 109–173) for the FDIC to conduct ongoing surveys ''on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the 'unbanked') into the conventional finance system.'' Section 7 further instructs the FDIC to consider several factors in its conduct of the surveys, including (1) ''what cultural, language and identification issues as well as transaction costs appear to most prevent 'unbanked' individuals from establishing conventional accounts;'' and (2) ''what is a fair estimate of the size and worth of the ''unbanked'' market in the United States.''

The Household Survey collects information on bank account ownership, which provides a factual basis for measuring the number and percentage of households that are unbanked. It is the only population-representative survey conducted at the national level that provides state-level estimates of the size and characteristics of unbanked households for all 50 States and the District of Columbia. The Household Survey also collects information from unbanked households about the reasons that they do not have a bank account and their interest in having a bank account.

Nonbank financial companies are playing an increasingly important role in the provision of financial products and services in the U.S., and households may use a variety of bank and nonbank financial products and services to meet their needs. Consequently, the Household Survey collects information on whether and how households use a wide range of bank and nonbank financial products and services.

To obtain this information, the FDIC partners with the U.S. Census Bureau, which administers the Household Survey under an FDIC-sponsored supplement to its CPS. The Household Survey has been administered every other year since January 2009. The previous survey questionnaires and survey results can be accessed through the following link: *https://fdic.gov/analysis/household-survey.*

Consistent with the statutory mandate to conduct the surveys on an ongoing basis, the FDIC already has in place arrangements for conducting the ninth Household Survey as a supplement to the June 2025 CPS. Prior to finalizing the 2025 survey questionnaire, the FDIC seeks to solicit public comment on whether changes to the existing instrument are desirable and, if so, to what extent. It should be noted that, as a supplement of the CPS survey, the Household Survey needs to adhere to specific parameters that include limits in the length and sensitivity of the questions that can be asked of CPS respondents. Interested members of the public may obtain a copy of the proposed survey questionnaire on the following web page: *https://www.fdic.gov/federal-register-publications/2025-fdic-national-survey-unbanked-and-underbanked-households.*

**Request for Comment**

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 22, 2024.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2024–24911 Filed 10–24–24; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Update listing of financial institutions in liquidation.

**SUMMARY:** Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institution effective as of the Date Closed as indicated in the listing.

**SUPPLEMENTARY INFORMATION:** This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992, issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation website at *www.fdic.gov/bank/individual/failed/banklist.html,* or contact the Chief, Receivership Oversight at *RO@fdic.gov* or at Division of Resolutions and Receiverships, FDIC, 600 North Pearl Street, Suite 700, Dallas, TX 75201.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

| FDIC Ref. No. | Bank name | City | State | Date closed |
|---|---|---|---|---|
| 10547 | First National Bank of Lindsay | Lindsay | OK | 10/18/2024 |

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 22, 2024.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2024–24850 Filed 10–24–24; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Wednesday, October 30, 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:**

REG 2024–06 (Request to Modify or Redact Contributor Info)—Draft Notice of Proposed Rulemaking

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)

**Vicktoria J. Allen,**

*Deputy Secretary of the Commission.*

[FR Doc. 2024–25018 Filed 10–23–24; 4:15 pm]

**BILLING CODE 6715–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments 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 12, 2024.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent electronically to *Comments.applications@chi.frb.org:*

1. *The Deborah A. Talen Trust, Deborah A. Talen, as trustee, both of Minneapolis, Minnesota;* to become a member of the Talen Family Control Group, a group acting in concert, to acquire voting shares of Talen, Inc., and thereby indirectly acquire voting shares of Farmers Savings Bank & Trust, both of Traer, Iowa.

*B. Federal Reserve Bank of San Francisco* (Joseph Cuenco, Assistant Vice President, Formations & Transactions) 101 Market Street, San Francisco, California 94105. Comments can also be sent electronically to *sf.fisc.comments.applications@sf.frb.org:*

1. *Russell S. Colombo, Walla Walla, Washington;* to join Megan F. Clubb and Clifford W. Kontos, both of Walla Walla, Washington, a group acting in concert, to control voting shares of Baker Boyer Bancorp, and thereby indirectly control voting shares of Baker Boyer National Bank, both of Walla Walla, Washington.

Board of Governors of the Federal Reserve System.

**Michele Taylor Fennell,**

*Associate Secretary of the Board.*

[FR Doc. 2024–24898 Filed 10–24–24; 8:45 am]

**BILLING CODE P**

## FEDERAL TRADE COMMISSION

### Senior Executive Service Performance Review Board

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the appointment of members to the FTC Performance Review Board.

**FOR FURTHER INFORMATION CONTACT:** Tamika Williams, Acting Chief Human Capital Officer, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2184.

**SUPPLEMENTARY INFORMATION:** Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations regarding performance ratings, performance awards, and pay-for-performance pay adjustments to the Chair.

The following individuals have been designated to serve on the Commission's Performance Review Board:

Monique Fortenberry, Director, Office of Workplace Inclusivity & Opportunity
Robin Moore, Principal Deputy General Counsel
Maribeth Petrizzi, Assistant Director for Compliance, Bureau of Competition
David Robbins, Executive Director, PRB Chair
Ted Rosenbaum, Deputy Director for Research and Management, Bureau of Economics
Rebecca Unruh, Deputy Director, Bureau of Consumer Protection
Tamika Williams, Acting Chief Human Capital Officer

By direction of the Commission.

**April J. Tabor,**

*Secretary.*

[FR Doc. 2024–24904 Filed 10–24–24; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–25–0612; Docket No. CDC–2024–0083]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) Reporting System. The WISEWOMAN program is designed to prevent, detect, and control, hypertension and other cardiovascular disease (CVD) risk factors through services such as health coaching, and evidence informed lifestyle programs, which are tailored for individual and group behavior change.

**DATES:** CDC must receive written comments on or before December 24, 2024.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2024–0083 by of either the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for

Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

*Please note:* Submit all comments through the Federal eRulemaking portal (*www.regulations.gov* )or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

**Proposed Project**

Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) Reporting System (OMB Control No. 0920–0612, Exp. 3/31/2025)—Revision—National Center for Chronic Disease and Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

The Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) program sponsored by the CDC, provides services to low income, uninsured, or underinsured women aged 35–64. The WISEWOMAN program is designed to prevent, detect, and control hypertension and other cardiovascular disease (CVD) risk factors through healthy behavior support services which are tailored for individual and group behavior change. The WISEWOMAN program provides services to participants who are jointly enrolled in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), which is also administered by CDC.

The WISEWOMAN program is administered by state health departments and tribal programs. In 2023, a new five-year cooperative agreement was awarded under Funding Opportunity Announcement DP23–0003, subject to the availability of funds. CDC collects two types of information from WISEWOMAN awardees. The WISEWOMAN awardee submits an electronic data file to CDC twice per year. The Minimum Data Elements (MDE) file contains data using a unique identifier with client-level information about CVD risk factors and types of healthy behavior support services for participants served by the program. The estimated burden per response for the MDE file is 25 hours. The Annual Progress Report provides a narrative summary of each awardee's objectives and the activities undertaken to meet program goals. The estimated burden per response is 16 hours.

The WISEWOMAN Program is requesting three additional years to continue data collection. The 2024 OMB Directive 15 for a combined race and ethnicity question will replace the separate race and ethnicity minimum data elements. Two MDEs are being deleted and two MDEs are being added, and a response option is being added to one MDE. There are no changes to overall burden. CDC will continue to use the information collected from WISEWOMAN awardees to support program monitoring and improvement activities, program assessment, and evaluation of program outcomes. The overall program evaluation helps to demonstrate program accomplishments and strengthen the evidence for strategy implementation for improved engagement of underserved populations. It can also determine whether the identified strategies and associated activities can be implemented at various levels within a state or tribal organization. The data collection is designed to demonstrate how WISEWOMAN can obtain CVD health outcome data on at-risk populations, promote public education about CVD risk-factors, and improve the availability of healthy behavior support services for under-served participants.

This is a Revision for the WISEWOMAN information collection (OMB Control No. 0920–0612, Exp. 03/31/2025). Participation in this information collection is required as a condition of cooperative agreement funding. There are no costs to respondents other than their time. The total estimated annual burden hours are 2,640.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|---|
| WISEWOMAN Awardees | Screening and Assessment and Lifestyle Program MDEs | 40 | 2 | 25 | 2,000 |
| | Annual Progress Report | 40 | 1 | 16 | 640 |
| Total | | | | | 2,640 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2024–24921 Filed 10–24–24; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–25–1385; Docket No. CDC–2024–0084]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Characteristics of Cases of Priority Fungal Diseases. These case report forms (CRF) collect information on patient demographics, underlying conditions, diagnosis, treatments, healthcare utilization, and outcomes of patients with coccidioidomycosis, histoplasmosis, blastomycosis, *Candida auris,* triazole-resistant *Aspergillus fumigatus* infection or colonization, or antifungal-resistant dermatophytosis, chromoblastomycosis, mycetoma, and sporotrichosis.

**DATES:** CDC must receive written comments on or before December 24, 2024.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2024–0084 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

*Please note:* Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

**Proposed Project**

Characteristics of Cases of Priority Fungal Diseases (OMB Control No. 0920–1385, Exp. 4/30/2027)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Fungal diseases cause substantial illness, ranging from mild infection to severe or life-threatening invasive disease. They also constitute a considerable financial burden on patients and healthcare systems. Awareness of fungal diseases is low, and data collection has historically been limited in size, scope, and coordination, which has hindered our understanding of these diseases. Detailed epidemiologic and clinical data are critical to inform appropriate public health responses.

CDC plans to enhance surveillance of high priority fungal diseases across the United States to better characterize factors such as disease burden, geographic scope, patient risk factors, health disparities, healthcare utilization, outcomes, and emerging trends. This project will serve as a Revision to the information collection project Characteristics of Cases of Priority Fungal Diseases (OMB Control No. 0920–1385). The Revision will expand the number of fungal diseases for which data may be collected. In addition to triazole-resistant *A. fumigatus* infections, coccidioidomycosis, histoplasmosis, blastomycosis, *C. auris,* and antifungal-resistant dermatophytosis, Case Report Forms (CRF) have also been developed for chromoblastomycosis, mycetoma, and sporotrichosis.

CDC plans to use standardized CRFs to collect public health surveillance data for cases of these diseases regarding demographics (*e.g.,* age, sex, race/ethnicity, location of residence), underlying medical conditions, diagnosis (*e.g.,* clinical presentation, laboratory testing), treatments, and outcomes (*e.g.,* hospitalization, vital status). The corresponding CRF would be filled out voluntarily by state, local or tribal health departments, federal agencies, and members of the private sector (*e.g.,* academic institutions), and contains a section for medical chart review and an optional supplemental interview (including data on potential occupational or environmental exposures) of the patient or their representative. Findings can help identify populations at higher risk of these diseases, detect emerging epidemiologic trends, and guide prevention and response efforts. They can also help better focus public and healthcare provider outreach, inform efforts to contain or mitigate spread, and influence health policy and research on prevention and treatment.

CDC requests OMB approval for an estimated 1,564 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Type of respondent | Number of respondents | Number responses per respondent | Avg. burden per response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|---|
| Triazole-resistant Aspergillus fumigatus Case Report Form | State and Local Health Departments | 15 | 15 | 0.5 | 113 |
| Coccidioidomycosis Case Report Form | State and Local Health Departments | 10 | 25 | 1.0 | 250 |
| | Private Sectors | 3 | 10 | 1.0 | 30 |
| Histoplasmosis Case Report Form | State and Local Health Departments | 10 | 25 | 1.0 | 250 |
| | Private Sectors | 3 | 10 | 1.0 | 30 |
| Blastomycosis Case Report Form | State and Local Health Departments | 10 | 25 | 1.0 | 250 |
| | Private Sectors | 3 | 10 | 1.0 | 30 |
| *Candida auris* Case Report Form | State and Local Health Departments | 15 | 20 | 0.75 | 225 |
| | Private Sectors | 3 | 10 | 0.75 | 23 |
| Antifungal-resistant dermatophytosis case report form | State and Local Health Departments | 10 | 10 | 0.5 | 50 |
| Chromoblastomycosis case report form | Private Sectors | 25 | 10 | 0.5 | 125 |
| Mycetoma case report form | Private Sectors | 25 | 5 | 0.5 | 63 |
| Sporotrichosis case report form | Private Sectors | 25 | 10 | 0.5 | 125 |
| Total | | | | | 1,564 |

**Jeffrey M. Zirger,**

*Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.*

[FR Doc. 2024–24922 Filed 10–24–24; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Meeting of the Lead Exposure and Prevention Advisory Committee

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention announces the following meeting for the Lead Exposure and Prevention Advisory Committee (LEPAC). This virtual meeting is open to the public. Advance registration by December 4, 2024, is needed to receive the information to join the meeting. The registration link is provided in the addresses section below.

**DATES:** The meeting will be held on December 11, 2024 from 11 a.m. to 5 p.m., EST.

**ADDRESSES:** Register in advance *https://events.gcc.teams.microsoft.com/event/0e538aa3-bc82-43e9-89ee-d997b498cfe6@9ce70869-60db-44fd-abe8-d2767077fc8f* to receive information to join the meeting.

**FOR FURTHER INFORMATION CONTACT:** Paul Allwood, Ph.D., M.P.H., Designated Federal Officer, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, Atlanta, Georgia 30341, Telephone: 770–488–6774; Email: *LEPAC@cdc.gov*.

**SUPPLEMENTARY INFORMATION:**

*Background:* The Lead Exposure and Prevention Advisory Committee was established under Section 2203 of Public Law 114–322, the Water Infrastructure Improvements for the Nation Act; 42 U.S.C. 300j–21, Registry for Lead Exposure and Prevention Advisory Committee.

*Purpose:* The LEPAC is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), and the Director, CDC and Administrator, ATSDR, on (1) reviewing Federal programs and services available to individual communities exposed to lead; (2) reviewing current research on lead exposure to identify additional research needs; (3) reviewing and identifying best practices, or the need for best practices regarding lead screening and the prevention of lead poisoning; (4) identifying effective services, including services relating to healthcare, education, and nutrition for individuals and communities affected by lead exposure and lead poisoning, including in consultation with, as appropriate, the lead exposure registry as established in Section 2203(b) of Public Law 114–322; and (5) undertaking any other review or activities that the Secretary determines to be appropriate.

*Matters to be Considered:* The agenda will include presentations and discussions on the following topics: vote on the 2023 annual LEPAC report, report from the Preventing Lead Exposure in Adults workgroup, lead related updates from the LEPAC members, local perspective on improving blood lead testing, blood lead testing strategies. Agenda items are subject to change as priorities dictate.

### Public Participation

*Oral Public Comment:* The public comment period is scheduled on December 11, 2024, from 12:30 p.m. until 12:50 p.m., EST. Individuals wishing to make a comment during the public comment period, please email your name, organization, and phone number by November 25, 2024, to *LEPAC@cdc.gov*.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2024–24925 Filed 10–24–24; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. FDA–2024–N–0783 and FDA–2024–N–0021]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

| Title of collection | OMB control number | Date approval expires |
|---|---|---|
| Establishment Registration and Product Listing for Manufacturers of Human Blood and Blood Products and Licensed Devices | 0910–0052 | 9/30/2027 |
| Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Restaurant and Retail Foodservice Facility Types | 0910–0744 | 10/31/2027 |

Dated: October 21, 2024.

**Eric Flamm,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 2024–24822 Filed 10–24–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–D–1083]**

### Insanitary Conditions in the Preparation, Packing, and Holding of Tattoo Inks and the Risk of Microbial Contamination; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Insanitary Conditions in the Preparation, Packing, and Holding of Tattoo Inks and the Risk of Microbial Contamination.'' The final guidance provides our current view of insanitary conditions of tattoo ink preparation, packaging, or holding that may render the inks injurious to health because of microbial contamination. This guidance finalizes the draft guidance of the same title issued on June 13, 2023.

**DATES:** The announcement of the guidance is published in the **Federal Register** on October 25, 2024.

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

*Electronic Submissions*

Submit electronic comments in the following way:

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

*Written/Paper Submissions*

Submit written/paper submissions as follows:

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

*Instructions:* All submissions received must include the Docket No. FDA–2023–D–1083 for ''Insanitary Conditions in the Preparation, Packing, and Holding of Tattoo Inks and the Risk of Microbial Contamination.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit

both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

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

Submit written requests for single copies of the guidance to Office of the Chief Scientist, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave WO1, Silver Spring, MD 20993. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Ross, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 301–796–4880 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance for industry entitled ''Insanitary Conditions in the Preparation, Packing, and Holding of Tattoo Inks and the Risk of Microbial Contamination.''

Tattooing has become increasingly popular in the United States. Polling and data suggest that about 30 percent of all Americans, and 40 percent of those aged 18–34, have at least one tattoo (Refs. 1 and 2). State and local jurisdictions generally regulate the practice of intradermal tattooing, including permanent makeup and microblading. FDA regulates, among other things, the inks used in that practice. Tattoo inks are cosmetics as defined by section 201(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321(i)) because they are articles intended to be introduced into or otherwise applied to the human body for beautifying, promoting attractiveness, or altering the appearance.

Microorganisms normally regarded as nonpathogenic when applied topically may become opportunistically pathogenic and virulent when introduced in other ways (*e.g.,* in wounds or via cosmetics introduced into or through the skin). Tattoo inks bypass the body's primary physical barrier against pathogens because they are inserted below the epidermis. We have received multiple reports of illness caused by microbially contaminated tattoo inks, and subsequent testing has found many sealed tattoo inks in the United States with microbial contamination. Among other things, between 2003 and 2019, tattoo ink firms conducted 15 ink recalls, 14 of which resulted from findings of microbial contamination. Eight of these recalls (Refs. 3 to 8) occurred after FDA conducted multiple surveys of tattoo inks available in the U.S. market and tested them for microbial contamination. Many of these inks were heavily contaminated with a variety of microorganisms, some of which can cause serious infections (Refs. 8 and 9).

This guidance will help tattoo ink manufacturers and distributors understand examples of what could adulterate a tattoo ink because it has been prepared, packed, or held under insanitary conditions that could render it injurious to health. We also recommend certain steps that manufacturers and distributors could take to help prevent the occurrence of these conditions, or to identify and remediate insanitary conditions that already exist during manufacturing and distribution.

This guidance finalizes the draft guidance entitled ''Insanitary Conditions in the Preparation, Packing, and Holding of Tattoo Inks and the Risk of Microbial Contamination'' issued on June 13, 2023 (88 FR 38516). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include addition of a definition of injection for purposes of this guidance. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Insanitary Conditions in the Preparation, Packing, and Holding of Tattoo Inks and the Risk of Microbial Contamination.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

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

## III. Electronic Access

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

## IV. References

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

1. Giulbudagian, M., I. Schreiver, A.V. Singh, et al., ''Safety of Tattoos and Permanent Make-up: A Regulatory View.'' *Archives of Toxicology,* 94: 357–369 (2020).
2. Ipsos poll. ''More Americans Have Tattoos Today than Seven Years Ago,'' August 29, 2019. Available at: *https://www.ipsos.com/en-us/news-polls/more-americans-have-tattoos-today* (accessed January 19, 2023, July 22, 2024).
*3. FDA, ''Fusion Ink'': Recall, posted November 30, 2017; available at *https://www.accessdata.fda.gov/scripts/ires/index.cfm?Product=158974* (accessed January 19, 2023, July 22, 2024).
*4. FDA, ''Radiant Colors'': Recall, posted December 21, 2017; available at *https://www.accessdata.fda.gov/scripts/ires/index.cfm?Product=160130* (accessed January 19, 2023, July 22, 2024).
*5. FDA, ''Solid Ink'': Recall, posted June 20, 2018; available at *https://www.accessdata.fda.gov/scripts/ires/index.cfm?Product=164628* (accessed

January 19, 2023, July 22, 2024).
*6. FDA, ''Intenze Ink'': Recall, posted July 31, 2018; available at *https://www.accessdata.fda.gov/scripts/ires/index.cfm?Product=165649* (accessed January 19, 2023, July 22, 2024).
*7. FDA, ''Eternal Ink'': Recall, posted October 24, 2018; available at *https://www.accessdata.fda.gov/scripts/ires/index.cfm?Product=167698* (accessed January 19, 2023, July 22, 2024).
*8. FDA, ''FDA Advises Consumers, Tattoo Artists, and Retailers to Avoid Using or Selling Certain Tattoo Inks Contaminated with Microorganisms''; available at *https://www.fda.gov/cosmetics/cosmetics-recalls-alerts/fda-advises-consumers-tattoo-artists-and-retailers-avoid-using-or-selling-certain-tattoo-inks* (accessed January 19, 2023, July 22, 2024).
*9. Nho, SW, S–J. Kim, O. Kweon, et al. ''Microbiological Survey of Commercial Tattoo and Permanent Makeup Inks Available in the United States.'' *Journal of Applied Microbiology,* 124: 1294–1302 (2018).

Dated: October 21, 2024.

**Kimberlee Trzeciak,**

*Deputy Commissioner for Policy, Legislation, and International Affairs.*

[FR Doc. 2024–24841 Filed 10–24–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2024–N–4777]**

### Pharmacy Compounding Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments—Bulk Drug Substances Nominated for Inclusion on the Section 503A Bulk Drug Substances List

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; establishment of a public docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Pharmacy Compounding Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

**DATES:** The meeting will be held on December 4, 2024, from 8 a.m. to 3 p.m. Eastern Time.

**ADDRESSES:** The meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. The public will also have the option to participate, and the advisory committee meeting will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform.

Answers to commonly asked questions about FDA advisory committee meetings, including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2024–N–4777. The docket will close on December 3, 2024. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time on December 3, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before November 19, 2024, will be provided to the Committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

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

*Written/Paper Submissions*

Submit written/paper submissions as follows:

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

*Instructions:* All submissions received must include the Docket No. FDA–2024–N–4777 for ''Pharmacy Compounding Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments—Bulk Drug Substances Nominated for Inclusion on the Section 503A Bulk Drug Substances List.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

**FOR FURTHER INFORMATION CONTACT:** Takyiah Stevenson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 240–402–2507, email: *PCAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

**SUPPLEMENTARY INFORMATION:**

*Background:* Section 503A of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353a) describes the conditions that must be satisfied for human drug products compounded by a licensed pharmacist in a State-licensed pharmacy or a Federal facility, or a licensed physician, to be exempt from the following three sections of the FD&C Act: (1) section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning current good manufacturing practice requirements); (2) section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use); and (3) section 505 (21 U.S.C. 355) (concerning the approval of human drug products under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)).

One of the conditions that must be satisfied for a drug product to qualify for the exemptions under section 503A of the FD&C Act is that the licensed pharmacist or licensed physician compounds the drug product using bulk drug substances (as defined in 21 CFR 207.3) that: (1) comply with the standards of an applicable United States Pharmacopoeia (USP) or National Formulary monograph, if a monograph exists, and the USP chapter on pharmacy compounding; (2) if an applicable monograph does not exist, are drug substances that are components of drugs approved by the Secretary of Health and Human Services (the Secretary); or (3) if such a monograph does not exist and the drug substance is not a component of a drug approved by the Secretary, that appear on a list developed by the Secretary through regulations issued by the Secretary under section 503A(c) of the FD&C Act (the 503A Bulks List) (see section 503A(b)(1)(A)(i) of the FD&C Act).

*Agenda:* FDA, invited attendees, and the public will be able to attend the meeting in-person at FDA's White Oak Campus (see **ADDRESSES**). The meeting presentations will also be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform.

The Committee will discuss the following bulk drug substances being considered for inclusion on the 503A Bulks List: AOD–9604-related bulk drug substances (AOD–9604 acetate, and AOD–9604 (free base)), CJC–1295-related bulk drug substances (CJC–1295 (free base), CJC–1295 acetate, CJC–1295 with drug affinity complex (DAC) (free base), CJC–1295 DAC acetate, and CJC–1295 DAC trifluoroacetate)), and Thymosin alpha-1-related bulk drug substances (Thymosin alpha-1 acetate, and Thymosin alpha-1 (free base)). The chart below identifies the use(s) FDA reviewed for each of the bulk drug substances being discussed at this advisory committee meeting. For nominated bulk drug substances, the nominators of these substances will be invited to make a short presentation supporting the nomination.

| Bulk drug substance | Uses evaluated |
|---|---|
| AOD–9604 (free base) | *Obesity. |
| AOD–9604 Acetate | |
| CJC–1295 (free base) | Growth hormone deficiency. |
| CJC–1295 Acetate | |
| CJC–1295 DAC (free base) | |
| CJC–1295 DAC Acetate | |
| CJC–1295 DAC Trifluoroacetate | |
| Thymosin alpha-1(free base) | Hepatitis B. |
| Thymosin alpha-1 Acetate | Hepatitis C. |
| | Human immunodeficiency virus (HIV). |
| | Coronavirus disease 2019 (COVID–19). |
| | Depressed response to vaccinations; adjuvant to flu vaccines. |
| | Malignant melanoma. |
| | Hepatocellular carcinoma (HCC). |
| | Non-small cell lung cancer (NSCLC). |
| | Sepsis. |
| | Infections after hematopoietic stem cell transplantation (HSCT). |
| | Chronic obstructive pulmonary disease (COPD). |
| | Myalgic encephalomyelitis and chronic fatigue syndrome (ME/CFS). |

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference and/or video conference meeting will be available at the location of the advisory committee meeting and at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide

presentations with audio and video components to allow the presentation of materials for online participants in a manner that most closely resembles an in-person advisory committee meeting.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before November 19, 2024, will be provided to the Committee. Oral presentations from the public will be scheduled following FDA presentations. FDA has allotted approximately 1 hour for open public hearing presentations, which will be split to allow for public remarks on each substance. The sessions will begin at approximately 9:35 a.m., 10:50 a.m., and 1:40 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, whether they would like to present online or in-person, and an indication of the approximate amount of time requested to make their presentation on or before November 8, 2024. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. FDA may also extend the time scheduled for open public hearing presentations depending on interest. Similarly, room for interested persons to participate in-person may be limited. If the number of registrants requesting to speak in-person during the open public hearing is greater than can be reasonably accommodated in the venue for the in-person portion of the advisory committee meeting, FDA may conduct a lottery to determine the speakers who will be invited to participate in-person. The contact person will notify interested persons regarding their request to speak and the timeframe for the presentation by November 12, 2024. Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Takyiah Stevenson (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform in conjunction with the physical meeting room (see location). This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. The conditions for issuance of a waiver under 21 CFR 10.19 are met.

Dated: October 21, 2024.

**Eric Flamm,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 2024–24828 Filed 10–24–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Metals and Controls Corp. in Attleboro, Massachusetts, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000.

**FOR FURTHER INFORMATION CONTACT:** Grady Calhoun, Director, Division of Compensation Analysis and Support, NIOSH, 1090 Tusculum Avenue, MS C–46, Cincinnati, OH 45226–1938, Telephone 513–533–6800. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

**SUPPLEMENTARY INFORMATION:** On September 9, 2024, as provided for under 42 U.S.C. 7384*l*(14)(C), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All atomic weapons employees who worked at Metals and Controls Corp. in Attleboro, Massachusetts, from January 1, 1968, through September 21, 1995, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the SEC.

This designation became effective on October 9, 2024. Therefore, beginning on October 9, 2024, members of this class of employees, defined as reported in this notice, became members of the SEC.

*Authority:* 2 U.S.C. 384q(b). 42 U.S.C. 7384*l*(14)(C).

**John J. Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2024–24833 Filed 10–24–24; 8:45 am]

**BILLING CODE 4163–18–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:* Center for Scientific Review Special Emphasis Panel; Small Business Innovation Research/Small Business Technology Transfer: Clinical Care and Health Interventions.

*Date:* November 14–15, 2024.

*Time:* 9:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* In Person and Virtual Meeting.

*Contact Person:* Joann Wu Shortt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3333, *shorttjw@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Radiation Therapy, Radiation Biology and Nanoparticle Based Therapeutics.

*Date:* November 14–15, 2024.

*Time:* 10:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Jennifer Ann Sanders, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–3553, *jennifer.sanders@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Infectious Diseases and Immunology B Review Panel.

*Date:* November 14–15, 2024.

*Time:* 10:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Diana Maria Ortiz-Garcia, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–5614, *diana.ortiz-garcia@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Bacterial Pathogenesis and Host Defense.

*Date:* November 14, 2024.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Joshua D. Powell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–5370, *josh.powell@nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Bioengineering, Biomaterials, and Instrumentation.

*Date:* November 14–15, 2024.

*Time:* 10:00 a.m. to 8:40 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Joseph Thomas Peterson, Ph.D., Scientific Review Office, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9694, *petersonjt@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Respiratory, Cardiac, and Circulatory Sciences.

*Date:* November 14, 2024.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7818, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Endocrinology, Metabolism, and Reproduction.

*Date:* November 14–15, 2024.

*Time:* 10:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Baskaran Thyagarajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 800B, Bethesda, MD 20892, (301) 867–5309, *thyagarajanb2@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–RM–24–007, SCGE Phase II, Assays and Technologies for Genome Editing.

*Date:* November 14, 2024.

*Time:* 2:30 p.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Karobi Moitra, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–6893, *karobi.moitra@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 22, 2024.

**Lauren A. Fleck,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–24880 Filed 10–24–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Cancer Institute, November 4, 2024, 10 a.m. to November 4, 2024, 4:40 p.m., National Institute of Health, Building 31, C Wing, 6th Floor, Conference Room C, 9000 Rockville Pike, Bethesda, MD 20892 which was published in the **Federal Register** on October 1, 2024, FR Doc 2024–22437, 89 FR 79937.

This meeting notice is being amended to change the meeting format from hybrid to virtual. The meeting is partially Closed to the public.

Dated: October 21, 2024.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–24876 Filed 10–24–24; 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:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Epidemiology and Population Health.

*Date:* November 20, 2024.

*Time:* 10 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Cynthia C. McOliver, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 1007G, Bethesda, MD 20892, (301) 594–2081 *mcolivercc@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; BBBT Small Business: Biomaterials, Delivery, and Nanotechnology.

*Date:* November 21–22, 2024.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* David R. Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Clinical Neurophysiology, Devices, Neuroprosthetics and Biosensors.

*Date:* November 21–22, 2024.

*Time:* 8:30 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Cristina Backman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, (301) 480–9069, *cbackman@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Aging and Development, Auditory Vision and Low Vision Technologies.

*Date:* November 21–22, 2024.

*Time:* 9 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Barbara Susanne Mallon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–8992 *mallonb@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Topics in Health Services Research, Maternal and Child Health, Aging, and Substance Use.

*Date:* November 21–22, 2024.

*Time:* 9 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Deborah Leachman Quesenberry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (423) 747–7534, *quesenberrydl@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Transformative Research Award for the Include Project.

*Date:* November 21, 2024.

*Time:* 9 a.m. to 8 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, (301) 435–0912 *malindakm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Substance Use and Prevention and Treatment of Addiction.

*Date:* November 21, 2024.

*Time:* 9 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *Jacinta.bronte-tinkew@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 22, 2024

**Lauren A. Fleck,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–24882 Filed 10–24–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed 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:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS R35 Review Panel A.

*Date:* November 20–21, 2024.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Address:* Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

*Meeting Format:* In Person and Virtual Meeting.

*Contact Person:* Tatiana Pasternak, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, (301) 496–9223, *tatiana.pasternak@nih.gov.*

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS R35 Review Panel B.

*Date:* November 20–21, 2024.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

*Meeting Format:* In Person and Virtual Meeting.

*Contact Person:* Ernest Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–4056, *lyonse@ninds.nih.gov.*

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R13 Review.

*Date:* November 21–22, 2024.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Li Jia, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301 451–2854, *li.jia@nih.gov.*

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Development and Validation of Human Cellular Models for ADRD.

*Date:* November 21, 2024.

*Time:* 10:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Mirela Milescu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *mirela.milescu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research

Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: October 21, 2024.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–24884 Filed 10–24–24; 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:* Center for Scientific Review Special Emphasis Panel; Small Business: Musculoskeletal, Oral, Rheumatology and Dermatology.

*Date:* November 18–19, 2024.

*Time:* 8:30 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Aftab A. Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 237–9931, *ansaria@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Cellular and Molecular Aspects of the Blood-Brain Barrier and Neurovascular System and Therapeutic Strategies.

*Date:* November 18, 2024.

*Time:* 9 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Address*: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Jacek Topczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002A1, Bethesda, MD 20892, (301) 594–7574, *topczewskij2@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery and Development.

*Date:* November 18–19, 2024.

*Time:* 10 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Interdisciplinary Clinical Care and Health Outcomes.

*Date:* November 18, 2024.

*Time:* 12 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Benjamin G. Shapero, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 402–4786, *shaperobg@mail.nih.gov.*

*Name of Committee:* Infectious Diseases and Immunology B Integrated Review Group; HIV Comorbidities and Clinical Studies Study Section.

*Date:* November 19–20, 2024.

*Time:* 9 a.m. to 8 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Shannon J. Sherman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–0715, *shannon.sherman@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Endocrine and Metabolic Systems.

*Date:* November 19, 2024.

*Time:* 9 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Anthony Wing Sang Chan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 809K, Bethesda, MD 20892, (301) 496–9392, *chana3@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Cardiovascular and Respiratory Systems.

*Date:* November 19–20, 2024.

*Time:* 9 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Yuanyi Feng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892, (301) 594–1180, *fengy7@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Instrumentation, Environmental, and Occupational Safety.

*Date:* November 19–20, 2024.

*Time:* 9:30 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Address*: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Michael James Knapp, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–0600, *mike.knapp@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery for Neuropsychiatric, Substance Use, and Neurological Disorders.

*Date:* November 19–20, 2024.

*Time:* 9:30 a.m. to 8 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Lai Yee Leung, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011D, Bethesda, MD 20892, (301) 827–8106, *leungl2@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Alcohol and Motivated Behavior.

*Date:* November 19, 2024.

*Time:* 11 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Myongsoo Matthew Oh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011F, Bethesda, MD 20892, (301) 435–1042, *ohmm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–OD–24–013: Building Interdisciplinary Research Careers in Women's Health (K12).

*Date:* November 19, 2024.

*Time:* 11 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Lauren Susan Penney, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–1968, *penneyls@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 21, 2024.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–24877 Filed 10–24–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The cooperative agreement applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BPN Small Molecule and Biologic Therapeutic Drug Discovery for Disorders of the Nervous System.

*Date:* November 19–20, 2024.

*Time:* 10 a.m. to 2 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Address:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Eric S. Tucker, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, 6001 Executive Boulevard, Rockville, MD 20852, 301–827–0799, *eric.tucker@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: October 22, 2024.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–24881 Filed 10–24–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Advancing Translational Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Advancing Translational Sciences Special Emphasis Panel; NCATS CTSA Training Grants Review Meeting.

*Date:* January 16–17, 2025.

*Time:* 10:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, Bethesda, MD 20892 (Video Assisted Meeting).

*Contact Person:* Nakia C. Brown, Ph.D., Scientific Review Officer, Office of Grants Management and Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 9609 Medical Center Drive, Room 1E504, Bethesda, MD 20892, (301) 827–4905, *brownnac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: October 21, 2024.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–24885 Filed 10–24–24; 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:* Center for Scientific Review Special Emphasis Panel; Fellowships: Epidemiology and Population Sciences.

*Date:* November 14–15, 2024.

*Time:* 9 a.m. to 8 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* St. Gregory Hotel, 2033 M Street NW, Washington, DC 20036.

*Meeting Format:* In Person.

*Contact Person:* Rebecca I. Tinker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 435–0637, *tinkerri@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–24–202: Lasker Clinical Research Scholars Program.

*Date:* November 15, 2024.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Yue Wu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 803C, Bethesda, MD 20892, (301) 867–5309, *wuy25@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurotechnology and Neuroengineering.

*Date:* November 15, 2024.

*Time:* 9 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Cibu Paul Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 1011–H, Bethesda, MD 20894, (301) 402–4341, *thomascp@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Study In Cancer Biology Area Review.

*Date:* November 15, 2024.

*Time:* 11 a.m. to 8 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–408–9850, *morrowcs@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; AREA/REAP: Respiratory, Cardiac and Circulatory Sciences.

*Date:* November 15, 2024.

*Time:* 1 p.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Kirk E. Dineley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 806E, Bethesda, MD 20892, (301) 867–5309, *dineleyke@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: The Cancer Biotherapeutics Development (CBD).

*Date:* November 18–19, 2024.

*Time:* 9 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Laurie Ann Shuman Moss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *laurie.shumanmoss@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Clinical Data Management and Analysis/Clinical Informatics and Digital Health Special Emphasis Panel.

*Date:* November 18–19, 2024.

*Time:* 9 a.m. to 8 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Amy Kathleen Wernimont, BS, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, Bethesda, MD 20892, 301–827–6427, *amy.wernimont@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Metabolic, Cerebrovascular, Environmental, and Sleep Factors in Alzheimer's Disease and Related Dementias (ADRD).

*Date:* November 18–19, 2024.

*Time:* 9 a.m. to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Jennifer Kielczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *jennifer.kielczewski@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: The Cancer Drug Development and Therapeutics (CDDT).

*Date:* November 18–19, 2024.

*Time:* 9 a.m. to 8 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Lilia Topol, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–22–180: Maximizing Investigators' Research Award.

*Date:* November 18, 2024.

*Time:* 9:30 a.m. to 8 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Mollie Kim Manier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0510, *mollie.manier@nih.gov.*

*Name of Committee:* Risk, Prevention and Health Behavior Integrated Review Group; HIV/AIDS Intra- and Inter-personal Determinants and Behavioral Interventions Study Section.

*Date:* November 18–19, 2024.

*Time:* 10 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Address:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

*Meeting Format:* Virtual Meeting.

*Contact Person:* Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@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 21, 2024.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–24878 Filed 10–24–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Center for Substance Abuse Prevention Drug Testing Advisory Board; Notice of Availability of Report of Fiscal Year 2023 Closed or Partially Closed Meetings

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** A report summarizing the closed or partially closed meeting activities of the SAMHSA's Center for Substance Abuse Prevention Drug Testing Advisory Board during fiscal year 2023 has been prepared. A copy of this report has been filed with the Library of Congress.

**DATES:** *Applicable Date:* This notice is applicable October 21, 2024.

**ADDRESSES:** The report is available by contacting the DTAB designated federal official, Lisa Davis.

**FOR FURTHER INFORMATION CONTACT:** Lisa Davis, *Lisa.Davis@samhsa.hhs.gov.* Phone: (240) 276–1440.

**SUPPLEMENTARY INFORMATION:** There is a Departmental requirement to complete and submit an Annual Report on Federal advisory committees when an entire or portion of the meeting is closed to the public as required by Section 10(d) of the Federal Advisory Committee Act (FACA).

Copies of these reports for FY 2023 are being submitted to the Library of Congress, FACA Desk for public inspection and use.

Dated: October 21, 2024.

**Carlos Castillo,**

*Committee Management Officer, SAMHSA.*

[FR Doc. 2024–24834 Filed 10–24–24; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4764–DR]**

**[Docket ID FEMA–2024–0001]**

### Maine; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Maine (FEMA–4764–DR), dated March 20, 2024, and related determinations.

**DATES:** This change occurred on September 17, 2024.

**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Georgeta Dragoiu, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Robert V. Fogel as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2024–24891 Filed 10–24–24; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. CISA–2024–0024]**

### National Security Telecommunications Advisory Committee

**AGENCY:** Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

**ACTION:** Notice of partially closed Federal Advisory Committee meeting.

**SUMMARY:** CISA is publishing this notice to announce the President's National Security Telecommunications Advisory Committee (NSTAC) Meeting on November 14, 2024, in Washington DC. This meeting will be partially closed to the public. The public can access the open portion of the meeting via teleconference.

**DATES:** *Meeting Registration:* Registration to attend the meeting is required and must be received no later than 5 p.m. Eastern Standard Time (EST) on November 12, 2024. For more information on how to participate, please contact *NSTAC@cisa.dhs.gov.*

*Speaker Registration:* Registration to speak during the meeting's public comment period must be received no later than 5 p.m. EST on November 7, 2024.

*Written Comments:* Written comments must be received no later than 5 p.m. EST on November 7, 2024.

*Meeting Date:* The NSTAC will meet on November 14, 2024, from 1 p.m. to 4:30 p.m. EST. The meeting may end early if the committee has completed its business.

**ADDRESSES:** The NSTAC meeting will be open to the public, per 41 CFR 102–3.150 and will be held virtually. Members of the public may participate via teleconference only. For access to the conference call bridge, or to request special assistance, please email *NSTAC@mail.cisa.dhs.gov* by 5:00 p.m. EST on November 12, 2024. The NSTAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

*Comments:* Members of the public are invited to provide comments on issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that may be discussed during the meeting will be made available for review at *https://www.cisa.gov/nstac* prior to the day of the meeting. Comments should be submitted by 5:00 p.m. EST on November 7, 2024, and must be identified by Docket Number CISA–2024–0024. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: NSTAC@mail.cisa.dhs.gov.* Include the Docket Number CISA–2024–0024 in the subject line of the email.

*Instructions:* All submissions received must include the words ''Cybersecurity and Infrastructure Security Agency'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided. You may wish to review the Privacy & Security Notice available via a link on the homepage of *www.regulations.gov.*

*Docket:* For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number CISA–2024–0024.

A public comment period is scheduled to be held during the meeting from 3:40 to 3:50 p.m. EST. Speakers who wish to participate in the public comment period must email *NSTAC@mail.cisa.dhs.gov* to register. Speakers should limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

**FOR FURTHER INFORMATION CONTACT:** Christina Berger, 202- 701–6354, *NSTAC@mail.cisa.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** The NSTAC is established under the authority of Executive Order (E.O.) 12382, dated September 13, 1982, as amended by E.O. 13286 and 14048, continued under the authority of E.O. 14109, dated September 30, 2023. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. Chapter 10. The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

*Agenda:* The NSTAC will meet in an open session on Thursday, November 14, 2024, from 3 p.m. to 4:30 p.m. EST to discuss current NSTAC activities and the government's ongoing cybersecurity and NS/EP communications initiatives. This open session will include: (1) an update on the administration's

cybersecurity initiatives; (2) a status update on the NSTAC Principles for Baseline Security Offerings from Cloud Service Providers Study; and (3) a status update on the National Preparedness for Post-Quantum Cryptography Study.

The committee will also meet in a closed session from 1:00 to 2:45 p.m. EST during which time: (1) senior government intelligence officials will provide a threat briefing concerning threats to NS/EP communications; and (2) NSTAC members and government officials will discuss potential future NSTAC study topics.

*Basis for Closure:* In accordance with section 1009(d) of FACA; and sections 552b(c)(1) and 552b(c)(9)(B) of *The Government in the Sunshine Act* (Sunshine Act), 5 U.S.C. 552b; it has been determined that a portion of the agenda requires closure.

*These agenda items are the:* (1) classified threat briefing, which will provide NSTAC members the opportunity to discuss information concerning threats to NS/EP communications with senior government intelligence officials; and (2) potential future NSTAC study topic discussion. The threat briefing will be classified at the top secret/sensitive compartmented information level. Disclosure of these threats during the briefing, as well as vulnerabilities and mitigation techniques, is a risk to the Nation's cybersecurity posture because adversaries could use this information to compromise commercial and government networks. Subjects addressed during the discussion are tentative and are under further consideration by the committee.

Therefore, this portion of the meeting has been closed pursuant to section 1009(d) of FACA, and sections 552b(c)(1) and 552b(c)(9)(B) of the Sunshine Act, because it will disclose matters that are classified and be likely to significantly frustrate implementation of one or more proposed agency actions.

Dated: October 18, 2024

**Christina Berger,**

*Designated Federal Officer, National Security Telecommunications Advisory Committee, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.*

[FR Doc. 2024–24863 Filed 10–24–24; 8:45 am]

**BILLING CODE 9111–LF–P**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### Intent To Request Revision From OMB of One Current Public Collection of Information: Security Appointment Center Visitor Request Form and Foreign National Vetting Request

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 60-Day notice.

**SUMMARY:** The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR) Office of Management and Budget (OMB) control number 1652–0068, abstracted below, that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves gathering information from individuals who plan to visit all TSA facilities in the National Capital Region (NCR).

**DATES:** Send your comments by December 24, 2024.

**ADDRESSES:** Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Dr., Springfield, VA 20598–6011.

**FOR FURTHER INFORMATION CONTACT:** Christina A. Walsh at the above address, or by telephone (571) 227–2062.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *https://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

#### Information Collection Requirement

*OMB Control Number 1652–0068; Security Appointment Center (SAC) Visitor Request Form and Foreign National Vetting Request.* The Secretary of the Department of Homeland Security (DHS) is required to protect property owned, occupied, or secured by the Federal Government. *See* 40 U.S.C. 1315; *see also* 41 CFR 102–81.15 (requires Executive agencies to be responsible for maintaining security at their own or leased facilities). To implement this requirement, DHS policy requires all visitors to DHS facilities in the NCR [1] to have a criminal history records check through the National Crime Information Center system before accessing the facility.

TSA has established a visitor management process that meets DHS requirements. This process allows TSA to conduct business with visitors, including other Federal employees and contract employees, while managing risks posed by individuals entering the building who have not been subject to a full employee security background check. Once an individual's access is approved, TSA's Visitor Management System generates temporary badges that visitors must wear when entering TSA facilities in the NCR. This badge must be clearly visible for the duration of the individual's visit.

Visitors seeking to enter TSA facilities must also have a TSA-Federal employee as their host, and the host must complete the electronic TSA Form 2802, *Security Appointment Center (SAC) Visitor Request Form.* TSA Form 2802 requires that the Federal host employee provide the visitor's first and last name, date of birth, date and time of visit, visitor type (*e.g.,* DHS or other government visitor, non-government individual), and whether the visitor is a foreign national visitor.[2] Although TSA requests the visitor to provide their social security number (SSN), the visitor is not required to provide this information. When provided, TSA uses the SSN to expedite vetting and to

[1] TSA facilities in the NCR include TSA Headquarters, the Freedom Center, the Transportation Security Integration Facility, and the Annapolis Junction facility.

[2] A person who is not a citizen of the United States.

enhance the accuracy in the identification of the visitor.

TSA uses the vetting results to determine the suitability of an individual requesting access to the TSA NCR, including whether the individual has a criminal history that would warrant further investigation and review before TSA grants access to the facility. In reviewing the National Crime Information Center vetting results, TSA will consider whether an individual could potentially pose a threat to the safety of TSA employees, contractors, visitors, or the facility. TSA also uses the information to maintain records of access to TSA facilities.

TSA previously used TSA Form 2816A, *Foreign National Visitor Request—Individual* to collect information for individual foreign national visitors and for groups consisting of two or more foreign nationals, TSA Form 2816B, *Foreign National Visitor Request—Group.*

TSA is revising the collection to remove TSA Form 2816A and transition TSA Form 2816B to a web form using SharePoint. This transition will help reduce user burden by incorporating system-populated fields and automatic submissions.

TSA estimates the average annual number of visitors to be 39,213, with an annual time burden to the public of 300 hours.

Dated: October 21, 2024.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer, Information Technology.*

[FR Doc. 2024–24819 Filed 10–24–24; 8:45 am]

**BILLING CODE 9110–05–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[CIS No. 2784–24; DHS Docket No. USCIS–2024–0009]**

### Notice of Approval of New Credentialing Organization for Healthcare Workers for Certain Immigration Purposes

**AGENCY:** Department of Homeland Security, U.S. Citizenship and Immigration Services.

**ACTION:** Notice.

**SUMMARY:** The Department of Homeland Security (DHS or the Department), U.S. Citizenship and Immigration Services (USCIS) is issuing this document to inform the public of the approval of a new credentialing organization for certain health care workers for certain immigration purposes.

**DATES:** USCIS approved the application from International Education Evaluations, LLC on October 25, 2024.

**FOR FURTHER INFORMATION CONTACT:** Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; or by phone at 240–721–3000 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Sections 212(a)(5)(C) and 212(r) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(5)(C) and (r), as well as the DHS regulations at 8 CFR 214.1(i) and (j) and 212.15(a) and (n)(3), require that an individual who seeks admission to the United States as a nonimmigrant or immigrant, or who is the beneficiary of a change of status request, or who is applying for adjustment of status, in the United States for the purpose of performing labor in certain health care occupations is inadmissible unless he or she presents a certificate from an authorized credentialing organization. DHS regulations at 8 CFR 212.15(e)(1) through (3) expressly authorize the Commission on Graduates of Foreign Nursing Schools (CGFNS), the National Board for Certification in Occupational Therapy (NBCOT), and the Foreign Credentialing Commission on Physical Therapy (FCCPT) to issue such certificates. In addition, DHS regulations list CGFNS as authorized to issue alternative certified statements under INA section 212(r), 8 U.S.C. 1182(r). *See* 8 CFR 212.15(h).[1] DHS regulations also establish detailed standards for the approval of additional credentialing organizations after consultation with the Secretary of Health and Human Services, and USCIS has created an adjudicatory framework for the filing and adjudication of those applications using Form I–905, *Application for Authorization to Issue Certification for Health Care Workers.* 8 CFR 212.15(j) and (k). The regulations also provide for periodic review and, if necessary, termination of credentialing organizations. 8 CFR 212.15(l) and (m). Finally, the regulations direct DHS to notify the public of the approval of additional credentialing organizations by publishing notices in the **Federal Register**. 8 CFR 212.15(e) and (h). Further guidance on certificates for health care workers is available at *https://www.uscis.gov/working-in-the-united-states/temporary-workers/health-care-worker-certification.*

In accordance with 8 CFR 212.15(e) and (h), USCIS is providing notice that, following consultation with the Secretary of Health and Human Services, it has approved the application from International Education Evaluations, LLC, as an organization authorized to issue certificates and certified statements under sections 212(a)(5)(C) and 212(r) of the Act, 8 U.S.C. 1182(a)(5)(C) and (r), for individuals seeking to enter the United States for the primary purpose of working as registered nurses, licensed practical nurses, and licensed vocational nurses.

**Ur Jaddou,**

*Director, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security.*

[FR Doc. 2024–24213 Filed 10–24–24; 8:45 am]

**BILLING CODE 9111–97–P**

[1] On July 22, 2021, USCIS approved an additional credentialing organization, Josef Silny & Associates, Inc. as authorized to issue healthcare certificates and certified statements. *See* 86 FR 40867 (Jul. 29, 2021). USCIS maintains the full list of approved credentialing organizations on its website—*https://www.uscis.gov/working-in-the-united-states/temporary-workers/health-care-worker-certification.*

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7080–N–52]**

### 30-Day Notice of Proposed Information Collection: FHA-Insured Mortgage Loan Servicing of Delinquent, Default, and Foreclosure With Service Members Act; OMB Control No.: 2502–0584

**AGENCY:** Office of Policy Development and Research, Chief Data Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comments from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* November 25, 2024.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open

for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Managment Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov*.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs*.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 25, 2024 at 89 FR 53117.

**A. Overview of Information Collection**

*Title of Information Collection:* FHA-Insured Mortgage Loan Servicing of Delinquent, Default, and Foreclosure with Service Members Act.

*OMB Approval Number:* 2502–0584.

*Type of Request:* Revision of currently approved collection.

*Form Numbers:* HUD 92070, HUD–2008–5–FHA, HUD 92068–A, HUD–50012, HUD–90041.

*Description of the need for the information and proposed use:* This request for information collection encompasses requirements for both FHA-approved Mortgagees who service FHA-insured mortgages and FHA-insured Mortgagors (borrowers). Information received must comply with delinquency and default servicing, foreclosure, and the Servicemembers Civil Relief Act (SCRA) requirements. The need and proposed use of the collection efforts for non-performing FHA-insured mortgages is to bring a delinquent mortgage current as quickly as possible, avoid foreclosure when feasible, and minimize losses to FHA's Mutual Mortgage Insurance Fund.

*Estimated Number of Respondents:* 3,360.

*Frequency of Response:* Monthly.

*Estimated Number of Responses:* 26,668,067.

*Average Hours per Response:* 1.05.

*Total Estimated Burdens:* 15,723,493.

| Information collection | Number of respondents | Frequency of response | Responses per annum | Burden hour per response | Annual burden hours | Hourly cost per response | Annual cost |
|---|---|---|---|---|---|---|---|
| FHA-Insured Mortgage Loan Servicing of Delinquent, Default, and Foreclosure with Service Members Act. | 3,360 | Monthly ..... | 26,668,067 | 1.05 | 15,723,493 | $34.16 | $537,114,520 |
| Totals ..... | 3,360 | ..... | 26,668,067 | ..... | 15,723,493 | 34.16 | 537,114,520 |

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

**C. Authority**

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

**Colette Pollard,**

*Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.*

[FR Doc. 2024–24867 Filed 10–24–24; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R6–ES–2024–N053; FXES11130600000–245–FF06E00000]**

### Endangered and Threatened Species; Receipt of Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received applications for permits, permit renewals, and/or permit amendments to conduct scientific research to promote conservation or other activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

**DATES:** We must receive written data or comments on the applications by November 25, 2024.

**ADDRESSES:** *Document availability and comment submission:* Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* Smith, PER0123456 or Jones, ES–056001):

- *Email: permitsR6ES@fws.gov.*
- *U.S. Mail:* Tom McDowell, Division Manager, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, CO 80225.

**FOR FURTHER INFORMATION CONTACT:** Robert Krijgsman, Recovery Permits Coordinator, Ecological Services, 303–

236–4347 (phone), or *permitsR6ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

## Background

With some exceptions, the ESA prohibits take of listed species unless a Federal permit is issued that authorizes such take. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to take endangered or threatened species while engaging in activities that are conducted for scientific purposes that promote recovery of species or for enhancement of propagation or survival of species. These activities often include the capture and collection of species, which would result in prohibited take if a permit were not issued. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

## Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

| Permit No. | Applicant | Species | Location | Activity | Permit action |
|---|---|---|---|---|---|
| ES–067734 | Badlands National Park, Interior, SD. | • Black-footed ferret (*Mustela nigripes*). | South Dakota | Capture, vaccinate, mark, collect biological samples, tag, and release. | Renew |
| ES–131638 | Loveland Living Planet Aquarium, Draper, UT. | • Virgin River chub (*Gila seminuda (=robusta)*) Woundfin (*Plagopterus argentissimus*). | Utah | Capture, handle, hold in captivity, propagate, display for educational purposes, release, and conduct scientific studies. | Renew and amend |
| ES–069553 | Nebraska National Forests and Grasslands, Wall, SD. | • Black-footed ferret (*Mustela nigripes*). | South Dakota | Capture, vaccinate, mark, collect biological samples, tag, and release. | Renew |
| PER12020441 | University of Nebraska, Lincoln, NE. | • Salt Creek tiger beetle (*Cicindela nevadica lincolniana*). | Nebraska | Receive larval specimens for rearing in captivity, conduct genetic research, and reintroduce into the wild. | New |
| PER12033146 | HDR, Inc., Fort Collins, CO. | Southwestern willow flycatcher (*Empidonax traillii extimus*). | Colorado | Play taped vocalizations for surveys | New |
| ES–145090 | Wind Cave National Park, Hot Springs, SD. | Black-footed ferret (*Mustela nigripes*). | South Dakota | Capture, vaccinate, mark, collect biological samples, tag, and release. | Renew |

## Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

## Next Steps

If we decide to issue a permit to an applicant listed in this notice, we will publish a notice in the **Federal Register**.

## Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**Marjorie Nelson,**

*Assistant Regional Director, Mountain-Prairie Region.*

[FR Doc. 2024–24849 Filed 10–24–24; 8:45 am]

**BILLING CODE 4333–15–P**

# DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–CONC–36347;PPWOBSADC0, PPMVSCS1Y.Y00000]**

## Notice of Intent To Extend and Continue Concession Contracts and Award Temporary Concession Contracts

**AGENCY:** National Park Service, Interior.

**ACTION:** Public notice.

**SUMMARY:** Under the terms of the concession contracts identified in the tables below and its regulations, the National Park Service gives public notice that it intends to: extend each concession contract listed in table 1 below until the date shown in the ''Extension Expiration Date'' column or until the effective date of a new

contract, whichever comes first; continue each concession contract listed in table 2 below until the date shown in the ''Continuation Expiration Date'' column or until the effective date of a new contract, whichever comes first; and award the temporary concession contracts listed in table 3 below.

**DATES:** The National Park Service intends that the concession contract extensions, continuations, and temporary concession contracts will be effective on the dates shown in the tables below, as applicable.

**FOR FURTHER INFORMATION CONTACT:** Kurt Rausch, Program Chief, Commercial Services Program, National Park Service, 1849 C Street NW, Mail Stop 2410, Washington, DC 20240; Telephone: 202–513–7156.

**SUPPLEMENTARY INFORMATION:** Under 36 CFR 51.23, the National Park Service proposes to extend each contract listed in table 1 until the date shown in the ''Extension Expiration Date'' column or until the effective date of a new contract, whichever comes first. The National Park Service has determined that the proposed extensions are necessary to avoid an interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such an interruption. The extension of the existing contracts does not confer or affect any rights with respect to the award of new contracts.

The concession contracts listed in table 2 below have been extended for the maximum time allowable under 36 CFR 51.23. Under the provisions of the existing contracts and pending the issuance of prospectuses and the completion of the public solicitation process to award new concession contracts, the National Park Service intends to continue the existing contracts until the date shown in the ''Continuation Expiration Date'' column or until the effective date of a new contract, whichever comes first. The continuation of the existing contracts does not confer or affect any rights with respect to the award of new concession contracts.

The National Park Service proposes awarding temporary concession contracts, in accordance with 36 CFR 51.24(a), to provide the visitor services currently provided under the contracts listed in table 3 below. The temporary contracts will have a term not to exceed 3 years and will be awarded to a qualified person. The National Park Service anticipates that the temporary contracts will be effective on the date shown in the ''Effective Date'' column. This notice is not a request for proposals.

The publication of this notice reflects the intent of the National Park Service but does not bind the National Park Service to extend, continue, or award any of the contracts listed below.

TABLE 1—CONCESSION CONTRACTS EXTENDED UNTIL THE EXPIRATION DATE SHOWN OR UNTIL THE EFFECTIVE DATE OF A NEW CONTRACT, WHICHEVER COMES FIRST

| Park unit | CONCID | Concessioner | Extension effective date | Extension expiration date |
|---|---|---|---|---|
| Blue Ridge PW | BLRI010–13 | Price Lake Boat Rentals, Inc. | 4/1/2025 | 3/31/2026 |
| Blue Ridge PW | BLRI008–13 | Southern Highland Handicraft Guild, Inc. | 2/1/2025 | 1/31/2026 |
| Buffalo NR | BUFF002–13 | Lost Valley Canoe and Lodging, Inc. | 1/1/2025 | 12/31/2025 |
| Buffalo NR | BUFF004–13 | Ozark Bison LLC | 1/1/2025 | 12/31/2025 |
| Buffalo NR | BUFF005–13 | Silver Hill Canoe, Inc. | 1/1/2025 | 12/31/2025 |
| Buffalo NR | BUFF009–13 | Buffalo Outdoor Center, Inc. | 1/1/2025 | 12/31/2025 |
| Buffalo NR | BUFF010–13 | Buffalo River Outfitters, Inc. | 1/1/2025 | 12/31/2025 |
| Buffalo NR | BUFF011–13 | Charles Raulston | 1/1/2025 | 12/31/2025 |
| Buffalo NR | BUFF014–13 | Christopher Crockett | 1/1/2025 | 12/31/2025 |
| Buffalo NR | BUFF015–13 | Buffalo Camping & Canoeing, Inc. | 1/1/2025 | 12/31/2025 |
| Buffalo NR | BUFF016–13 | Buffalo River Float Service, LLC | 1/1/2025 | 12/31/2025 |
| Buffalo NR | BUFF018–13 | Buffalo River Canoes, Inc. | 1/1/2025 | 12/31/2025 |
| Buffalo NR | BUFF019–13 | Dirst Canoe Rental, Inc. | 1/1/2025 | 12/31/2025 |
| Buffalo NR | BUFF022–13 | Bill Scruggs, Inc. | 1/1/2025 | 12/31/2025 |
| Canyonlands NP | CANY026–15 | Canyonlands River Tours, LLC | 1/1/2025 | 12/31/2025 |
| Canyonlands NP | CANY027–15 | Meander Canyon Transportation, Inc. | 1/1/2025 | 12/31/2025 |
| Cape Cod NS | CACO003–14 | Johnson Golf Management, Inc. | 5/28/2025 | 5/27/2026 |
| Cape Lookout NS | CALO001–14 | Island Express Ferry Service, LLC | 1/1/2025 | 12/31/2025 |
| Delaware Water Gap NRA | DEWA001–15 | Rivers Ridge Properties, LLC | 1/1/2026 | 12/31/2027 |
| Dry Tortugas NP | DRTO002–15 | Key West Seaplane Adventures, LLC | 9/15/2025 | 9/14/2026 |
| Everglades NP | EVER004–11 | TRF Concession Specialists of Florida, Inc. | 1/1/2025 | 12/31/2025 |
| Gateway NRA | GATE015–03 | ARKLOW–FBF LLC | 4/15/2025 | 4/14/2026 |
| Gateway NRA | GATE021–12 | JAYBAY, LLC | 1/1/2025 | 12/31/2026 |
| Gateway NRA | GATE023–12 | JAYBAY, LLC | 1/1/2025 | 12/31/2026 |
| Glacier Bay NP&P | GLBA008–18 | Haines Rafting Company, LLC | 1/1/2025 | 12/31/2025 |
| Glacier Bay NP&P | GLBA011–18 | Chilkat Guides, Ltd. | 1/1/2025 | 12/31/2025 |
| Glacier Bay NP&P | GLBA012–18 | Colorado River and Trail Expeditions, Inc. | 1/1/2025 | 12/31/2025 |
| Glacier Bay NP&P | GLBA013–18 | Momentum Alaska, Inc. | 1/1/2025 | 12/31/2025 |
| Glacier Bay NP&P | GLBA014–18 | Mountain Travel | 1/1/2025 | 12/31/2025 |
| Glacier Bay NP&P | GLBA017–18 | Wilderness River Outfitters and Trail Expeditions Inc.. | 1/1/2025 | 12/31/2025 |
| Glacier NP | GLAC004–15 | Belton Chalets, Inc. | 1/1/2025 | 12/31/2025 |
| Glen Canyon NRA | GLCA007–03 | Antelope Point Holdings, LLC | 1/1/2025 | 12/31/2025 |
| Grand Teton NP | GRTE001–07 | Grand Teton Lodge Company | 1/1/2025 | 12/31/2025 |
| Grand Teton NP | GRTE004–12 | Triangle X Partnership | 11/1/2026 | 10/31/2027 |
| Grand Teton NP | GRTE005–13 | The American Alpine Club | 1/1/2025 | 12/31/2025 |
| Hot Springs NP | HOSP002–12 | Buckstaff Bath House Company | 1/1/2025 | 12/31/2025 |
| Katmai NP&P | KATM001–16 | Katmailand, Inc. | 1/1/2026 | 12/31/2026 |
| North Cascades NP | LACH003–12 | Guest Services, Inc. | 3/1/2025 | 2/28/2026 |
| Ozark NSR | OZAR012–14 | O D Blackwell1, LLC | 1/1/2025 | 12/31/2025 |
| Sequoia & Kings Canyon NPs | SEKI001–19 | Timothy B. Loverin | 1/1/2025 | 12/31/2025 |

TABLE 2—CONCESSION CONTRACTS CONTINUED UNTIL THE EXPIRATION DATE SHOWN OR UNTIL THE EFFECTIVE DATE OF A NEW CONTRACT, WHICHEVER COMES FIRST

| Park unit | CONCID | Concessioner | Continuation effective date | Continuation expiration date |
|---|---|---|---|---|
| Glen Canyon NRA | GLCA002–88 | ARAMARK Sports and Entertainment Services, LLC. | 1/1/2025 | 12/31/2025 |
| Glen Canyon NRA | GLCA003–69 | ARAMARK Sports and Entertainment Services, LLC. | 1/1/2025 | 12/31/2025 |
| Lake Mead NRA | LAKE002–82 | LMNRA Guest Services, LLC | 1/1/2025 | 12/31/2025 |
| Lake Mead NRA | LAKE005–97 | LMNRA Guest Services, LLC | 1/1/2025 | 12/31/2025 |
| Lake Mead NRA | LAKE006–74 | Las Vegas Boat Harbor, Inc. | 1/1/2025 | 12/31/2025 |
| Lake Mead NRA | LAKE009–88 | LMNRA Guest Services, LLC | 1/1/2025 | 12/31/2025 |

TABLE 3—TEMPORARY CONCESSION CONTRACT

| Park unit | CONCID | Services | Effective date |
|---|---|---|---|
| Ozark NSR | OZAR011–12 | Canoe and tube rentals with shuttle service, retail, and firewood sales. | 1/1/2025 |
| Great Smoky Mountains NP | GRSM002–22 | Lodging, food and beverage, and retail | 1/1/2025 |

**Justin Unger,**

*Associate Director, Business Services.*

[FR Doc. 2024–24872 Filed 10–24–24; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

**[Docket No. BOEM–2024–0054]**

### Notice of Availability of a Final Programmatic Environmental Impact Statement for Expected Wind Energy Development in the New York Bight

**AGENCY:** Bureau of Ocean Energy Management, Interior.

**ACTION:** Notice of availability; final programmatic environmental impact statement.

**SUMMARY:** The Bureau of Ocean Energy Management (BOEM) announces the availability of the final programmatic environmental impact statement (PEIS) to analyze the potential impacts of wind energy development in six lease areas of the New York (NY) Bight. The Proposed Action for the final PEIS is the identification of specific measures at the programmatic stage that could avoid, minimize, mitigate, or monitor potential impacts. The final PEIS will inform BOEM's decision about whether to identify certain avoidance, minimization, mitigation, and monitoring (AMMM) measures at this stage that could potentially be required as conditions of approval for activities proposed by NY Bight lessees in their construction and operations plans (COPs) or defer the identification of such measures to each project-specific environmental review.

**ADDRESSES:** The final PEIS can be found on the NY Bight website at: *https://www.boem.gov/renewable-energy/state-activities/new-york-bight.*

**FOR FURTHER INFORMATION CONTACT:** Jill Lewandowski, BOEM Office of Environmental Programs, 45600 Woodland Road, VAM–OEP, Sterling, Virginia 20166, (703) 787–1703 or *jill.lewandowski@boem.gov.*

**SUPPLEMENTARY INFORMATION:**

*Proposed Action:* The final PEIS analyzes the development of both one and six representative projects, including associated export cables, within a range of design parameters informed by lessees, for the NY Bight and considers the potential environmental impacts of that development. The Proposed Action for the PEIS is the identification of measures at the programmatic stage that could avoid, minimize, mitigate, and monitor impacts. BOEM may require some or all of these measures as conditions of approval for activities proposed by lessees in COPs submitted for the six NY Bight lease areas. BOEM may require additional or different measures based on subsequent, project-specific environmental analyses. These AMMM measures are considered programmatic insofar as they may be applied to COPs for the six NY Bight lease areas, not because they necessarily will apply to COPs under BOEM's renewable energy program outside of the NY Bight area. The PEIS analyzes the potential impacts of development in the NY Bight area and how those impacts can be avoided, minimized, or mitigated by AMMM measures. The alternatives analyzed do not involve any final actions by BOEM or lessees.

*Alternatives:* BOEM considered 19 alternatives when preparing the draft PEIS and carried forward three alternatives for further analysis in the final PEIS. These three alternatives include two action alternatives and the no action alternative. Sixteen alternatives were rejected because they did not meet the purpose and need for the proposed action or did not meet screening criteria, which are presented in Chapter 2 of the final PEIS. The screening criteria included consistency with law and regulations, technical and economic feasibility, environmental impact, and geographic considerations.

*Availability of the Final PEIS:* The final PEIS and associated information are available on the New York Bight website at: *https://www.boem.gov/renewable-energy/state-activities/new-york-bight.* BOEM has distributed digital copies of the final PEIS to all parties listed in Appendix N of the final PEIS. If you need a flash drive or paper copy, BOEM will provide one upon request as long as copies are available. You may request a flash drive or paper copy of the final PEIS by calling (703) 787–1703.

*Cooperating Agencies:* The following 13 Federal, State, and local agencies participated as cooperating agencies in the preparation of the final PEIS: the Bureau of Safety and Environmental Enforcement; U.S. Environmental Protection Agency; National Marine Fisheries Service; U.S. Army Corps of Engineers; U.S. Coast Guard; U.S. Fish and Wildlife Service; National Park Service; New Jersey Department of Environmental Protection; New Bedford Port Authority; New York State Department of State; New York State Department of Environmental Compliance; New Jersey Board of Public

Utilities; and the Massachusetts Office of Coastal Zone Management. The following Tribal Nations participated as Cooperating Tribal Governments in the preparation of the final PEIS: the Stockbridge-Munsee Community Band of Mohican Indians and the Mashantucket (Western) Pequot Tribal Nation. The New York City Mayor's Office of Environmental Coordination served as a participating agency in the preparation of the final PEIS.

*Authority:* 42 U.S.C. 4321 *et seq.* (NEPA, as amended), and 40 CFR 1506.6.

**Karen Baker,**

*Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.*

[FR Doc. 2024–24862 Filed 10–24–24; 8:45 am]

**BILLING CODE 4340–98–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–741 and 731–TA–1718–1719 (Preliminary)]**

## Paper File Folders From Cambodia and Sri Lanka; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–741 and 731–TA–1718–1719 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of paper file folders from Cambodia and Sri Lanka, provided for in subheading 4820.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of Cambodia. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by December 5, 2024. The Commission's views must be transmitted to Commerce within five business days thereafter, or by December 12, 2024.

**DATES:** October 21, 2024.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on October 21, 2024, by the Coalition of Domestic Folder Manufacturers, Hastings, Minnesota, and Naperville, Illinois.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

*Participation in the investigations and public service list.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Office of Investigations will hold a staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on November 12, 2024. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before 5:15 p.m. on November 7, 2024. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation, including guidance for requests to appear as a witness via videoconference, will be available on the Commission's Public Calendar (Calendar (USITC) | United States International Trade Commission). A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

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.

*Written submissions.*—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before 5:15 p.m. on November 15, 2024, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than 4:00 p.m. on November 8, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Certification.*—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations 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 these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

*Authority:* These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: October 21, 2024.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2024–24823 Filed 10–24–24; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–733–736 and 731–TA–1702–1711 (Preliminary)]**

## Corrosion-Resistant Steel Products From Australia, Brazil, Canada, Mexico, Netherlands, South Africa, Taiwan, Turkey, United Arab Emirates, and Vietnam

### Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of corrosion-resistant steel products from Australia, Brazil, Canada, Mexico, Netherlands, South Africa, Taiwan, Turkey, United Arab Emirates, and Vietnam, provided for in subheadings 7210.30.00, 7210.41.00, 7210.49.00, 7210.61.00, 7210.69.00, 7210.70.60, 7210.90.10, 7210.90.60, 7210.90.90, 7212.20.00, 7212.30.10, 7212.30.30, 7212.30.50, 7212.40.10, 7212.40.50, 7212.50.00, 7212.60.00, 7215.90.10, 7215.90.30, 7215.90.50, 7217.20.15, 7217.30.15, 7217.90.10, 7217.90.50, 7225.91.00, 7225.92.00, 7225.99.00, 7226.99.01, 7228.60.60, 7228.60.80, and 7229.90.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and alleged to be subsidized by the governments of Brazil, Canada, Mexico, and Vietnam.[2]

### Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Any other party may file an entry of appearance for the final phase of the investigations after publication of the final phase notice of scheduling. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations. As provided in section 207.20 of the Commission's rules, the Director of the Office of Investigations will circulate draft questionnaires for the final phase of the investigations to parties to the investigations, placing copies on the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*), for comment.

### Background

On September 5, 2024, Steel Dynamics, Inc., Fort Wayne, Indiana; Nucor Corporation, Charlotte, North Carolina; United States Steel Corporation, Pittsburgh, Pennsylvania; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC, Washington, DC; and Wheeling-Nippon Steel, Follansbee, West Virginia filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of corrosion-resistant steel products from Brazil, Canada, Mexico, and Vietnam and LTFV imports of corrosion-resistant steel products from Australia, Brazil, Canada, Mexico, Netherlands, South Africa, Taiwan, Turkey, United Arab Emirates, and Vietnam. Accordingly, effective September 5, 2024, the Commission instituted countervailing duty investigation Nos. 701–TA–733–736 and antidumping duty investigation Nos. 731–TA–1702–1711 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 11, 2024 (89 FR 73721). The Commission conducted its conference on September 26, 2024. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on October 21, 2024. The views of the Commission are contained in USITC Publication 5558 (October 2024), entitled *Corrosion-Resistant Steel Products from Australia, Brazil, Canada, Mexico, Netherlands, South Africa, Taiwan, Turkey, United Arab Emirates, and Vietnam: Investigation Nos. 701–TA–733–736 and 731–TA–1702–1711 (Preliminary).*

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 89 FR 80196 and 89 FR 80204 (October 2, 2024).

By order of the Commission.

Issued: October 21, 2024.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2024–24824 Filed 10–24–24; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

### Meeting of the Criminal Justice Information Services Advisory Policy Board

**AGENCY:** Federal Bureau of Investigation, Department of Justice.

**ACTION:** Meeting notice.

**SUMMARY:** The purpose of this notice is to announce a meeting of the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a Federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by section 10 of the FACA.

**DATES:** The APB will meet in open session from 8:30 a.m. until 5:00 p.m. on December 11–12, 2024.

**ADDRESSES:** The meeting will take place at the Marriott Savannah Riverfront Hotel, 100 General McIntosh Blvd. Savannah, Georgia 31401; telephone: 912–233–7722. The CJIS Division is offering a blended participation option that allows for individuals to participate in person and additional individuals to participate via a telephone bridge line. The public will be permitted to provide comments and/or questions related to matters of the APB prior to the meeting. Please see details in the supplemental information.

**FOR FURTHER INFORMATION CONTACT:** Inquiries may be addressed to Ms. Katie Carpenter, Program Analyst, Advisory Process Management Office, Law Enforcement Engagement and Data Sharing Section; 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; email: *agmu@leo.gov;* telephone: 304–625–0511.

**SUPPLEMENTARY INFORMATION:** The FBI CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Law Enforcement Enterprise Portal, National Crime Information Center, Next Generation Identification, National Instant Criminal Background Check System, National Data Exchange System, and Uniform Crime Reporting.

The meeting will be conducted with a blended participation option. The public may participate as follows: Via phone bridge number to participate in a listen-only mode or in person, which are required to check-in at the meeting registration desk.

Registrations will be taken via email to *agmu@leo.gov.* Information regarding the phone access will be provided prior to the meeting to all registered individuals. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Designated Federal Officer (DFO).

Any member of the public may file a written statement with the APB. Written comments shall be focused on the APB's issues under discussion and may not be repetitive of previously submitted written statements. Written comments should be provided to Mr. Nicky J. Megna, DFO, at least seven (7) days in advance of the meeting so the comments may be made available to the APB members for their consideration prior to the meeting.

Individuals requiring special accommodations should contact Mr. Megna by no later than December 4, 2024. Personal registration information will be made publicly available through the minutes for the meeting published on the FACA website.

**Nicky J. Megna,**

*CJIS Designated Federal Officer, Criminal Justice Information, Services Division, Federal Bureau of Investigation.*

[FR Doc. 2024–24860 Filed 10–24–24; 8:45 am]

**BILLING CODE 4410–02–P**

## DEPARTMENT OF JUSTICE

**[CPCLO Order No. 04–2024]**

### Privacy Act of 1974; Systems of Records

**AGENCY:** Access to Justice, United States Department of Justice.

**ACTION:** Notice of a new system of records.

**SUMMARY:** Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the Office for Access to Justice (ATJ), a component within the United States Department of Justice (DOJ or Department), proposes to develop a new system of records to support the Civil Legal Empowerment, Access, and Reentry (CLEAR) Program. The system of records is the Civil Legal Empowerment, Access, and Reentry (CLEAR) Program Records System, JUSTICE/ATJ–001. The ATJ proposes to establish this system of records to maintain records of the information received, reviewed, or created for the CLEAR Program, administered by ATJ, in collaboration with the Federal Bureau of Prisons (FBOP), and third-party partners, such as legal and medical service providers or academic institutions, to provide civil legal services to individuals incarcerated or previously incarcerated at FBOP facilities.

**DATES:** In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is applicable upon publication, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by November 25, 2024.

**ADDRESSES:** The public, OMB, and Congress are invited to submit any comments by mail to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, Two Constitution Square, 145 N St. NE, Suite 8W–300, Washington, DC 20530; by facsimile at 202–307–0693; or by email at *privacy.compliance@usdoj.gov.* To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nina Wu, Senior Counsel, Office for Access to Justice, Department of Justice, 150 M Street NE, Washington, DC 20002, *Nina.Wu@usdoj.gov,* 202–510–6386.

**SUPPLEMENTARY INFORMATION:** The CLEAR Program, announced by the Acting Associate Attorney General in April 2024, is designed to help incarcerated individuals better understand their civil legal rights and feel empowered to meet their own civil legal needs. As part of the CLEAR Program, ATJ will collaborate with a private third party, such as an academic institution or legal services provider, to provide civil legal services to incarcerated individuals and formerly incarcerated individuals at selected FBOP facilities.

The CLEAR Program will include three segments: (1) developing and providing self-help materials to address civil legal needs of incarcerated individuals; (2) conducting a series of empowerment workshops for incarcerated individuals focused on family law, financial-related issues, and public benefits; and (3) creating Medical

Legal Partnerships (MLPs) with third-party partners to assist with pre-release Supplemental Security Income (SSI) claims.

To properly execute the CLEAR Program, ATJ is issuing this System of Records Notice.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this new system of records.

Dated: October 9, 2024.

**Peter A. Winn,**

*Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.*

**JUSTICE/ATJ–001**

**SYSTEM NAME AND NUMBER:**

Civil Legal Empowerment, Access, and Reentry (CLEAR) Program Records System, JUSTICE/ATJ–001.

**SECURITY CLASSIFICATION:**

Controlled Unclassified Information.

**SYSTEM LOCATION:**

Records may be maintained at any Department of Justice authorized location. A list of the Access to Justice (ATJ) system locations may be found at *https://www.justice.gov/atj.* Records within this system of records may be transferred to a Department-authorized cloud service provider, in which records would be limited to locations within the United States.

**SYSTEM MANAGER(S):**

Deputy Director, U.S. Department of Justice, Office for Access to Justice, 950 Pennsylvania Ave. NW, Room 3339, Washington, DC 20530.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

This system is established and maintained under the authority of 28 CFR 0.33.

**PURPOSE(S) OF THE SYSTEM:**

The purpose of the system is to maintain records of the information received, reviewed, or created for the CLEAR Program; to make records available to DOJ and ATJ staff to support the program as needed, and to other Federal and third-party partners as necessary to perform program functions as needed. The CLEAR Program is administered by ATJ, in collaboration with the Federal Bureau of Prisons (FBOP) and third-party partners, such as a legal or medical service providers or academic institutions, to provide self-help materials, a series of empowerment workshops and a Medical Legal Partnership focused on Supplemental Security Income claims to assist individuals currently and previously incarcerated at FBOP facilities.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals currently or previously in the custody of the Attorney General and/or the Director of the FBOP, including those individuals in custody for criminal and civil commitments; counsel, family, and friends of individuals in custody, for example, when they provide letters of support to an incarcerated individual participating in the CLEAR Program; students and staff of academic institutions participating in the CLEAR Program; staff or volunteers affiliated with legal or medical service providers and other third-party partners participating in the CLEAR Program; third parties which enter into contracts, memoranda of understanding, or other arrangements with ATJ to facilitate the execution of the CLEAR Program; and DOJ staff involved in the administration of the CLEAR Program.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system consists of all records relating to the execution of the CLEAR Program, including healthcare-related (such as medical, dental, mental health, and substance abuse records), legal (such as criminal, civil, custodial, and probation records), financial, housing, and social security records pertaining to currently or previously incarcerated individuals participating in the Program; and records created and maintained for administrative or operational purposes for the CLEAR Program. This includes communications between, and records received from, generated by, or about DOJ staff (including ATJ and FBOP) and third-party partner staff participating in the CLEAR Program. The system will also contain records related to the performance of the Program and third-party partners and their students and staff.

**RECORD SOURCE CATEGORIES:**

The system contains records that originated from DOJ staff involved in the administration of the CLEAR Program; FBOP, students, and staff of the third-party partners supporting the CLEAR Program; health care providers and professionals; the Social Security Administration; the U.S. Probation Office; individuals currently or formerly in FBOP's custody, and counsel, family, and friends of those individuals.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

(a) 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.

(b) To any person or entity that ATJ has reason to believe possesses information regarding a matter within the authority of ATJ, to the extent deemed to be necessary by ATJ in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity.

(c) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding in accordance with applicable laws, rules, and Department policies.

(d) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy, with the concurrence of the Department's Chief Privacy and Civil Liberties Officer.

(e) To contractors, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, memorandum of understanding or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(f) To designated officers and employees of state, local, territorial, or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is

relevant and necessary to the recipient agency's decision.

(g) To appropriate officials and employees of a Federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail, or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit.

(h) To a former employee of the Department for purposes of: responding to an official inquiry by a Federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(i) To Federal, state, local, territorial, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(j) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(k) To the National Archives and Records Administration (NARA) and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(l) To appropriate agencies, entities, and persons when: (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(m) To another Federal agency or entity, when the Department 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.

(n) To any agency, organization, or individual for the purpose of performing authorized audit or oversight operations of ATJ and meeting related reporting requirements.

(o) To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

(p) To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury; and

(q) To the Social Security Administration, to meet the requirements of Social Security disability applications.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records in this system are stored on paper and/or in electronic form. Records are stored securely in accordance with applicable laws, regulations, and policies.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records are retrieved by identifying data of the persons covered by this system, including name, inmate register number, and Social Security Number.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records in this system are maintained and disposed of in accordance with all applicable statutory and regulatory requirements. Pending NARA approval of a proposed records schedule, SSI claim-related case records will be retained for a period of five years after a decision is made by the Social Security Administration on the SSI claim of the individual under FBOP custody. Documentary records are destroyed by shredding; computer records are destroyed by degaussing and/or shredding.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Information in this system in electronic or hard copy form is subject to administrative, technical, and physical safeguards in accordance with applicable laws, rules, and policies, including Federal information technology (IT) security requirements and DOJ's rules and policies governing automated information systems security, including physical security and access controls. These safeguards include the maintenance of records and technical equipment in restricted areas, the use of encryption to protect data, and the required use of strong user authentication to access the system. Only those authorized staff who require access to perform their official duties may access the system equipment and the information in the system. The data is also segregated and encrypted, and staff's ability to update inmate data is restricted absent authorization. Internet connections are protected by multiple firewalls. Users of individual DOJ computers can only gain access to data through a multi-factor authentication process; direct access to certain information is restricted depending on a user's role and responsibility within the organization and system. Security staff conduct periodic vulnerability scans using DOJ-approved software to ensure security compliance, and security logs are enabled for computers to assist in troubleshooting and forensics analysis during incident investigations.

**RECORD ACCESS PROCEDURES:**

All requests for access to records must be in writing and can be emailed to *ATJFOIA@usdoj.gov* or mailed to FOIA Contact, Office for Access to Justice, Department of Justice, 950 Pennsylvania Ave. NW, Rm. 3341, Washington, DC 20530–0001. Any envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request must describe the records sought in sufficient detail to enable Department staff to locate them with a reasonable amount of effort. The request must include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. A determination whether a record may be accessed will be made at the time a request is received.

Although no specific form is required, you may obtain forms for this purpose from the FOIA/Privacy Act Mail Referral Unit, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530, or on the Department of Justice website at *https://www.justice.gov/oip/oip-request.html.*

More information regarding the Department's procedures for accessing records in accordance with the Privacy Act can be found at 28 CFR part 16, subpart D, ''Access to and Amendment of Individual Records Pursuant to the Privacy Act of 1974, and Other Privacy Protections.''

**CONTESTING RECORD PROCEDURES:**

Individuals seeking to contest or amend records maintained in this system of records must direct their requests to the address indicated in the ''RECORD ACCESS PROCEDURES'' paragraph, above. All requests to contest or amend records must be in writing and the envelope and letter should be clearly marked ''Privacy Act Amendment Request.'' All requests must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

More information regarding the Department's procedures for amending or contesting records in accordance with the Privacy Act can be found at 28 CFR 16.46, ''Privacy Act requests for amendment or correction.''

**NOTIFICATION PROCEDURES:**

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the ''RECORD ACCESS PROCEDURES'' paragraph, above.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

None.

[FR Doc. 2024–23951 Filed 10–24–24; 8:45 am]

**BILLING CODE 4410–PN–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1117–0058]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Exempt Chemical Preparations Under the Controlled Substance Act

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Drug Enforcement Administration (DEA), 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 25, 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 Heather E. Achbach, Regulatory Drafting and Policy Support Section, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 776–3882; Email: *DEA.PRA@dea.gov* or *Heather.E.Achbach@dea.gov*.

**SUPPLEMENTARY INFORMATION:** This proposed information collection was previously published in the **Federal Register** on August 23, 2024, at 89 FR 68205, allowing for 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 1117–0058. 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 previously approved collection.

*2. Title of the Form/Collection:* Exempt Chemical Preparations under the Controlled Substance Act.

*3. Agency form number, if any, and the applicable component of the Department of Justice 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 a brief abstract:*

*Affected public (Primary):* Business or other for-profit.

*Affected public (Other):* Not-for-profit institutions; Federal, State, local, and tribal governments.

*Abstract:* Pursuant to 21 U.S.C. 811(g)(3)(B), DEA (by delegation of authority from the Attorney General) may, by regulation, exempt from specific provisions of the Controlled Substances Act (CSA) any compound, mixture, or preparation containing any controlled substance, which is not for administration to a human being or animal, and which is packaged in a certain manner, so that as packaged it does not present any significant potential for abuse. In accordance with 21 CFR 1308.23(f), the Administrator (or the Deputy Assistant Administrator), at any time, may revoke or modify any exemption granted pursuant to 21 CFR 1308.23; modify or revoke the criteria by which exemptions are granted; and modify the scope of exemptions.

*5. Obligation to Respond:* Mandatory per 21 CFR 1308.23.

*6. Total Estimated Number of Respondents:* 131.

*7. Estimated Time per Respondent:* 1 hour.

*8. Frequency:* 15.98.

*9. Total Estimated Annual Time Burden:* 2,093 hours.

*10. Total Estimated Annual Other Costs Burden:* $3,558.

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 22, 2024

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2024–24883 Filed 10–24–24; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Vehicle-Mounted Elevating and Rotating Work Platforms Standard (Aerial Lifts)

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that the agency receives on or before November 25, 2024.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** The Standard requires that when aerial lifts are ''field modified'' for uses other than those intended by the manufacturer, the manufacturer or other equivalent entity, such as a nationally recognized testing laboratory, must certify in writing that the modification is in conformity with all applicable provisions of ANSI A92.2–1969 and the OSHA Standard and that the modified aerial lift is at least as safe as the equipment was before modification. Employers are to maintain the certification record and make it available to OSHA compliance officers. This record provides assurance to employers, workers, and compliance officers that the modified aerial lift is safe for use; thereby, preventing failure while workers are being elevated. The certification record also provides the most efficient means for the compliance officers to determine that an employer is complying with the Standard. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 15, 2024 (89 FR 66456).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL–OSHA.

*Title of Collection:* Vehicle-Mounted Elevating and Rotating Work Platforms Standard (Aerial Lifts).

*OMB Control Number:* 1218–0230.

*Affected Public:* Private Sector—Businesses or other for-profits.

*Total Estimated Number of Respondents:* 1,000.

*Total Estimated Number of Responses:* 1,000.

*Total Estimated Annual Time Burden:* 17 hours.

*Total Estimated Annual Other Costs Burden:* $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

**Nicole Bouchet,**

*Senior Paperwork Reduction Act Analyst.*

[FR Doc. 2024–24792 Filed 10–24–24; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2009–0026]**

### Bureau Veritas Consumer Product Services Inc.: Grant of Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to expand the scope of recognition for Bureau Veritas Consumer Product Services Inc., for expansion of the recognition as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on October 25, 2024.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999 or email *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693–1911 or email *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Bureau Veritas Consumer Product Services Inc. (BVCPS) as a NRTL. BVCPS's expansion covers the addition of seven test standards to the NRTL scope of recognition.

OSHA's recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is

not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including BVCPS which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

BVCPS submitted an application to OSHA for expansion of the NRTL scope of recognition on November 2, 2023 (OSHA–2009–0026–0089), requesting the addition of seven standards to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform an on-site review related to this application. OSHA staff has preliminarily determined that OSHA should grant the application for test standard expansion.

OSHA published the preliminary notice announcing BVCPS's expansion application in the **Federal Register** on September 12, 2024 (89 FR 74300). The agency requested comments by September 27, 2024, but it received no comments in response to this notice.

To obtain or review copies of all public documents pertaining to the BVCPS's application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA–2009–0026 contains all materials in the record concerning BVCPS's recognition. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

## II. Final Decision and Order

OSHA staff examined BVCPS's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that BVCPS meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant BVCPS's application for an expansion of the scope of recognition. OSHA limits the expansion of BVCPS's recognition to testing and certification of products for demonstration of conformance to the test standards listed below in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN BVCPS'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| UL 61010–2–020 | Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–020: Particular Requirements for Laboratory Centrifuges. |
| UL 61010–2–051 | Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–051: Particular Requirements for Laboratory Equipment for Mixing and Stirring. |
| UL 61010–2–081 | Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–081: Particular Requirements for Automatic and Semi-Automatic Laboratory Equipment for Analysis and Other Purposes. |
| UL 61010–2–101 | Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–101: Particular Requirements for In Vitro Diagnostic (IVD) Medical Equipment. |
| UL 61010–2–201 | Safety Requirements for Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–201: Particular Requirements for Control Equipment. |
| UL 67 | Panelboards. |
| UL 869A | Reference Standard for Service Equipment. |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, BVCPS must abide by the following conditions of the recognition:

1. BVCPS must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. BVCPS must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. BVCPS must continue to meet the requirements for recognition, including all previously published conditions on BVCPS's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of BVCPS as a NRTL, subject to the limitations and conditions specified above.

## III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on October 21, 2024.

**James S. Frederick,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2024–24785 Filed 10–24–24; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2011–0747]**

### Blasting and the Use of Explosives; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on Blasting and the use of Explosives.

**DATES:** Comments must be submitted (postmarked, sent, or received) by December 24, 2024.

**ADDRESSES:**

*Electronically:* You may submit comments, including attachments, electronically at *https://www.regulations.gov,* the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Docket:* To read or download comments or other material in the docket, go to *https://www.regulations.gov.* Documents in the docket are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

*Instructions:* All submissions must include the agency name and the OSHA docket number (OSHA–2011–0747) for the Information Collection Request (ICR). OSHA will place comments, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security number or date of birth.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The Standard on Blasting and the Use of Explosives (29 CFR part 1926, subpart U) specifies a number of paperwork requirements. The following is a brief description of the collection of information requirements contained in the Subpart.

*General Provisions (§ 1926.900)*

*§ 1926.900(d)*—Paragraph (d) states that employers must ensure that explosives not in use are kept in a locked magazine, unavailable to persons not authorized to handle explosives. The employers must maintain an inventory and use record of all explosives—in use and not in use. In addition, the employer must notify the appropriate authorities in the event of any loss, theft, or unauthorized entry into a magazine.

*§ 1926.900(k)(3)(i)*—Paragraph (k)(3)(i) requires employers to display adequate signs warning against the use of mobile radio transmitters on all roads within 1,000 feet of blasting operations to prevent the accidental discharge of electric blasting caps caused by current induced by radar, radio transmitters, lighting, adjacent power lines, dust storms, or other sources of extraneous electricity. The employer must certify and maintain a record of alternative provisions made to adequately prevent any premature firing of electric blasting caps.

*§ 1926.900(o)*—Employers must notify the operators and/or owners of overhead power lines, communication lines, utility lines, or other services and structures when blasting operations will take place in proximity to those lines, services, or structures.

*§ 1926.903(d)*—The employer must notify the hoist operator prior to transporting explosives or blasting agents in a shaft conveyance.

*§ 1926.903(e)*—Employers must perform weekly inspections on the electrical system of trucks used for underground transportation of explosives. The weekly inspection is to detect any failure in the system which would constitute an electrical hazard. The most recent certification of inspection must be maintained and must include the date of inspection, a serial number or other identifier of the truck inspected, and the signature of the person who performed the inspection.

*§ 1926.905(t)*—The employer blaster must maintain an accurate and up-to-date record of explosives, blasting agents, and blasting supplies used in a blast. The employer must also maintain an accurate running inventory of all explosives and blasting agents stored on the operation.

*§ 1926.909(a)*—Employers must post a code of blasting agents on one or more conspicuous places at the operation. All employees also shall familiarize themselves with the code and conform to it at all times. Danger signs warning of blasting agents shall also be placed at suitable locations.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;

• The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
• The quality, utility, and clarity of the information collected; and
• Ways to minimize the burden on employers who must comply. For example, by using automated or other technological information collection and transmission techniques.

### III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Standard on Blasting and the use of Explosives (29 CFR part 1926, subpart U) U.S.C. 669). The agency is requesting an adjustment decrease in the burden hours amount from 1,602 hours to 1,427 hours, a difference of 175 hours. This decrease is due to the change in the number of affected sites due to general economic growth.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

*Type of Review:* Extension of currently approved collection.

*Title:* Standard on Blasting and the use of Explosives.

*OMB Control Number:* 1218–0217.

*Affected Public:* Business or other for-profits.

*Number of Respondents:* 171.

*Number of Responses:* 758.

*Frequency of Responses:* On occasion.

*Average Time per Response:* Various.

*Estimated Total Burden Hours:* 1,426.

*Estimated Cost (Operation and Maintenance):* $0.

### IV. Public Participation—Submission of Comments on This Notice and Internet Access To Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax) at (202) 693–1648; or (3) by hard copy. All comments, attachments, and other materials must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0747). You may supplement electronic submissions by uploading document files electronically.

Comments and submissions are posted without change at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *https://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *https://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link.

Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

### V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393)

Signed at Washington, DC, on October 18, 2024.

**James S. Frederick,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2024–24793 Filed 10–24–24; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2019–0009]**

### DEKRA Certification Inc.: Grant of Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to expand the scope of recognition for DEKRA Certification Inc., as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on October 25, 2024.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999 or email *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693–1911 or email *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of DEKRA Certification Inc. (DEKRA) as a NRTL. DEKRA's expansion covers the addition of seventeen test standards to the NRTL scope of recognition.

OSHA's recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including DEKRA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

DEKRA submitted an application to OSHA for expansion of the NRTL scope of recognition on December 24, 2021 (OSHA–2019–0009–0007), requesting the addition of twenty-nine recognized testing standards. The application was amended on February 1, 2023 (OSHA–2019–0009–0008), removing eight standards from the original request, while adding an additional standard to

the expansion application. The December 2021 expansion application was amended a second time on June 21, 2023 (OSHA–2019–0009–0009) to withdraw three standards from the December 2021 application. The December 2021 application was amended a third time on February 28, 2024 (OSHA–2019–0009–0010), to withdraw two standards from the original request. This notice covers the remaining seventeen standards. OSHA staff performed a detailed analysis of the application packets and reviewed other pertinent information. OSHA performed an on-site review of DEKRA's Arnhem, Netherlands site on June 5–7, 2023, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. DEKRA addressed these issues sufficiently, and OSHA staff has preliminarily determined that OSHA should grant the application for test standard expansion.

OSHA published the preliminary notice announcing DEKRA's expansion application in the **Federal Register** on September 12, 2024 (89 FR 74294). The agency requested comments by September 27, 2024, but it received no comments in response to this notice.

To obtain or review copies of all public documents pertaining to the DEKRA's application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA–2019–0009 contains all materials in the record concerning DEKRA's recognition. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

## II. Final Decision and Order

OSHA staff examined DEKRA's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that DEKRA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant DEKRA's expanded scope of recognition. OSHA limits the expansion of DEKRA's recognition to testing and certification of products for demonstration of conformance to the test standards listed below in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN DEKRA'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| UL 197 | Commercial Electric Cooking Appliances. |
| UL 499 | Electric Heating Appliances. |
| UL 507 | Electric Fans. |
| UL 508 | Industrial Control Equipment. |
| UL 674 | Electric Motors and Generators for Use in Hazardous (Classified) Locations. |
| UL 749 | Household Dishwashers. |
| UL 921 | Commercial Electric Dishwashers. |
| UL 923 | Microwave Cooking Appliances. |
| UL 1017 | Vacuum Cleaners, Blower Cleaners and Household Floor Finishing Machines. |
| UL 1026 | Household Electric Cooking and Food-Serving Appliances. |
| UL 1082 | Household Electric Coffee Makers and Brewing-Type Appliances. |
| UL 1206 | Electric Commercial Clothes-Washing Equipment. |
| UL 2054 | Household and Commercial Batteries. |
| UL 2158 | Electric Clothes Dryers. |
| UL 60079–28 | Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation. |
| UL 60730–2–7 | Automatic Electrical Controls for Household and Similar Use: Part 2: Particular Requirements for Timers and Time Switches. |
| NFPA 496 | Purged and Pressurized Enclosures for Electrical Equipment. |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, DEKRA must abide by the following conditions of the recognition:

1. DEKRA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. DEKRA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. DEKRA must continue to meet the requirements for recognition, including all previously published conditions on DEKRA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of DEKRA as a NRTL, subject to the limitations and conditions specified above.

## III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on October 18, 2024.

**James S. Frederick,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2024–24791 Filed 10–24–24; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2013–0016]**

### Nemko North America, Inc.: Grant of Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to expand the scope of recognition for Nemko North America, Inc. (NNA) as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on October 25, 2024.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1999 or email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–1911 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Nemko North America, Inc. (NNA) as a NRTL. NNA's expansion covers the addition of one test standard and one testing site to the NRTL scope of recognition.

OSHA's recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes an application by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A, 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including NNA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at: *https://www.osha.gov/nationally-recognized-testing-laboratory-program.*

NNA submitted two applications to OSHA for expansion of the NRTL scope of recognition. The first application, dated September 1, 2023 (OSHA–2013–0016–0029), requested the expansion of the NRTL scope of recognition to include one additional test standard. The second application, dated November 27, 2023 (OSHA–2013–0016–0030), requested the expansion of the NRTL scope of recognition to include an additional recognized testing site located at: 5F, No. 413, Sec. 2, Tiding Blvd., Nei Hu Dist. 11493 Taipei City, Taiwan, R.O.C. OSHA staff performed an on-site review of NNA's testing facilities at NNA Taipei on March 4–5, 2024, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. NNA has addressed these issues sufficiently, and OSHA staff preliminarily determined that OSHA should grant the applications.

OSHA published the preliminary notice announcing NNA's expansion applications in the **Federal Register** on September 12, 2024 (89 FR 74296). The agency requested comments by September 27, 2024, but it received no comments in response to this notice. OSHA is now proceeding with this final decision to grant the expansion of NNA's NRTL scope of recognition.

Docket No. OSHA–2013–0016 contains all materials in the record concerning NNA's recognition. To obtain or review copies of all public documents pertaining to NNA's expansion application, go to *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 for assistance in locating docket submissions.

#### II. Final Decision and Order

OSHA staff examined NNA's expansion applications, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that NNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant NNA's expanded scope of recognition. OSHA limits the expansion of NNA's recognition to the additional testing site in Taipei City, Taiwan, and the additional test standard listed below in Table 1.

TABLE 1—APPROPRIATE TEST STANDARD FOR INCLUSION IN NNA'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| UL 2054 ..... | Household and Commercial Batteries. |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

*A. Conditions*

Recognition is contingent on continued compliance with 29 CFR 1910.7, including, but not limited to, abiding by the following conditions of the recognition:

1. NNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. NNA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. NNA must continue to meet the requirements for recognition, including all previously published conditions on NNA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of NNA as a NRTL to include one additional test standard and an additional testing site in Taipei City, Taiwan, subject to the limitations and conditions specified above.

## III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to Section 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on October 18, 2024.

**James S. Frederick,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2024–24787 Filed 10–24–24; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2014–0021]**

### General Working Conditions in Shipyard Employment; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the General Working Conditions in Shipyard Employment Standard.

**DATES:** Comments must be submitted (postmarked, sent, or received) by December 24, 2024.

**ADDRESSES:**

*Electronically:* You may submit comments and attachments electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Docket:* To read or download comments or other material in the docket, go to *https://www.regulations.gov*. Documents in the docket are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

*Instructions:* All submissions must include the agency name and OSHA docket number (OSHA–2014–0021) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who and how they use the information collected under each requirement. The purpose of these requirements is to reduce the risk of death and serious injury for employees working in shipyards.

The standard on General Working Conditions in Shipyard Employment Standard (29 CFR part 1915, subpart F; hereafter, ''the Standard'') contains information collection requirements that address conditions and operations in shipyard employment that may produce worker hazards. The subpart is comprised of 14 sections that include housekeeping; lighting, utilities; working alone; vessel radar and communication systems; lifeboats; medical services and first aid; sanitation; control of hazardous energy; safety color code for marking physical hazards; accident prevention signs and tags; retention of DOT markings, placards, and labels; motor vehicle safety equipment, operation and maintenance; and servicing multi-piece and single-piece rim wheels. Of the 14

sections, eight contain information collection requirements—utilities; medical service and first aid; sanitation; control of hazardous energy; retention of DOT markings, placards, and labels; motor vehicle safety equipment, operation and maintenance; and servicing multi-piece and single-piece rim wheels.

**II. Special Issues for Comment**

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

**III. Proposed Actions**

OSHA is requesting that OMB extend the approval of the information collection requirements contained in subpart F of the General Working Conditions in Shipyard Employment Standard (29 CFR part 1915). The agency is requesting an adjustment increase in burden from 82,999 to 84,818 hours, a difference of 1,819 hours. This increase in hours is a result of updated data showing an increase in the number of large to medium establishments covered by the standard. The capital cost has increased from $7,678 to $8,784, a total increase of $1,106.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

*Type of Review:* Extension of a currently approved collection.

*Title:* General Working Conditions in Shipyard Employment Standard.

*OMB Control Number:* 1218–0259.

*Affected Public:* Business or other for-profits.

*Number of Respondents:* 4,096.

*Number of Responses:* 258,861.

*Frequency of Responses:* On occasion.

*Average Time per Response:* Varies.

*Estimated Total Burden Hours:* 84,818.

*Estimated Cost (Operation and Maintenance):* $8,784.

**IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions**

You may submit comments in response to this document as follows: (1) electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2014–0021). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *https://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *https://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link.

Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

**V. Authority and Signature**

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on October 18, 2024.

**James S. Frederick,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2024–24788 Filed 10–24–24; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2006–0040]**

### SGS North America, Inc.: Denial of Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to deny the expansion of the scope of recognition for SGS North America, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on October 25, 2024.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999 or email *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693–1911 or email *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Notice of Final Decision**

OSHA hereby gives notice of the denial of the request for expansion of the scope of recognition of SGS North America, Inc., (SGS) as a NRTL. SGS requested the addition of two test standards to the NRTL scope of recognition. OSHA is denying that application.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government

authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including SGS, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

SGS submitted an application to OSHA to expand recognition as a NRTL to include two additional test standards on September 1, 2021 (OSHA–2006–0040–0079). OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing SGS's expansion application and OSHA's preliminary decision to deny the application in the **Federal Register** on August 6, 2024 (89 FR 63985). The agency requested comments by August 21, 2024, but it received no comments in response to this notice.

To obtain or review copies of all public documents pertaining to the SGS application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA–2006–0040 contains all materials in the record concerning SGS's recognition. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

## II. Final Decision and Order

OSHA staff examined SGS's expansion application and other pertinent information. Based on its review of this evidence, OSHA finds that the standards requested in the expansion application do not meet the requirements of 29 CFR 1910.7 for appropriate test standards or alternative test standards for the NRTL Program. OSHA, therefore, is proceeding with this final notice to deny SGS's request for expansion of the NRTL scope of recognition to include the test standards listed below in Table 1.

TABLE 1—TEST STANDARDS FOR WHICH OSHA DENIES INCLUSION IN SGS'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| IEC 60335–2–23 | Household and Similar Electrical Appliances—Safety—Part 2–23: Particular Requirements for Appliances for Skin or Hair Care. |
| IEC 60335–2–30 | Household and Similar Electrical Appliances—Safety—Part 2–30: Particular Requirements for Room Heaters. |

As explained in the preliminary decision (89 FR 63985), pursuant to the NRTL Program regulation, 29 CFR 1910.7, for each specified item of equipment or material to be listed, labeled or accepted, a NRTL must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform: (i) testing and examining of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards; or (ii) experimental testing and examining of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards or performance in a specified manner. § 1910.7(b)(1).

An ''appropriate test standard'' is defined in the NRTL Program regulation as a document which specifies the safety requirements for specific equipment or class of equipment and meets one of two alternative requirements. Either the document must be (1) recognized in the United States as a safety standard providing an adequate level of safety, and (2) compatible with and maintained current with periodic revisions of applicable national codes and installation standards and (3) developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety field involved, or the document must be currently designated as an American National Standards Institute (ANSI) safety-designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials. § 1910.7(c).

Notwithstanding the requirements in § 1910.7(b)(1), if a testing laboratory desires to use an alternative test standard (that is, a test standard that is not an appropriate test standard), then OSHA evaluates the proposed standard to determine whether it provides an adequate level of safety before it may be used. § 1910.7(d). If a test standard does not provide an adequate level of safety, it may not be used by a NRTL to perform testing or examining of equipment and materials for workplace safety purposes or experimental testing and examining of equipment and materials for workplace safety purposes.

The test standards requested in the expansion application, issued by the International Electrotechnical Commission (IEC), are not appropriate test standards under the NRTL program because they are not recognized in the United States as safety standards providing an adequate level of safety. To provide an adequate level of safety, these test standards would need to be evaluated for compliance with U.S. electrical safety requirements. The IEC develops standards that are broad technical safety solutions for electrical products, but this does not represent a complete safety standard for each member country. The process of adapting the IEC-based standard to a fully compliant U.S. national standard is typically conducted by a U.S.-based standards development organization (SDO), which considers the unique requirements for the U.S. market, along with the input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety field involved (as set forth in § 1910.7(c)). This information-gathering process and evaluation has not been undertaken for the test standards in SGS's application (*i.e.,* these test standards have not been evaluated for

compliance with U.S. electrical safety requirements). Nor have these test standards been designated by ANSI or ASTM. Therefore, they do not meet the requirements for appropriate test standards under the NRTL program.

Nor are these test standards alternative test standards that may be used under the NRTL program to perform testing or examining of equipment and materials for workplace safety purposes or experimental testing and examining of equipment and materials for workplace safety purposes. Again, these test standards have not been determined to provide an adequate level of safety because they have not been evaluated for compliance with U.S. electrical safety requirements.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby denies the expanded scope of recognition of SGS as a NRTL as requested in the application identified in this notice.

### III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on October 18, 2024.

**James S. Frederick,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2024–24789 Filed 10–24–24; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2009–0025]**

### UL LLC: Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of UL LLC, for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before November 12, 2024.

**ADDRESSES:** Comments may be submitted as follows:

*Electronically:* You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2009–0025). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

*Extension of comment period:* Submit requests for an extension of the comment period on or before November 12, 2024 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–1911 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Notice of the Application for Expansion

OSHA is providing notice that UL LLC (UL), is applying for an expansion of current recognition as a NRTL. UL requests the addition of one test site to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including UL, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

UL currently has fifty-five facilities (site) recognized by OSHA for product testing and certification, with the headquarters located at: UL LLC, 333 Pfingsten Road, Northbrook, Illinois 60062. A complete list of UL sites recognized by OSHA is available at *https://www.osha.gov/dts/otpca/nrtl/ul.html.*

### II. General Background on the Application

UL submitted an application, dated November 29, 2022 (OSHA–2009–0025–0066), to expand recognition as a NRTL to include one additional test site located at: Uiwang (LAB), Obongsandan 1-Ro, 42, Uiwang-Si, Gyeonggi-Do Uiwang 16079, South Korea. OSHA staff performed an on-site review of UL's testing facilities at UL Uiwang on May 8–9, 2024, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. UL has addressed these issues sufficiently, and OSHA staff has preliminarily determined that OSHA should grant the application.

### III. Preliminary Finding on the Application

UL submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file and pertinent documentation preliminarily indicates that UL can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include one additional test site for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of UL's application.

OSHA seeks public comment on this preliminary determination.

### IV. Public Participation

OSHA welcomes public comment as to whether UL meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibit identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2009–0025 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant UL's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

### IV. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on October 18, 2024.

**James S. Frederick,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2024–24794 Filed 10–24–24; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. OSHA–2006–0042]**

## CSA Group Testing & Certification Inc.: Grant of Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to expand the scope of recognition for CSA Group Testing & Certification Inc., for expansion of the recognition as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on October 25, 2024.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999 or email *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693–1911 or email *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of CSA Group Testing & Certification Inc. (CSA) as a NRTL. CSA's expansion covers the addition of one test standard to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including CSA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

CSA submitted an application to OSHA for expansion of the NRTL scope of recognition on May 3, 2024 (OSHA–2006–0042–0042), requesting the addition of one test standard to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not

perform an on-site review in response to this application.

OSHA published the preliminary notice announcing CSA's expansion application in the **Federal Register** on September 12, 2024 (89 FR 74297). The agency requested comments by September 27, 2024, but it received no comments in response to this notice. OSHA is now proceeding with this final grant of expansion of CSA's NRTL recognition.

To obtain or review copies of all public documents pertaining to the CSA's application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA–2006–0042 contains all materials in the record concerning CSA's recognition. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

## II. Final Decision and Order

OSHA staff examined CSA's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that CSA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant CSA's expanded scope of recognition. OSHA limits the expansion of CSA's recognition to testing and certification of products for demonstration of conformance to the test standard listed below in Table 1.

TABLE 1—APPROPRIATE TEST STANDARD FOR INCLUSION IN CSA'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| UL 347A ..... | Medium Voltage Power Conversion Equipment. |

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

### *A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, CSA must abide by the following conditions of the recognition:

1. CSA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. CSA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. CSA must continue to meet the requirements for recognition, including all previously published conditions on CSA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of CSA as a NRTL, subject to the limitations and conditions specified above.

## III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on October 18, 2024.

**James S. Frederick,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2024–24790 Filed 10–24–24; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: 24–073]**

### International Space Station Advisory Committee

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the NASA International Space Station Advisory Committee. The purpose of the meeting is to review aspects related to the safety and operational readiness of the International Space Station.

**DATES:** November 13, 2024, 10–11:00 a.m. All times are eastern time.

**ADDRESSES:** Public attendance will be virtual only. See dial-in and Webinar information below under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Dennis McSweeney, Designated Federal Officer, ISS Advisory Committee, NASA Headquarters, Washington, DC 20546, via email at *dennis.mcsweeney@nasa.gov* or at 202–834–7351.

**SUPPLEMENTARY INFORMATION:** As noted above, this meeting will be open to the public via Webinar and telephonically. Webinar connectivity information is provided below. For audio, when you join the Webinar event, you may use your computer to join or call the U.S. toll conference number listed.

November 13, 2024, link: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjcwNWIxYTktYjMyYy00OWIwLWI1Y2ItZDBmZjg3OGRkYmYx%40thread.v2/0?context=%7b%22Tid%22%3a%227005d458-45be-48ae-8140-d43da96dd17b%22%2c%22Oid%22%3a%22453f1a86-a177-4251-b896-a3c23cc1a9a1%22%7d.*

Meeting ID: 276 024 759 223, Passcode: Ktdm9N, Call in number (audio only): +1 256–715–9946, Phone conference ID: 450362467#.

It is imperative that the meeting be held on this day to accommodate the scheduling priorities of the key participants.

**Jamie M. Krauk,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2024–24769 Filed 10–24–24; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–2025–004]**

### Advisory Committee on the Records of Congress; Meeting

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of Federal advisory committee meeting.

**SUMMARY:** We are announcing an upcoming meeting of the Advisory Committee on the Records of Congress in accordance with the Federal Advisory Committee Act. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Public Museum Engagement and Legislative Archives.

**DATES:** The meeting will be on October 29, 2024, from 2 p.m. EDT.

**ADDRESSES:** The meeting will be virtual.

**FOR FURTHER INFORMATION CONTACT:** James Wyatt, National Archives, Center for Legislative Archives, by email at *James.Wyatt@nara.gov* or by phone at 202–357–5016.

**SUPPLEMENTARY INFORMATION:** This virtual meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulations.

**Meeting Information**

*Join link: https://senate.webex.com/senate/j.php?MTID=m88b50482d2bb81c164c41bd3d323038e.*

*Meeting number:* 2828 845 7477.

*Meeting password:* 9uRyNBJDu32 (98796253 when dialing from a video system).

*Join by phone:* +1 202–228–0808 US Senate Webex. +1 855–428–0808 US Senate Webex (Toll Free).

*Access code:* 282 884 57477.

**Agenda**

1. Opening Remarks—Ann Berry, Secretary of the Senate
2. Recognition of Co-Chair—Kevin McCumber, Acting Clerk of the House
3. Recognition of the Archivist of the United States—Colleen Shogan
4. Approval of the Minutes of the Last Meeting
5. New Business
6. Adjournment

**Merrily Harris,**

*Committee Management Officer.*

[FR Doc. 2024–24909 Filed 10–24–24; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL SCIENCE FOUNDATION

### Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for NSF Regional Innovation Engines (NSF Engines) Program

**AGENCY:** National Science Foundation.

**ACTION:** Notice.

**SUMMARY:** The National Science Foundation (NSF) is announcing plans to establish this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

**DATES:** Written comments on this notice must be received by December 24, 2024, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E6400, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

*Comments:* Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* National Science Foundation (NSF) Regional Innovation Engines (Engines) Program Evaluation Capacity Building.

*OMB Number:* 3145–NEW.

*Expiration Date of Approval:* Not Applicable.

*Type of Request:* Intent to seek approval to establish an information collection.

*Proposed Project:* The NSF Engines program was authorized in the CHIPS and Science Act of 2022 (Section 10388) to (1) advance multidisciplinary, collaborative, use-inspired and translational research, technology development, in key technology focus areas; (2) address regional, national, societal, or geostrategic challenges; (3) leverage the expertise of multidisciplinary and multi-sector partners, including partners from private industry, nonprofit organizations, and civil society organizations; and (4) support the development of scientific, innovation, entrepreneurial, and STEM educational capacity within the region of each Engine to grow and sustain regional innovation.

In Fiscal Year (FY) 2024, NSF established 10 inaugural NSF Engines awards, uniquely placing science and technology leadership as the central driver for regional economic competitiveness. Each NSF Engine is accelerating technological innovation while also addressing national, societal and/or geostrategic challenges that are of significant interest in the NSF Engine's defined ''region of service.''

The programmatic level goals of NSF Engines are to:

*Goal 1:* Establish self-sustaining innovation ecosystems;

*Goal 2:* Establish nationally recognized regional ecosystems for key industries;

*Goal 3:* Broaden participation in innovation ecosystems by enabling all members of a region to engage;

*Goal 4:* Advance technologies relevant to national competitiveness;

*Goal 5:* Catalyze regions with nascent innovation ecosystems;

*Goal 6:* Increase economic growth;

*Goal 7:* Increase job creation.

To achieve these goals, each NSF Engine will carry out an integrated and comprehensive set of activities spanning use-inspired research, translation research, innovation and entrepreneurship, and workforce development to nurture and accelerate regional industries. In addition, each NSF Engine is expected to embody a culture of innovation and have a demonstrated, intense, and meaningful focus on engaging everyone throughout its regional science and technology ecosystem.

Owing to the bespoke goals and objectives that are varied by regions and NSF Engines, and the expansive network of stakeholders that are involved, it is important for each NSF Engine to build (and subsequently strengthen) its own evaluation capacity, within a broader context of NSF's assessment of the NSF Engines individually and collectively.

Here, *evaluation capacity* refers to enabling each Engine to have the competencies in designing, managing, implementing, and using evaluation. It includes ''strengthening a culture of valuing evidence, valuing questioning, and valuing evaluative thinking. This

can include the capacity of evaluators, as well as the capacity of evaluation and program managers, internal staff, and community members.'' [1] The idea is for each NSF Engine to build the capability and ability to frame evaluations, make sense of them, and apply them in contextually appropriate ways in order to in turn, for example: make evidence-based decisions, provide a supportive network of trust and reciprocity, and continue growing and fostering the structure and infrastructure of each Engine.

This request is to seek approval from OMB in establishing a new data collection to enable evaluation capacity to be built and maintained by each NSF Engine. To build evaluation capacity, we are requesting each NSF Engine to provide two sets of documents:

1. Evaluation Plan
2. Annual Evaluation Report

*Evaluation Plan.* Each NSF Engine award recipient is requested to establish its own external evaluation team. Each evaluation team is tasked to systematically assess the activities, processes, and practices implemented by its respective NSF Engine. The evaluation team, in collaboration with its respective NSF Engine, will work together to formulate a comprehensive *Evaluation Plan.*

The primary objective of the *Evaluation Plan* is to serve as an alternative and objective approach for the NSF Engine to monitor and measure its progress, determine the effectiveness of its activities, and gauge the broader socioeconomic impacts of its endeavors. It also serves as an assessment tool for each NSF Engine award recipient to identify, reflect, and address development needs and challenges as they arise, and perform any intervention and/or course corrections, if necessary, in a timely fashion. Finally, it also serves as a tool to systematically and structurally communicate internally within an Engine and externally with partners and other stakeholders.

The *Evaluation Plan* contains 14 sections:

1. Engine vision and mission
2. Engine goals and alignment
3. Engine overview
4. Purpose of Engine evaluation
5. Timeline
6. Information sharing
7. Research and development (R&D) including translation
8. Workforce development
9. Engagement of the region
10. Ecosystem building
11. Engine level outcomes and impact
12. Internal assessment of evaluation process
13. Other
14. Data management

*Annual Evaluation Plan.* The external evaluation teams of each NSF Engine award recipient will also produce an *Annual Evaluation Report* to be provided to both their respective NSF Engine leadership team and to NSF. The annual evaluation report provides a structured mechanism for the evaluation teams to provide an independent and objective assessment on the baselines, progresses, achievements, milestones, and challenges faced by its respective NSF Engine over the past award year. In addition, the evaluation teams will provide recommendations to their respective NSF Engine leadership team on ways to improve existing processes, policies, and practices. These reports offer a comprehensive overview of the team's activities and their outcomes over the previous award year. The report has dual purposes, as a reflection tool for each NSF Engine to learn from their experiences and to make improvements, and as an assessment tool for NSF program directors for award oversight and management.

There are 8 sections to the report:

1. Executive summary
2. Introduction
3. Research and development (R&D) including translation
4. Workforce development
5. Engagement of the region
6. Ecosystem building
7. Outcomes and Impact
8. Evaluation action plan for next year
9. Appendices

a. Appendix A: NSF Engines bi-annual evaluation form
b. Appendix B: Updated methodologies
c. Appendix C: Additional figures and tables
d. Appendix D: Other Information

*Burden on the Public:* For each Engine award, we anticipate the following number of responses and response burden by reporting requirement:

**A.12.1. Number of Respondents, Frequency of Response, and Annual Hour Burden**

TABLE 1—RESPONDENTS, RESPONSES, AND ANNUAL HOUR BURDEN

| Reporting requirements | Number of responses per year | Minimum burden per response (hours) | Maximum burden per response (hours) | Annual burden (hours) per engine |
|---|---|---|---|---|
| *Evaluation Plan* | 1 | Year 1: 200 .... | Year 1: 300 .... | 200–300 |
| | | Year 2: 20 ..... | Year 2: 40 ..... | 20–40 |
| | | Year 3: 20 ..... | Year 3: 40 ..... | 20–40 |
| *Annual Evaluation Report* | 1 | Year 1: 160 .... | Year 1: 240 .... | 160–240 |
| | | Year 2: 80 ..... | Year 2: 160 .... | 80–160 |
| | | Year 3: 80 ..... | Year 3: 160 .... | 80–160 |
| Total | 2 | ..... | ..... | 100–540 |

A total of 10 NSF Engine teams were awarded. For the first year, the total amount of burden is estimated to be between 3,600 and 5,400 hours for all 10 NSF Engines. For subsequent years, 1,000 and 2,000 hours for all 10 NSF Engines, which translates to 100–200 hours per NSF Engine divided among all participants. Here, *participants* include members of the Leadership Team of an NSF Engine, which consists between 8 and 12 persons, the Governance Board, which consists between 10 and 20 persons, and the (external) Evaluation Team, which consists of 4–8 persons. Thus, the annual burden hours for the listed evaluation capacity building activities are shared between 22 and 40 persons. And this is to be expected, as evaluation in general is a highly collaborative and

[1] *https://www.betterevaluation.org/frameworks-guides/rainbow-framework/manage/strengthen-evaluation-capacity.*

participatory activity, it is therefore expected that both the *Evaluation Plan* and *Annual Evaluation Report* would involve and engage across and within an NSF Engine.

Finally, the upper bound estimate for the *Annual Evaluation Report* reflects not only the effort for writing the report but also account for data cleaning, data analysis, and data visualization. We anticipate that the burden for subsequent years to be lower as workflow and cadence will be established after the first year.

Dated: October 22, 2024.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2024–24913 Filed 10–24–24; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2024–0001]**

### Sunshine Act Meetings

**TIME AND DATE:** Weeks of October 28, November 4, 11, 18, 25, and December 2, 2024. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

**PLACE:** The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

**STATUS:** Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

**MATTERS TO BE CONSIDERED:**

**Week of October 28, 2024**

*Wednesday, October 30, 2024*

1:00 p.m. Today and Tomorrow Across Region II Business Lines (Public Meeting) (Contact: Katie McCurry: 404–997–4438)

*Additional Information:* The meeting will be held in the 8th Floor Conference Center, Marquis One Tower, 245 Peachtree Center Avenue NE, Suite 1200, Atlanta, Georgia. The public is invited to attend the Commission's meeting in person or watch live via webcast at the web address—*https://video.nrc.gov/.*

**Week of November 4, 2024—Tentative**

There are no meetings scheduled for the week of November 4, 2024.

**Week of November 11, 2024**

*Thursday, November 14, 2024*

9:00 a.m. Strategic Programmatic Overview of the Operating Reactors and New Reactors Business Lines (Public Meeting) (Contact: Annie Ramirez: 301–415–6780)

*Additional Information:* The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the web address—*https://video.nrc.gov/.*

**Week of November 18, 2024—Tentative**

There are no meetings scheduled for the week of November 18, 2024.

**Week of November 25, 2024—Tentative**

There are no meetings scheduled for the week of November 25, 2024.

**Week of December 2, 2024**

*Thursday, December 5, 2024*

10:00 a.m. Briefing on Equal Employment Opportunity, Affirmative Employment, and Small Business (Public Meeting) (Contact: Erin Deeds: 301–415–2887)

*Additional Information:* The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the web address—*https://video.nrc.gov/.*

**CONTACT PERSON FOR MORE INFORMATION:** For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: October 23, 2024.

For the Nuclear Regulatory Commission.

**Wesley W. Held,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2024–24998 Filed 10–23–24; 4:15 pm]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 72–36, 50–321, and 50–366; NRC–2024–0147]**

### Southern Nuclear Operating Company; Edwin I. Hatch Nuclear Plant Units 1 and 2; Independent Spent Fuel Storage Installation; Exemption

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) issued an exemption to Southern Nuclear Operating Company permitting Edwin I. Hatch Nuclear Plant (Hatch) to maintain three loaded and to load five new 68M multi-purpose canisters with continuous basket shims in HI–STORM 100 Cask System at its Hatch Units 1 and 2 independent spent fuel storage installation in a storage condition where the terms, conditions, and specifications in Certificate of Compliance No. 1014, Amendment No. 11 are not met.

**DATES:** The exemption was issued on October 11, 2024.

**ADDRESSES:** Please refer to Docket ID NRC–2024–0147 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0147. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document

referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Heath Stroud, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–3664; email: *Heath.Stroud@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The text of the exemption is attached.

Dated: October 22, 2024.

For the Nuclear Regulatory Commission.

**Yoira Diaz-Sanabria, Chief,**

*Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety, and Safeguards.*

**Attachment—Exemption**

**NUCLEAR REGULATORY COMMISSION**

**Docket Nos. 72–36, 50–321, and 50–366**

**Southern Nuclear Operating Company; Edwin I. Hatch Nuclear Plant Units 1 and 2; Independent Spent Fuel Storage Installation**

## I. Background

Southern Nuclear Operating Company (SNC) is the holder of Renewed Facility Operating License Nos. DPR–57 and NPF–5, which authorize operation of the Edwin I. Hatch Nuclear Plant (Hatch), Units 1 and 2 in Baxley, Georgia, pursuant to part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities.'' The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC) now or hereafter in effect.

Consistent with 10 CFR part 72, subpart K, ''General License for Storage of Spent Fuel at Power Reactor Sites,'' a general license is issued for the storage of spent fuel in an independent spent fuel storage installation (ISFSI) at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50. SNC is authorized to operate nuclear power reactors under 10 CFR part 50 and holds a 10 CFR part 72 general license for storage of spent fuel at the Hatch ISFSI. Under the terms of the general license, SNC stores spent fuel at its Hatch ISFSI using the HI–STORM 100 Cask System in accordance with Certificate of Compliance (CoC) No. 1014, Amendment No. 11.

## II. Request/Action

By a letter dated June 25, 2024 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML24177A217), as supplemented on July 26, 2024 (ML24208A172), SNC requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.212(b)(11), and 72.214 that require Hatch to comply with the terms, conditions, and specifications of CoC No. 1014, Amendment No. 11 (ML23328A045). If approved, SNC's exemption request would accordingly allow Hatch to maintain three loaded and to load five multi-purpose canisters (MPCs) with an unapproved, variant basket design with continuous basket shims (CBS) (*i.e.,* MPC–68M–CBS) in the HI–STORM 100 Cask System, and thus, to maintain and load the systems in a storage condition where the terms, conditions, and specifications in CoC No. 1014, Amendment No. 11 are not met.

SNC currently uses the HI–STORM 100 Cask System under CoC No. 1014, Amendment No. 11, for dry storage of spent nuclear fuel in MPC–68M at the Hatch ISFSI. Holtec International (Holtec), the designer and manufacturer of the HI–STORM 100 Cask System, developed a variant of the design with CBS for the MPC–68M, known as MPC–68M–CBS. Holtec performed a non-mechanistic tip-over analysis with favorable results and implemented the CBS variant design under the provisions of 10 CFR 72.48, ''Changes, tests, and experiments,'' which allows licensees to make changes to cask designs without a CoC amendment under certain conditions (listed in 10 CFR 72.48(c)). After evaluating the specific changes to the cask designs, the NRC determined that Holtec erred when it implemented the CBS variant design under 10 CFR 72.48, as this is not the type of change allowed without a CoC amendment. For this reason, the NRC issued three Severity Level IV violations to Holtec (ML24016A190).

Prior to the issuance of the violation, SNC had loaded three MPC–68M–CBS in the HI–STORM 100 Cask System, which are safely in storage at the Hatch ISFSI. SNC's loading campaign for the Hatch ISFSI include loading five MPC–68M–CBS in the HI–STORM 100 Cask System beginning in April 2025. While Holtec was required to submit a CoC amendment to the NRC to seek approval of the CBS variant design, such a process will not be completed in time to inform decisions for this loading campaign. Therefore, SNC submitted this exemption request to allow for the continued storage of the three already loaded MPC–68–CBS, and future loading of five MPC–68M–CBS beginning in April 2025 at the Hatch ISFSI. This exemption is limited to the use of MPC–68M–CBS in the HI–STORM 100 Cask System only for the three already loaded canisters and the planned loading of five specific new canisters using the MPC–68M–CBS variant basket design.

## III. Discussion

Pursuant to 10 CFR 72.7, ''Specific exemptions,'' the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations of 10 CFR part 72 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

### *A. The Exemption is Authorized by Law*

This exemption would allow SNC to maintain three loaded and to load five MPC–68M–CBS in the HI–STORM 100 Cask System at its Hatch ISFSI in a storage condition where the terms, conditions, and specifications in CoC No. 1014, Amendment No. 11, are not met. SNC is requesting an exemption from the provisions in 10 CFR part 72 that require the licensee to comply with the terms, conditions, and specifications of the CoC for the approved cask model it uses. Section 72.7 allows the NRC to grant exemptions from the requirements of 10 CFR part 72. This authority to grant exemptions is consistent with the Atomic Energy Act of 1954, as amended, and is not otherwise inconsistent with NRC's regulations or other applicable laws. Additionally, no other law prohibits the activities that would be authorized by the exemption. Therefore, the NRC concludes that there is no statutory prohibition on the issuance of the requested exemption, and the NRC is authorized to grant the exemption by law.

### *B. The Exemption Will Not Endanger Life or Property or the Common Defense and Security*

This exemption would allow SNC to maintain three loaded and to load five MPC–68M–CBS in the HI–STORM 100 Cask System at the Hatch ISFSI in a storage condition where the terms, conditions, and specifications in CoC No. 1014, Amendment No. 11, are not met. In support of its exemption request,

SNC asserts that issuance of the exemption would not endanger life or property because the administrative controls the applicant has in place prevent a tip-over or handling event, and that the containment boundary would be maintained in such an event. SNC relies, in part, on the approach in the NRC's Safety Determination Memorandum (ML24018A085). The NRC issued this Safety Determination Memorandum to address whether, with respect to the enforcement action against Holtec regarding this violation, there was any need to take an immediate action for the cask systems that were already loaded with non-compliant basket designs. The Safety Determination Memorandum documents a risk-informed approach concluding that, during the design basis event of a non-mechanistic tip-over, the fuel in the basket in the MPC–68M–CBS remains in a subcritical condition.

SNC also provided site-specific technical information, including information explaining why the use of the approach in the NRC's Safety Determination Memorandum is appropriate for determining the safe use of the CBS variant baskets at the Hatch ISFSI. Specifically, SNC described that the analysis of the tip-over design basis event that is relied upon in the NRC's Safety Determination Memorandum, which demonstrates that the MPC confinement barrier is maintained, is documented in the updated final safety analysis report (UFSAR) for the HI–STORM 100 Cask System CoC No. 1014, Amendment No. 11 that is used at the Hatch site. SNC also described its administrative controls for handling of the HI–STORM 100 Cask System at the Hatch ISFSI to prevent a tip-over or handling event. Those controls include operational procedures that demonstrate lift height restrictions and that the system is handled with a single failure proof device, which comply with CoC No. 1014, Amendment No. 11, Appendix A.

Additionally, SNC provided specific information from Hatch's 72.212 Evaluation Report, Revision 27, indicating that during the design basis event of a non-mechanistic tip-over, Hatch's ISFSI would meet the requirements in 10 CFR 72.104, ''Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS,'' and 72.106, ''Controlled area of an ISFSI or MRS.'' Specifically, SNC described that, in the highly unlikely event of a tip-over, any potential fuel damage from a non-mechanistic tip-over event would be localized, the confinement barrier would be maintained, and the shielding material would remain intact. SNC concluded that compliance with 72.104 and 72.106 is not impacted by approving this exemption request.

The NRC staff reviewed the information provided by SNC and concludes that issuance of the exemption would not endanger life or property because the administrative controls that SNC has in place at the Hatch ISFSI sufficiently minimize the possibility of a tip-over or handling event, and that the containment boundary would be maintained in such an event. The staff confirmed that these administrative controls are documented in the technical specifications and UFSAR for the HI–STORM 100 Cask System CoC No. 1014, Amendment No. 11, that is used at the Hatch site. In addition, the staff confirmed that the information provided by SNC regarding Hatch's 72.212 Evaluation Report, Revision 27, demonstrates that the consequences of normal and accident conditions would be within the regulatory limits of the 10 CFR 72.104 and 10 CFR 72.106. The staff also determined that the requested exemption is not related to any aspect of the physical security or defense of the Hatch ISFSI; therefore, granting the exemption would not result in any potential impacts to common defense and security.

For these reasons, the NRC staff has determined that under the requested exemption, the storage system will continue to meet the safety requirements of 10 CFR part 72 and the offsite dose limits of 10 CFR part 20 and, therefore, will not endanger life or property or the common defense and security.

*C. The Exemption is Otherwise in the Public Interest*

The proposed exemption would allow the three already loaded MPC–68M–CBS in the HI–STORM 100 Cask System to remain in storage at the Hatch ISFSI, and allow SNC to load five MPC–68M–CBS in the HI–STORM 100 Cask System beginning in April 2025 at the Hatch ISFSI, even though the CBS variant basket design is not part of the approved CoC No. 1014, Amendment No. 11. According to SNC, the exemption is in the public interest because being unable to load fuel into dry storage in the future loading campaign would impact SNC's ability to offload fuel from the Hatch reactor units, consequently impacting continued safe reactor operation.

SNC rescheduled its 2024 loading campaign to 2025 and stated that further delaying the future loading campaign would impact its ability to effectively manage the margin to capacity in the Hatch Units 1 and 2 spent fuel pools. The low spent fuel pool capacity would make it difficult to refuel and present potential risks to fuel handling operations. In addition, a crowded spent fuel pool would challenge the decay heat removal demand of the pool and increase the likelihood of a loss of fuel pool cooling event and a fuel handling accident. Furthermore, Hatch planned the cask loading campaign years in advance based on availability of the specialized resources and equipment. These specialty resources support competing activities and priorities, including spent fuel pool clean-up and refueling outages. Therefore, the available windows to complete cask loading campaigns are limited, and any delays would have a cascading impact on other scheduled specialized activities. SNC also stated that leaving the three loaded CBS canisters is in the public interest because it eliminates the risks associated with dispositioning spent fuel, including increased radiation dose to workers and affecting SNC's ability to manage the spent fuel pool capacity. SNC has ordered an additional five MPC–68M canisters for the planned loading starting in April 2025, that comply with CoC No. 1014, Amendment No. 11. However, due to factors outside of SNC's control, delivery of the compliant canisters is not guaranteed for the April 2025 loading. It would put the 2025 campaign and Hatch's capability for full core offloading of both reactors at risk.

For the reasons described by SNC in the exemption request, the NRC agrees that it is in the public interest to grant the exemption. If the exemption is not granted, in order to comply with the CoC, SNC would have to unload MPC–68M–CBS from the HI–STORM 100 Cask System at the Hatch ISFSI and reload into the older design MPC–68M to restore compliance with the terms, conditions, and specifications of the CoC. This would subject onsite personnel to additional radiation exposures and increase the risk of a possible fuel handling accident. Furthermore, the removed spent fuel would need to be placed in the spent fuel pool until it can be loaded into another storage cask or remain in the spent fuel pool if it is not permitted to be loaded into CBS casks for the future loadings. As described by SNC, this scenario would affect SNC ability to effectively manage the spent pool capacity and reactor fuel offloading at Hatch. In addition, the rescheduling of the specialized resources for the future loading campaign would impact the operations of Hatch.

Therefore, the staff concludes that approving the exemption is in the public interest.

Environmental Consideration

The NRC staff also considered whether there would be any significant environmental impacts associated with the exemption. For this proposed action, the NRC staff performed an environmental assessment pursuant to 10 CFR 51.30. The environmental assessment concluded that the proposed action would not significantly impact the quality of the human environment. The NRC staff concluded that the proposed action would not result in any changes in the types or amounts of any radiological or non-radiological effluents that may be released offsite, and there would be no significant increase in occupational or public radiation exposure because of the proposed action. The environmental assessment and the finding of no significant impact was published on October 11, 2024 (89 FR 82645).

**IV. Conclusion**

Based on these considerations, the NRC has determined that, pursuant to 10 CFR 72.7, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the NRC grants SNC an exemption from the requirements of §§ 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.212(b)(11), and 72.214 with respect to the ongoing storage of three MPC–68M–CBS in the HI–STORM 100 Cask System and a future loading in the HI–STORM 100 Cask System of five new MPC–68M–CBS beginning in April 2025.

This exemption is effective upon issuance.

Dated: October 11, 2024.

For the Nuclear Regulatory Commission.

Yoira Diaz-Sanabria,

*Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety, and Safeguards.*

[FR Doc. 2024–24917 Filed 10–24–24; 8:45 am]

**BILLING CODE 7590–01–P**

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

In accordance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Railroad Unemployment Insurance Act Applications; OMB 3220–0039.

Under section 2 of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 362), sickness benefits are payable to qualified railroad employees who are unable to work because of illness or injury. In addition, sickness benefits are payable to qualified female employees if they are unable to work, or if working would be injurious, because of pregnancy, miscarriage, or childbirth. Under section 1(k) of the RUIA a statement of sickness, with respect to days of sickness of an employee, is to be filed with the RRB within a 10-day period from the first day claimed as a day of sickness. The Railroad Retirement Board's (RRB) authority for requesting supplemental medical information is section 12(i) and 12(n) of the RUIA. The procedures for claiming sickness benefits and for the RRB to obtain supplemental medical information needed to determine a claimant's eligibility for such benefits are prescribed in 20 CFR part 335.

The forms currently used by the RRB to obtain information needed to determine eligibility for, and the amount of, sickness benefits due a claimant follow: Form SI–1a, Application for Sickness Benefits; Form SI–1b, Statement of Sickness; Form SI–3 (Manual & internet), Claim for Sickness Benefits; Form SI–7, Supplemental Doctor's Statement; Form SI–8, Verification of Medical Information; and Form ID–11A, Requesting Reason for Late Filing of Sickness Benefit. Completion is required to obtain or retain benefits. One response is requested of each respondent. The RRB proposes no changes to Form SI–1a, SI–1b, SI–3, SI–3 (internet), SI–7, SI–8, and ID–11a.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

| Form No. | Annual responses | Time (minutes)1/ | Burden (hours) |
|---|---|---|---|
| SI–1a (Employee) | 11,179 | 10 | 1,863 |
| SI–1b (Doctor) | 11,179 | 8 | 1,490 |
| SI–3 (Manual) | 100,120 | 5 | 8,343 |
| SI–3 (Internet) | 82,812 | 5 | 6,901 |
| SI–7 | 12,151 | 8 | 1,620 |
| SI–8 | 24 | 5 | 2 |
| ID–11A | 284 | 4 | 19 |
| Total | 217,749 | ..... | 20,238 |

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Kennisha Money at (312) 469–2591 or *Kennisha.Money@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to *Brian.Foster@rrb.gov.* Written comments should be received within 60 days of this notice.

**Brian Foster,**

*Clearance Officer.*

[FR Doc. 2024–24818 Filed 10–24–24; 8:45 am]

**BILLING CODE 7905–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–101392; File No. SR–CboeEDGA–2024–040]**

## Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fee Schedule

October 21, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 10, 2024, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to update its Fee Schedule to provide a temporary 20% discount on fees assessed to EDGA Members (''Members'') [3] and non-Members that purchase $20,000 or more of ad hoc purchases of historical U.S. Equity Short Volume and Trades Reports (''Short Volume Reports''), effective October 10, 2024 through December 31, 2024.

By way of background, the Short Volume Report is an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade date,[4] total volume,[5] short volume,[6] and sell short exempt volume,[7] by symbol.[8] The Short Volume Report also includes an end-of-month report that provides a record of all short sale transactions for the month, including trade date and time (in microseconds),[9] trade size,[10] trade price,[11] and type of short sale execution,[12] by symbol and exchange.[13] The Short Volume Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC (''LiveVol''), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., makes the Short Volume Report available for purchase to Users on the LiveVol DataShop website (*datashop.cboe.com*). Both the end-of-day report and end-of-month report are included in the cost of the Short Volume Report and are available for purchase by both Members as well as non-Members on an annual or monthly [14] basis. The monthly fee is $750 per Internal Distributor [15] and $1,250 per External Distributor.[16] Additionally, the Exchange offers historical reports containing both the end-of-day volume and end-of-month trading activity. The fee per month of historical data is $500. The Short Volume Report provided on a historical basis is only for display use redistribution (*e.g.,* the data may be provided on the User's platform). Therefore, Users of the historical data may not charge separately for data included in the Short Volume Report or incorporate such data into their product. The Exchange notes that the Short Volume Report is subject to direct competition from other exchanges, as other exchanges offer similar products for a fee.[17]

The Exchange proposes to provide a temporary pricing incentive program in which Members or Non-Members that purchase historical Short Volume Reports will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the

[3] *See* Rule 1.5(n) (''Member''). The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

[4] ''Trade date'' is the date of trading activity in yyyy-mm-dd format.

[5] ''Total volume'' is the total number of shares transacted.

[6] ''Short volume'' is the total number of shares sold short.

[7] ''Short exempt volume'' is the total number of shares sold short classified as exempt.

[8] ''Symbol'' refers to the Cboe formatted symbol in which the trading activity occurred. *See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.*

[9] ''Trade date and time'' is the date and time of trading activity in yyyy-mm-dd hh:mm:ss.000000 ET format.

[10] ''Trade size'' is the number of shares transacted.

[11] ''Trade price'' is the price at which shares were transacted.

[12] ''Short type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (*see* 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (*see* 17 CFR 242.201(c)).

[13] ''Exchange'' is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

[14] The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on October 24, 2023, the monthly fee will cover the period of October 24, 2023, through November 23, 2023. If the User cancels its subscription prior to November 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

[15] An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity. *See* Cboe EDGA U.S. Equities Exchange Fee Schedule.

[16] An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity. *See* Cboe EDGA U.S. Equities Exchange Fee Schedule.

[17] *See* the Nasdaq Fee Schedule, Equity 7, Section 152. *See also,* the TAQ Group Short Sales (Monthly File) and Short Volume product, offered by the New York Stock Exchange LLC (''NYSE'') and affiliated equity markets (the ''NYSE Group'') at NYSE Exchange Proprietary Market Data | TAQ NYSE Group Short Sales.

Exchange proposes to provide a 20% discount for ad-hoc purchases of historical Short Volume Reports of $20,000 or more.[18] The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange. The Exchange intends to introduce the discount program beginning October 10, 2024, with the program remaining in effect through December 31, 2024. The Exchange also notes that it has previously adopted the same discount program and proposes to update the Fees Schedule with the new program dates accordingly.[19]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[21] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[23] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee changes will further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The Exchange believes the dissemination of historical short volume data via historical Short Volume Reports benefits investors through increased transparency and may promote better informed trading, as well as research and studies of the equities industry. Nevertheless, the Exchange notes that such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer the same type of data content through similar reports.[24]

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered equities exchanges that trade equities. Based on publicly available information, no single equities exchange has more than 13% of the equity market share.[25] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [26] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supercompetitive fees. In the event that a market participant views one exchange's data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of historical Short Volume Reports.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases historical Short Volume Reports is reasonable because such purchasers would receive a 20% discount for purchasing $20,000 or more worth of historical Short Volume Reports. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the historical Short Volume Reports at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage users to purchase historical Short Volume Reports. Further, the proposed discount is intended to promote increased use of the Exchange's historical Short Volume Reports by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who purchase historical Short Volume Reports. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the historical Short Volume Reports, and the Exchange is not required to make historical Short Volume Reports available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange previously adopted similar discount programs.[27]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, including the adoption

[18] The discount will apply on an order-by-order basis. The discount will apply to the total purchase price, once the $20,000 minimum purchase is satisfied (for example, a qualifying order of $25,000 would be discounted to $20,000, *i.e.* receive a 20% discount of $5,000).

[19] *See* Securities Exchange Act Release No. 88195 (December 14, 2023), 88 FR 88193 (December 20, 2023) (SR–CboeEDGA–2023–021) and Securities Exchange Act Release No. 100334 (June 14, 2024), 89 FR 52161 (June 21, 2024) (SR–CboeEDGA–2024–024).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

[23] 15 U.S.C. 78f(b)(4).

[24] *See supra* note 17.

[25] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (October 3, 2024), available at *https://www.cboe.com/us/equities/market_statistics/.*

[26] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[27] *See* Securities Exchange Act Release No. 88195 (December 14, 2023), 88 FR 88193 (December 20, 2023) (SR–CboeEDGA–2023–021) and Securities Exchange Act Release No. 100334 (June 14, 2024), 89 FR 52161 (June 21, 2024) (SR–CboeEDGA–2024–024).

of similar discounts to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange's historical Short Volume Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of historical Short Volume Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange's efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Short Volume Reports.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [28] and paragraph (f) of Rule 19b–4 [29] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGA–2024–040 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGA–2024–040. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGA–2024–040 and should be submitted on or before November 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–24797 Filed 10–24–24; 8:45 am]

**BILLING CODE 8011–01–P**

[30] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 35348A; File No. 812–15507]**

## FS Credit Opportunities Corp., et al.

October 21, 2024.

**AGENCY:** Securities and Exchange Commission (''Commission'' or ''SEC'').

**ACTION:** Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain business development companies and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.[1]

**APPLICANTS:** FS Credit Opportunities Corp., PA Senior Credit Opportunities Fund, L.P., FS Senior Credit Fund II, L.P., FS Global Advisor, LLC, FS Credit Income Fund, FS Credit Income Advisor, LLC, FS Specialty Lending Fund, FS/EIG ADVISOR, LLC, FS Tactical Opportunities (LOI) Splitter, L.P., FS Tactical Opportunities (SI) Splitter, L.P., FS Tactical Opportunities (LOI) Splitter II, L.P., FS Tactical Opportunities (SI) Splitter II, L.P. and FS Tactical Advisor, LLC.

**FILING DATES:** The application was filed on September 19, 2023, and amended on January 24, 2024, May 23, 2024, September 18, 2024 and October 18, 2024.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is

[1] The Commission issued a notice of application on October 3, 2024, Release No. IC–35348. Applicants subsequently amended the application to add additional applicants.

listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below.

Hearing requests should be received by the Commission by 5:30 p.m. on November 12, 2024, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov.* Applicants: Stephen S. Sypherd, 201 Rouse Boulevard, Philadelphia, Pennsylvania 19112; James A. Lebovitz, David Bartels, Cira Centre, 2929 Arch Street, Philadelphia, PA 19104.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, or Thomas Ahmadifar, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** For Applicants' representations, legal analysis, and conditions, please refer to Applicants' fourth amended and restated application, dated October 18, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system.

The SEC's EDGAR system may be searched at, *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–24827 Filed 10–24–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 35363; File No. 812–15550]**

### AGL Private Credit Income Fund, et al.

October 21, 2024.

**AGENCY:** Securities and Exchange Commission (''Commission'' or ''SEC'').

**ACTION:** Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain business development companies and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

**APPLICANTS:** AGL Private Credit Income Fund, AGL US DL Management LLC, AGL CLO I Ltd., AGL Core CLO 2 Ltd., AGL CLO 3 Ltd., AGL Core CLO 4 Ltd., AGL CLO 5 Ltd., AGL CLO 6 Ltd., ALG CLO 7 Ltd., AGL Core CLO 8 Ltd., AGL CLO 9 Ltd., AGL CLO 10 Ltd., AGL CLO 11 Ltd., AGL CLO 12 Ltd., AGL CLO 13 Ltd., AGL CLO 14 Ltd., AGL Core CLO 15 Ltd., AGL CLO 16 Ltd., AGL CLO17 Ltd., AGL CLO 19 LTD., AGL CLO 20 LTD., AGL CLO 21 LTD., AGL CLO 22 LTD., AGL CLO 23 LTD., AGL CLO 24 LTD., AGL CLO 25 LTD., AGL CLO 26 Ltd., AGL CORE CLO 27 LTD., AGL CLO 28 Ltd., AGL CLO 29 Ltd., AGL CLO 30 Ltd., AGL CLO 33 Ltd., AGL CLO 34 Ltd., AGL Core Fund Vintage 2019–1, L.P., AGL Core Fund Vintage 2020–1, L.P., AGL Core Fund Vintage 2021–1, L.P., AGL Core Fund Vintage 2023–1, L.P., Arwen Holdings LLC, AGL Credit Funds ICAV, AGL CLO 32 Ltd., SP17 International Ltd., AGL Credit Management LLC, AGL CLO Credit Management LLC, AGL Core CLO 31 Ltd., AGL CLO Dislocation Fund, L.P., Lafayette Funding II Ltd., AGL Dislocation Fund, L.P., PCIF Vigilant Funding LLC, PCIF Defender Funding LLC.

**FILING DATES:** The application was filed on February 16, 2024, and amended on April 17, 2024, and October 15, 2024.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below.

Hearing requests should be received by the Commission by 5:30 p.m. on November 15, 2024, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov.* Applicants: Matthieu Milgrom, *MMilgrom@AGLCredit.com,* Thomas Friedmann, *Thomas.Friedmann@Dechert.com.*

**FOR FURTHER INFORMATION CONTACT:** Barbara T. Heussler, Senior Counsel, or Thomas Ahmadifar, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated October 15, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, at *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–24825 Filed 10–24–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–101394; File No. SR–CboeBZX–2024–098]**

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

October 21, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 10, 2024, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/BZX/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to update its Fee Schedule to provide a temporary discount on fees assessed to BZX Members (''Members'') [3] and non-Members that purchase $20,000 or more of ad hoc purchases of historical U.S. Equity Short Volume and Trades Reports (''Short Volume Reports''), effective October 10, 2024 through December 31, 2024.

By way of background, the Short Volume Report is an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade date,[4] total volume,[5] short volume,[6] and sell short exempt volume,[7] by symbol.[8] The Short Volume Report also includes an end-of-month report that provides a record of all short sale transactions for the month, including trade date and time (in microseconds),[9] trade size,[10] trade price,[11] and type of short sale execution,[12] by symbol and exchange.[13] The Short Volume Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC (''LiveVol''), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., makes the Short Volume Report available for purchase to Users on the LiveVol DataShop website (*datashop.cboe.com*). Both the end-of-day report and end-of-month report are included in the cost of the Short Volume Report and are available for purchase by both Members as well as non-Members on an annual or monthly [14] basis. The monthly fee is $750 per Internal Distributor [15] and $1,250 per External Distributor.[16] Additionally, the Exchange offers historical reports containing both the end-of-day volume and end-of-month trading activity. The fee per month of historical data is $500. The Short Volume Report provided on a historical basis is only for display use redistribution (*e.g.,* the data may be provided on the User's platform). Therefore, Users of the historical data may not charge separately for data included in the Short Volume Report or incorporate such data into their product. The Exchange notes that the Short Volume Report is subject to direct competition from other exchanges, as other exchanges offer similar products for a fee.[17]

The Exchange proposes to provide a temporary pricing incentive program in which Members or Non-Members that purchase historical Short Volume Reports will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a 20% discount for ad-hoc purchases of historical Short Volume Reports of $20,000 or more.[18] The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange. The Exchange intends to introduce the discount program beginning October 10, 2024, with the program remaining in effect through December 31, 2024. The Exchange also notes that it has previously adopted the same discount program and proposes to update the Fees Schedule with the new program dates accordingly.[19]

[3] *See* Rule 1.5(n) (''Member''). The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

[4] ''Trade date'' is the date of trading activity in yyyy-mm-dd format.

[5] ''Total volume'' is the total number of shares transacted.

[6] ''Short volume'' is the total number of shares sold short.

[7] ''Short exempt volume'' is the total number of shares sold short classified as exempt.

[8] ''Symbol'' refers to the Cboe formatted symbol in which the trading activity occurred. *See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.*

[9] ''Trade date and time'' is the date and time of trading activity in yyyy-mm-dd hh:mm:ss.000000 ET format.

[10] ''Trade size'' is the number of shares transacted.

[11] ''Trade price'' is the price at which shares were transacted.

[12] ''Short type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (*see* 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (*see* 17 CFR 242.201(c)).

[13] ''Exchange'' is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

[14] The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on October 24, 2023, the monthly fee will cover the period of October 24, 2023, through November 23, 2023. If the User cancels its subscription prior to November 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

[15] An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity. *See* Cboe BZX U.S. Equities Exchange Fee Schedule.

[16] An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity. *See* Cboe BZX U.S. Equities Exchange Fee Schedule.

[17] *See* the Nasdaq Fee Schedule, Equity 7, Section 152. *See also,* the TAQ Group Short Sales (Monthly File) and Short Volume product, offered by the New York Stock Exchange LLC (''NYSE'') and affiliated equity markets (the ''NYSE Group'') at NYSE Exchange Proprietary Market Data | TAQ NYSE Group Short Sales.

[18] The discount will apply on an order-by-order basis. The discount will apply to the total purchase price, once the $20,000 minimum purchase is satisfied (for example, a qualifying order of $25,000 would be discounted to $20,000, *i.e.* receive a 20% discount of $5,000).

[19] *See* Securities Exchange Act Release No. 99182 (December 14, 2023), 88 FR 88173 (December 20,

*2. Statutory Basis*

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[21] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[23] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee changes will further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The Exchange believes the dissemination of historical short volume data via historical Short Volume Reports benefits investors through increased transparency and may promote better informed trading, as well as research and studies of the equities industry. Nevertheless, the Exchange notes that such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer the same type of data content through similar reports.[24]

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered equities exchanges that trade equities. Based on publicly available information, no single equities exchange has more than 13% of the equity market share.[25] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [26] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supercompetitive fees. In the event that a market participant views one exchange's data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of historical Short Volume Reports.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases historical Short Volume Reports is reasonable because such purchasers would receive a 20% discount for purchasing $20,000 or more worth of historical Short Volume Reports. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the historical Short Volume Reports at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage users to purchase historical Short Volume Reports. Further, the proposed discount is intended to promote increased use of the Exchange's historical Short Volume Reports by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who purchase historical Short Volume Reports. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the historical Short Volume Reports, and the Exchange is not required to make historical Short Volume Reports available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange has previously adopted similar discount programs.[27]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, including the adoption of similar discounts to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange's historical Short Volume Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of historical Short Volume Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange's efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange

2023) (SR–CboeBZX–2023–093) and Securities Exchange Act Release No. 100330 (June 13, 2024), 89 FR 51931 (June 20, 2024) (SR–CboeBZX–2024–048).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

[23] 15 U.S.C. 78f(b)(4).

[24] *See supra* note 17.

[25] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (October 3, 2024), available at *https://www.cboe.com/us/equities/market_statistics/.*

[26] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[27] *See* Securities Exchange Act Release No. 99182 (December 14, 2023), 88 FR 88173 (December 20, 2023) (SR–CboeBZX–2023–093) and Securities Exchange Act Release No. 100330 (June13, 2024), 89 FR 51931 (June 20, 2024) (SR–CboeBZX–2024–048).

believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Short Volume Reports.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [28] and paragraph (f) of Rule 19b–4 [29] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2024–098 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2024–098. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2024–098 and should be submitted on or before November 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–24799 Filed 10–24–24; 8:45 am]

**BILLING CODE 8011–01–P**

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f).

[30] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–101397; File No. 10–244]**

## In the Matter of the Application of Green Impact Exchange, LLC for Registration as a National Securities Exchange; Order Instituting Proceedings To Determine Whether To Grant or Deny an Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

October 21, 2024.

**I. Introduction**

On May 9, 2024, Green Impact Exchange, LLC (''GIX'') filed with the Securities and Exchange Commission (''Commission'') a Form 1 application (''Form 1'') under the Securities Exchange Act of 1934 (''Act''), seeking registration as a national securities exchange under Section 6 of the Act.[1] Notice of the application was published for comment in the **Federal Register** on July 23, 2024.[2] The Commission received comments on the GIX Form 1,[3] all expressing support for the Form 1.

Section 19(a)(1) of the Act [4] requires the Commission, within 90 days of the date of publication of notice of an application for registration as a national securities exchange, or such longer period as to which the applicant consents, to, by order, grant such registration [5] or institute proceedings to determine whether such registration should be denied.[6] This order is instituting proceedings under Section 19(a)(1)(B) of the Act [7] to determine whether GIX's application for registration as a national securities exchange should be granted or denied, and provides notice of the grounds for denial under consideration by the Commission, as set forth below.

**II. Overview of GIX's Form 1**

*A. Description*

GIX proposes to operate a fully automated electronic trading platform for the trading of listed equities and would not maintain a physical trading floor. Liquidity would be derived from orders to buy and orders to sell submitted to GIX electronically by GIX members from remote locations. GIX proposes to have one class of membership open to registered broker-dealers. GIX would be wholly owned by its parent company, Green Exchange, PBC (''GEPBC'').[8]

With respect to the listing of securities, GIX proposes to permit an operating company whose securities are, or at the time of listing on GIX will be, listed on another national securities exchange registered with the Commission pursuant to Section 6(a) of the Act (its ''primary listing exchange'') to apply to also list those securities on the Exchange.[9] As a condition of

[1] 15 U.S.C. 78f.

[2] *See* Securities Exchange Act Release No. 100547 (July 17, 2024), 89 FR 59795.

[3] The public comment file for GIX's Form 1 (File No. 10–244) is available on the Commission's website at: *https://www.sec.gov/comments/10-244/10-244.htm.*

[4] 15 U.S.C. 78s(a)(1).

[5] 15 U.S.C. 78s(a)(1)(A).

[6] 15 U.S.C. 78a(a)(1)(B).

[7] 15 U.S.C. 78s(a)(1)(B).

[8] *See* Exhibit C to GIX's Form 1.

[9] *See* proposed GIX Rule 14.105(a). GIX's proposed rulebook, which includes its proposed Green Governance Standards (as described in section III.A. below), may be found in Exhibit B–1 to GIX's Form 1.

continuing to dually list its securities on GIX, a company would have to at all times continue to be in good standing with its primary listing exchange.[10]

A novel feature of GIX's proposed listing standards is that GIX would require all companies that list on GIX to comply with its Green Governance Standards which, according to GIX, are designed to provide investors with access to accountable and enforceable information about the quality of a listed company's commitment to sustainable ways of doing business.[11] As proposed, GIX's Green Governance Standards do not include fixed targets or a single reporting framework, and generally are process or disclosure based.

GIX proposes to enter into a technology services agreement with MEMX Technologies, LLC (''MEMX Technologies'') [12] to license the technology underlying the GIX trading platform (''Agreement'').[13]

A more detailed description of the manner of operation of GIX's proposed system can be found in Exhibit E to GIX's Form 1. Further information about GIX's proposed Green Governance Standards can be found in Exhibit H–5 to GIX's Form 1. GIX's proposed rulebook, which includes the Green Governance Standards, is Exhibit B to GIX's Form 1, and the governing documents for GIX and GEPBC can be found in Exhibit A and Exhibit C, respectively.

*B. Comments on GIX's Form 1*

Commenters principally discuss the benefits that they believe GIX's proposed Green Governance Standards would provide. Commenters support the transparency and accountability for the sustainability initiatives that they believe would be provided through GIX's proposed Green Governance Standards.[14] In particular, some commenters state that the proposed listing criteria should prevent ''greenwashing.'' [15] Another commenter states that the transparency and accountability required through GIX's proposed Green Governance Standards would ''promote[ ] investor protection by providing greater information about each listed company and allows easier comparisons across 'green' companies leading to improved investment decision-making.'' [16]

Additionally, one commenter states that approving the GIX Form 1 would be consistent with Section 11A of the Act, which, according to this commenter, mandates the Commission to assure ''fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.'' [17] Fair competition, in the commenter's view, ''implies minimal barriers to entry,'' so the commenter states that ''[a]s long as a proposed entrant can demonstrate that it can fulfill a national securities exchange's legal obligations under the [Act], then its registration should be approved.'' [18] Another commenter states that approval of GIX's application would contribute to investor protection.[19] A different commenter offers specific additions regarding GIX's proposed Green Governance Standards, specifically suggesting that GIX: (1) designate only the IFRS Sustainability Reporting standards as a reporting framework to ensure comparability of information for investors; [20] and (2) incorporate into its listing criteria socially responsible practices in line with the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and the UN Guiding Principles on Business and Human Rights.[21]

Further, another commenter states that approval of the Form 1 would provide ''much-needed competition'' to a listings ''duopoly'' and ''offer a specialized platform for companies and investors who prioritize sustainability and responsible business practices.'' [22] This commenter also states that GIX would ''play a crucial role in directing capital toward companies that are genuinely committed to sustainable practices.'' [23]

## III. Proceedings To Determine Whether To Grant or Deny the Application and Grounds for Potential Denial Under Consideration

As required by Section 19(a)(1)(B) of the Act,[24] the Commission is hereby providing notice of grounds for denial under consideration, as set forth below. Institution of such proceedings is appropriate at this time in view of the issues raised by the application. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Under Section 19(a)(1) of the Act, the Commission shall grant an application for registration as a national securities exchange if the Commission finds that the requirements of the Act and the rules and regulations thereunder with respect to the applicant are satisfied. The Commission shall deny such application for registration if it does not make such a finding.[25] Under Section 6(b) of the Act, an exchange shall not be registered as a national securities exchange unless the Commission determines that it has satisfied the relevant requirements of the Act.[26] In particular, Section 6(b)(1) of the Act requires that the Commission determine that an exchange is so organized and has the capacity to carry out the purposes of the Act.[27] In addition, under Section 6(b)(3) of the Act, the Commission must determine that the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer.[28] Section 6(b)(5) of the Act requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions

[10] *See* proposed GIX Rule 14.105(b).

[11] *See* Exhibit H–5 to GIX's Form 1, at 3–4.

[12] MEMX Technologies is affiliated with MEMX LLC (''MEMX Exchange''), a registered national securities exchange. MEMX Exchange is not a party to the Agreement. *See* Exhibit E to GIX's Form 1.

[13] *See infra* Section III (discussing the proposed Agreement between GIX and MEMX Technologies in greater detail). *See also* Exhibits C and E to GIX's Form 1.

[14] *See, e.g.,* letters from Hideto Nishitani, CEO, Virtuous Capital, LLC (September 4, 2024) (''Virtuous Capital Letter'') at 1; the Green Impact Exchange Advisory Council (August 30, 2024) (''GIEAC Letter'') at 2; Andrew Behar, CEO, As You Sow (August 26, 2024); Steven M. Rothstein, Managing Director, and Jake Rascoff, Director, Ceres (August 20, 2024) (''Ceres Letter'') at 2; Marcus Hooper, Board Advisor, Sustainable Footprints (August 13, 2024) at 1; John FX Dolan (July 27, 2024); J.G. Michalowski, SafeRock USA (July 30, 2024) (''SafeRock USA Letter'') at 1; Michael Capelli (August 8, 2024) at 2.

[15] *See, e.g.,* Virtuous Capital Letter at 1; GIEAC Letter at 1; SafeRock USA Letter at 1; letters from Andrea Schmitz (August 9, 2024); Nancy Reich (August 15, 2024) (''Reich Letter'') at 1; Pradiv Mahesh (August 15, 2024).

[16] Reich Letter at 2.

[17] Letter from James J. Angel, Associate Professor of Finance, Georgetown University (August 28, 2024) at 3.

[18] *Id.*

[19] *See* Ceres Letter at 1.

[20] In the commenter's view, these standards provide a global baseline for sustainability reporting, focusing on decision-useful information for investors. *See* letter from Jen Sisson, CEO, The International Corporate Governance Network (September 6, 2024) at 1.

[21] *See id.*

[22] Letter from Dave Lauer (September 16, 2024) (''Lauer Letter'') at 3.

[23] Lauer Letter at 2.

[24] 15 U.S.C. 78s(a)(1)(B).

[25] 15 U.S.C. 78s(a)(1).

[26] 15 U.S.C. 78f.

[27] 15 U.S.C. 78f(b)(1).

[28] 15 U.S.C. 78f(b)(3).

in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general to protect investors and the public interest.[29] Finally, under Section 6(b)(8) of the Act, the Commission must determine that the rules of the exchange do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Act.[30]

*A. Proposed Green Governance Standards*

Generally, GIX's proposed Green Governance Standards would require the following: (1) establishment of board governance polices and processes to reinforce the issuer's ''Green Goals''; [31] (2) identification of stakeholders, classification of them, and evaluation of how they may be affected by the issuer's environmental practices; [32] (3) definition of short-, medium-, and long-term goals for environmentally sustainable business practices that are materially meaningful in light of the listed company's specific business; [33] (4) preparation of a plan reasonably designed to meet the listed company's stated environmental goals and disclosure of a summary of such plan; [34] (5) provision of a framework for evaluating the issuer's environmental goals and an explanation of the propriety of the selected metrics; [35] (6) disclosure of a summary of the listed company's year-over-year progress using these metrics; [36] and (7) implementation of a green compliance program and appointment of a corporate officer to oversee this program.[37]

Pursuant to its proposed Green Governance Standards, GIX would require the establishment of board governance polices and processes to reinforce the issuer's Green Goals.[38] Specifically, a listed company's board would have to: (1) adopt a Green Values statement for the company and board; [39] (2) adopt a charge to the company's board and/or appropriate board committee(s) regarding oversight of and responsibility for green strategy and the achievement of, and/or progress toward, the prospective listed company's Green Goals; (3) designate a Chief Sustainability Officer to report to the board or a committee of the board; [40] and (4) direct management to implement a generally accepted sustainability reporting framework.[41] As proposed, a ''generally accepted sustainability reporting framework'' is a third-party designed framework for collecting and reporting data and information regarding the listed company's green performance.[42] GIX would recognize the following sustainability reporting frameworks as being ''generally accepted'': Task Force for Climate-related Financial Disclosure; International Sustainability Standards Board/Sustainability Accounting Standards Board; Science-Based Targets Initiative; Global Reporting Initiative; CDP (formerly the Carbon Disclosure Project); World Economic Forum Stakeholder Capitalism Metrics; and the European Union Corporate Sustainability Reporting Directive.[43] A listed company would have to develop and implement policies and procedures for itself and standards of conduct for vendors, and contractors of the listed company that support the company's Green Values.[44]

A listed company would have to: (1) identify all stakeholders in its environmental impact, taking into consideration the customs and practices of the company's industry and ordinary business practices; (2) document the scope of each stakeholder's perceived interests in connection with the company's environmental impacts; (3) classify whether the stakeholder's perceived interest(s) is (are) direct, indirect, or general; and (4) publish a summary of its initial stakeholder analysis on its website either as a standalone page or as a component of its annual sustainability report.[45] The listed company's management and board would have to review the stakeholder analysis at least annually and publish any updated analysis.[46]

GIX would require a listed company to disclose on the listed company's website or in a sustainability report: (1) the listed company's short-, medium-, and long-term goals; (2) how the listed company defines short-, medium-, and long-term time horizons, and the criteria it employs for classifying each Green Goal as short-, medium- or long-term; (3) for each Green Goal that establishes quantitative targets, whether the listed company relied on science-based target setting methodology to determine such quantitative targets; and (4) the metrics by which the company will evaluate its progress toward the achievement of each of its Green Goals on an ongoing basis.[47] Additionally, GIX would require a company to create a Green Business Plan that describes all material aspects of implementing its Green Goals. A Green Business Plan would

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78f(b)(8).

[31] *See* proposed GIX Rule 14.426(b).

[32] *See* proposed GIX Rule 14.427(b). The proposed term ''stakeholder'' would mean any entities or individuals that can reasonably be expected to be significantly affected by a listed company's or prospective listed company's activities, products, or services; or whose actions can reasonably be expected to affect the ability of the company to implement its strategies or achieve its objectives. *See* proposed GIX Rule 14.425(a)(4). Stakeholders would include, but would not be limited to, the following: shareholders; employees; customers; suppliers (both direct and indirect); partners or joint venture participants; lenders or financers; potential customers; city, county or equivalent political subdivisions in which the listed company operates directly; regulators; and financial analysts and markets. *See* Supplementary Material .03(b) to proposed GIX Rule 14.427. As proposed, stakeholders may also include unidentified persons or groups who have interests in the preservation of local flora and fauna, specific ecosystems (*e.g.,* river basins or wetlands), or shared local natural resources (*e.g.,* groundwater) that could be affected by the company's actions. *See* Supplementary Material .03(c) to proposed GIX Rule 14.427.

[33] *See* proposed GIX Rule 14.427(c).

[34] *See* proposed GIX Rule 14.427(d).

[35] *See* proposed GIX Rule 14.426(d).

[36] *See* proposed GIX Rule 14.428(c).

[37] *See* proposed GIX Rules 14.426(c), 14.427(e).

[38] As proposed, ''Green Goals'' are a set of specific and measurable goals in line with the company's ''Green Values'' for (i) transitioning to a sustainable business model and green business practices; (ii) maintaining the listed company's mature green business practices; and (iii) evolving or iterating its mature green business practices as needed. *See* proposed GIX Rule 14.427(c)(1). As proposed, Green Goals must address three distinct time periods: short-term (reasonably achievable within two to four years), medium-term (reasonably achievable within four to ten years), and long-term (reasonably achievable in more than ten years). *See id.* and Supplementary Material .06 to proposed GIX Rule 14.427.

[39] As proposed, the board's ''Green Values'' statement would guide decision-making at the board and executive levels, establish a standard against which the prospective listed company's green actions can be assessed, and form the basis for an internal framework for evaluating initiatives, plans, and actions by leadership, managers, and employees with respect to whether such initiatives, plans, and actions take environmental impacts and green outcomes into account, and incorporate sustainable and green practices to the maximum extent possible. *See* Supplementary Material .02 to proposed GIX Rule 14.426.

[40] As proposed, GIX specifies qualifications necessary for a Chief Sustainability Officer. *See* Supplementary Material .04 to proposed GIX Rule 14.426. Alternatively, the board may assign green responsibilities to core business leaders and describe how such core business leaders will report to the board.

[41] *See* proposed GIX Rule 14.426(b). Correspondingly, a listed company would have to implement its generally accepted sustainability reporting framework as directed by the board. *See* proposed GIX Rule 14.427(g).

[42] *See* Supplementary Material .04(3) to proposed GIX Rule 14.426.

[43] *See id.* In the future, GIX may designate additional frameworks as ''generally accepted.'' *See id.*

[44] *See* proposed GIX Rule 14.427(e).

[45] *See* proposed GIX Rule 14.427(b). As proposed, a listed company may use another generally recognized taxonomy to classify stakeholders in lieu of the classification described above, provided that the listed company adheres to the requirements for applying such generally recognized taxonomy. *See* Supplementary Material .05 to proposed GIX Rule 14.427(b).

[46] *See* proposed GIX Rule 14.428(b).

[47] *See* proposed GIX Rule 14.427(c)(2).

have to specifically: identify key resources required for implementation; assign responsibility for action to one or more executive sponsors; describe material assumptions, timelines, and key dependencies; and describe any material contractual arrangements, communications, and operational systems to be employed in connection with the plan.[48] A summary of the plan would have to be publicly disclosed.[49]

GIX would require a listed company to disclose annually in its sustainability report: (1) the results of a self-evaluation with respect to its Green Goals, assessing whether it is on-track to meet its short-term Green Goals; and (2) its year-over-year progress toward achieving its Green Goals, as measured by its chosen sustainability reporting framework.[50]

The Commission is evaluating whether the novel proposed Green Governance Standards are consistent with Section 6 of the Act, including Section 6(b)(1) of the Act,[51] which requires among other things that a national securities exchange be organized and capable of complying with its own rules, and Section 6(b)(5) of the Act,[52] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general protect investors and the public interest. In Exhibit H–5 to its Form 1, GIX states why it believes the various aspects of the proposed Green Governance Standards are consistent with Section 6(b)(5) of the Act.

*B. Technology Services Agreement With MEMX Technologies, LLC*

GIX would not own the trading technology and systems (''System'') developed by MEMX Technologies LLC, but GIX proposes to enter into the Agreement with MEMX Technologies to license the technology underlying GIX. Generally, the Agreement would govern (1) the delivery and licensing of certain software for operation of the System, (2) the development and testing of software necessary for connectivity to other GIX and/or third party-developed functions and certain other software necessary to support trading on GIX, and (3) the operation of the System in an on-premises environment on behalf of the Exchange, including certain operational and support services.[53] GIX represents that the Agreement and Service Levels Annex to the Agreement would also set forth certain service levels to ensure that GIX can meet its Regulation Systems Compliance and Integrity (''Regulation SCI'') obligations in light of the contractual relationship between GIX and MEMX Technologies.

The Commission is evaluating whether the proposed Agreement between GIX and MEMX Technologies is consistent with Section 6(b)(1) of the Act,[54] including Regulation SCI thereunder.[55] The Commission is considering whether, under the terms of the Agreement, as described in the GIX Form 1, GIX would be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and enforce compliance by its members and persons associated with its members with the Act and the rules thereunder. Specifically, the Commission is considering, and requests commenters' views on, whether GIX would be capable of exercising sufficient control over the operation of GIX, and be sufficiently independent from MEMX Technologies, to enable GIX to comply with requirements under the Act and applicable rules, including, among other things, Regulation SCI, which requires an SCI entity to have written policies and procedures reasonably designed to ensure that its SCI systems have levels of capacity, integrity, resilience, availability and security adequate to maintain the SCI entity's operation capability.[56]

## IV. Request for Written Comment

The Commission requests that interested persons provide written views and data with respect to GIX's Form 1 and the questions included above or other relevant issues. 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 No. 10–244 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 No. 10–244. 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/other*). Copies of the submission, all subsequent amendments, all written statements with respect to GIX's Form 1 filed with the Commission, and all written communications relating to the application between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File No. 10–244 and should be submitted on or before November 15, 2024.

By the Commission.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–24813 Filed 10–24–24; 8:45 am]

**BILLING CODE 8011–01–P**

[48] *See* proposed GIX Rule 14.427(d)(1).

[49] *See* proposed GIX Rule 14.427(d)(2). As proposed, the summary must contain sufficient information so as to not be materially misleading and provide investors and stakeholders with a clear understanding of management's key assumptions, estimates, and risks that could materially affect the listed company's achievement of its Green Goals. *See* Supplementary Material .08 to proposed GIX Rule 14.427.

[50] *See* proposed GIX Rule 14.428(c)(1).

[51] 15 U.S.C. 78f(b)(1).

[52] 15 U.S.C. 78f(b)(5).

[53] *See* Exhibit E to GIX's Form 1 at 3. Under the terms of the Agreement, (1) GIX may request that MEMX Technologies develop and implement technology changes that change the operation of the GIX System; and (2) GIX is not obligated to agree to, accept, or adopt changes to the System that are not essential to the operation of its instance of the System. *See* Exhibit E to GIX's Form 1 at 2–3.

[54] 15 U.S.C. 78f(b)(1).

[55] 17 CFR 242.1000–1007; Securities Exchange Act Release No. 73639 (Nov. 19, 2014), 79 FR 72252 (Dec. 5, 2014) (''SCI Adopting Release'').

[56] 17 CFR 242.1000–1007. An SCI entity is responsible for having in place policies and procedures to ensure that it is able to satisfy the requirements of Regulation SCI for SCI systems operated on its behalf by a third party. *See* SCI Adopting Release, 79 FR at 72275–76.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–101396; File No. SR–CboeBYX–2024–037]**

## Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

October 21, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 10, 2024, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/BYX/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to update its Fee Schedule to provide a temporary discount on fees assessed to BYX Members (''Members'') [3] and non-Members that purchase $20,000 or more of ad hoc purchases of historical U.S. Equity Short Volume and Trades Reports (''Short Volume Reports''), effective October 10, 2024 through December 31, 2024.

By way of background, the Short Volume Report is an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade date,[4] total volume,[5] short volume,[6] and sell short exempt volume,[7] by symbol.[8] The Short Volume Report also includes an end-of-month report that provides a record of all short sale transactions for the month, including trade date and time (in microseconds),[9] trade size,[10] trade price,[11] and type of short sale execution,[12] by symbol and exchange.[13] The Short Volume Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC (''LiveVol''), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., makes the Short Volume Report available for purchase to Users on the LiveVol DataShop website (*datashop.cboe.com*). Both the end-of-day report and end-of-month report are included in the cost of the Short Volume Report and are available for purchase by both Members as well as non-Members on an annual or monthly [14] basis. The monthly fee is $750 per Internal Distributor [15] and $1,250 per External Distributor.[16] Additionally, the Exchange offers historical reports containing both the end-of-day volume and end-of-month trading activity. The fee per month of historical data is $500. The Short Volume Report provided on a historical basis is only for display use redistribution (*e.g.,* the data may be provided on the User's platform). Therefore, Users of the historical data may not charge separately for data included in the Short Volume Report or incorporate such data into their product. The Exchange notes that the Short Volume Report is subject to direct competition from other exchanges, as other exchanges offer similar products for a fee.[17]

The Exchange proposes to provide a temporary pricing incentive program in which Members or Non-Members that purchase historical Short Volume Reports will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the

[3] *See* Rule 1.5(n) (''Member''). The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

[4] ''Trade date'' is the date of trading activity in yyyy-mm-dd format.

[5] ''Total volume'' is the total number of shares transacted.

[6] ''Short volume'' is the total number of shares sold short.

[7] ''Short exempt volume'' is the total number of shares sold short classified as exempt.

[8] ''Symbol'' refers to the Cboe formatted symbol in which the trading activity occurred. *See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.*

[9] ''Trade date and time'' is the date and time of trading activity in yyyy-mm-dd hh:mm:ss.000000 ET format.

[10] ''Trade size'' is the number of shares transacted.

[11] ''Trade price'' is the price at which shares were transacted.

[12] ''Short type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (*see* 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (*see* 17 CFR 242.201(c)).

[13] ''Exchange'' is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

[14] The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on October 24, 2023, the monthly fee will cover the period of October 24, 2023, through November 23, 2023. If the User cancels its subscription prior to November 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

[15] An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity. *See* Cboe BYX U.S. Equities Exchange Fee Schedule.

[16] An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity. *See* Cboe BYX U.S. Equities Exchange Fee Schedule.

[17] *See* the Nasdaq Fee Schedule, Equity 7, Section 152. *See also,* the TAQ Group Short Sales (Monthly File) and Short Volume product, offered by the New York Stock Exchange LLC (''NYSE'') and affiliated equity markets (the ''NYSE Group'') at NYSE Exchange Proprietary Market Data | TAQ NYSE Group Short Sales.

Exchange proposes to provide a 20% discount for ad-hoc purchases of historical Short Volume Reports of $20,000 or more.[18] The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange. The Exchange intends to introduce the discount program beginning October10, 2024, with the program remaining in effect through December 31, 2024. The Exchange also notes that it previously adopted the same discount program and proposes to update the Fees Schedule with the new program dates accordingly.[19]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[21] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[23] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee changes will further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The Exchange believes the dissemination of historical short volume data via historical Short Volume Reports benefits investors through increased transparency and may promote better informed trading, as well as research and studies of the equities industry. Nevertheless, the Exchange notes that such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer the same type of data content through similar reports.[24]

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered equities exchanges that trade equities. Based on publicly available information, no single equities exchange has more than 13% of the equity market share.[25] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [26] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supercompetitive fees. In the event that a market participant views one exchange's data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of historical Short Volume Reports.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases historical Short Volume Reports is reasonable because such purchasers would receive a 20% discount for purchasing $20,000 or more worth of historical Short Volume Reports. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the historical Short Volume Reports at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage users to purchase historical Short Volume Reports. Further, the proposed discount is intended to promote increased use of the Exchange's historical Short Volume Reports by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who purchase historical Short Volume Reports. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the historical Short Volume Reports, and the Exchange is not required to make historical Short Volume Reports available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange has previously adopted similar discount programs.[27]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own

[18] The discount will apply on an order-by-order basis. The discount will apply to the total purchase price, once the $20,000 minimum purchase is satisfied (for example, a qualifying order of $25,000 would be discounted to $20,000, *i.e.* receive a 20% discount of $5,000).

[19] *See* Securities Exchange Act Release No. 99181 (December 14, 2023), 88 FR 88176 (December 20, 2023) (SR–CboeBYX–2023–017) and Securities Exchange Act Release No. 100331 (June 13, 2024), 89 FR 51916 (June 20, 2024) (SR–CboeBYX–2024–022).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

[23] 15 U.S.C. 78f(b)(4).

[24] *See supra* note 17.

[25] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (October 3, 2024), available at *https://www.cboe.com/us/equities/market_statistics/.*

[26] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[27] *See* Securities Exchange Act Release No. 99181 (December 14, 2023), 88 FR 88176 (December 20, 2023) (SR–CboeBYX–2023–017) and Securities Exchange Act Release No. 100331 (June 13, 2024), 89 FR 51916 (June 20, 2024) (SR–CboeBYX–2024–022).

fees in response, including the adoption of similar discounts to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange's historical Short Volume Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of historical Short Volume Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange's efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Short Volume Reports.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [28] and paragraph (f) of Rule 19b–4 [29] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBYX–2024–037 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBYX–2024–037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBYX–2024–037 and should be submitted on or before November 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–24800 Filed 10–24–24; 8:45 am]

**BILLING CODE 8011–01–P**

[30] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 35365; 812–15638]**

## Elevation Series Trust and TrueMark Investments, LLC

October 21, 2024.

**AGENCY:** Securities and Exchange Commission (''Commission'' or ''SEC'').

**ACTION:** Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements'').

**SUMMARY OF APPLICATION:** The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with certain subadvisors without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisors.

**APPLICANTS:** Elevation Series Trust and TrueMark Investments, LLC.

**FILING DATES:** The application was filed on September 27, 2024.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on November 15, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should

state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov.* Applicants: JoAnn M. Strasser, *JoAnn.Strasser@thompsonhine.com* and Christopher Moore, Elevation Series Trust c/o TrueMark Investments, LLC, 1700 Broadway, Suite 1850, Denver, CO 80290.

**FOR FURTHER INFORMATION CONTACT:** Barbara T. Heussler, Senior Counsel, or Thomas Ahmadifar, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated September 27, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–24826 Filed 10–24–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–101393; File No. SR–CboeEDGX–2024–064]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

October 21, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 10, 2024, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to update its Fee Schedule to provide a temporary 20% discount on fees assessed to EDGX Members (''Members'')[3] and non-Members that purchase $20,000 or more of ad hoc purchases of historical U.S. Equity Short Volume and Trades Reports (''Short Volume Reports''), effective October 10, 2024 through December 31, 2024.

By way of background, the Short Volume Report is an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade date,[4] total volume,[5] short volume,[6] and sell short exempt volume,[7] by symbol.[8] The Short Volume Report also includes an end-of-month report that provides a record of all short sale transactions for the month, including trade date and time (in microseconds),[9] trade size,[10] trade price,[11] and type of short sale execution,[12] by symbol and exchange.[13] The Short Volume Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC (''LiveVol''), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., makes the Short Volume Report available for purchase to Users on the LiveVol DataShop website (*datashop.cboe.com*). Both the end-of-day report and end-of-month report are included in the cost of the Short Volume Report and are available for purchase by both Members as well as non-Members on an annual or monthly[14] basis. The monthly fee is $750 per Internal Distributor[15] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 1.5(n) (''Member''). The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

[4] ''Trade date'' is the date of trading activity in yyyy-mm-dd format.

[5] ''Total volume'' is the total number of shares transacted.

[6] ''Short volume'' is the total number of shares sold short.

[7] ''Short exempt volume'' is the total number of shares sold short classified as exempt.

[8] ''Symbol'' refers to the Cboe formatted symbol in which the trading activity occurred. *See https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf.*

[9] ''Trade date and time'' is the date and time of trading activity in yyyy-mm-dd hh:mm:ss.000000 ET format.

[10] ''Trade size'' is the number of shares transacted.

[11] ''Trade price'' is the price at which shares were transacted.

[12] ''Short type'' is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (*see* 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (*see* 17 CFR 242.201(c)).

[13] ''Exchange'' is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

[14] The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on October 24, 2023, the monthly fee will cover the period of October 24, 2023, through November 23, 2023. If the User cancels its subscription prior to November 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

[15] An Internal Distributor of an Exchange Market Data product is a Distributor that receives the

Continued

$1,250 per External Distributor.[16] Additionally, the Exchange offers historical reports containing both the end-of-day volume and end-of-month trading activity. The fee per month of historical data is $500. The Short Volume Report provided on a historical basis is only for display use redistribution (*e.g.,* the data may be provided on the User's platform). Therefore, Users of the historical data may not charge separately for data included in the Short Volume Report or incorporate such data into their product. The Exchange notes that the Short Volume Report is subject to direct competition from other exchanges, as other exchanges offer similar products for a fee.[17]

The Exchange proposes to provide a temporary pricing incentive program in which Members or Non-Members that purchase historical Short Volume Reports will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a temporary 20% discount for ad-hoc purchases of historical Short Volume Reports of $20,000 or more.[18] The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange. The Exchange intends to introduce the discount program beginning October 10, 2024, with the program remaining in effect through December 31, 2024. The Exchange also notes that it has previously adopted the same discount program and proposes to update the Fees Schedule with the new program dates accordingly.[19]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[21] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[23] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee changes will further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The Exchange believes the dissemination of historical short volume data via historical Short Volume Reports benefits investors through increased transparency and may promote better informed trading, as well as research and studies of the equities industry. Nevertheless, the Exchange notes that such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer the same type of data content through similar reports.[24]

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered equities exchanges that trade equities. Based on publicly available information, no single equities exchange has more than 13% of the equity market share.[25] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [26] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supercompetitive fees. In the event that a market participant views one exchange's data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of historical Short Volume Reports.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases historical Short Volume Reports is reasonable because such purchasers would receive a 20% discount for purchasing $20,000 or more worth of historical Short Volume Reports. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the historical Short Volume Reports at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage users to purchase historical Short Volume Reports. Further, the proposed discount is intended to promote increased use of the Exchange's historical Short Volume Reports by

Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity. *See* Cboe EDGX U.S. Equities Exchange Fee Schedule.

[16] An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity. *See* Cboe EDGX U.S. Equities Exchange Fee Schedule.

[17] *See* the Nasdaq Fee Schedule, Equity 7, Section 152. *See also,* the TAQ Group Short Sales (Monthly File) and Short Volume product, offered by the New York Stock Exchange LLC (''NYSE'') and affiliated equity markets (the ''NYSE Group'') at NYSE Exchange Proprietary Market Data | TAQ NYSE Group Short Sales.

[18] The discount will apply on an order-by-order basis. The discount will apply to the total purchase price, once the $20,000 minimum purchase is satisfied (for example, a qualifying order of $25,000 would be discounted to $20,000, *i.e.* receive a 20% discount of $5,000).

[19] *See* Securities Exchange Act Release No. 99185 (December 14, 2023), 88 FR 88182 (December 20, 2023) (SR–CboeEDGX–2023–072) and Securities Exchange Act Release No. 100333 (June 14, 2024), 89 FR 52115 (June 21, 2024) (SR–CboeEDGX–2024–034).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

[23] 15 U.S.C. 78f(b)(4).

[24] *See supra* note 17.

[25] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (October 3, 2024), available at *https://www.cboe.com/us/equities/market_statistics/.*

[26] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who purchase historical Short Volume Reports. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the historical Short Volume Reports, and the Exchange is not required to make historical Short Volume Reports available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange has previously adopted similar discount programs.[27]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, including the adoption of similar discount to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange's historical Short Volume Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of historical Short Volume Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange's efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Short Volume Reports.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[28] and paragraph (f) of Rule 19b–4[29] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2024–064 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGX–2024–064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGX–2024–064 and should be submitted on or before November 15, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–24798 Filed 10–24–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20469 and #20470; CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION Disaster Number WA–20009]**

### Presidential Declaration Amendment of a Major Disaster for the Confederated Tribes and Bands of the Yakama Nation

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the Confederated Tribes and Bands of the Yakama Nation (FEMA–4823–DR), dated September 24, 2024.

*Incident:* Wildfires.

[27] *See* Securities Exchange Act Release No. 99185 (December 14, 2023), 88 FR 88182 (December 20, 2023) (SR–CboeEDGX–2023–072) and Securities Exchange Act Release No. 100333 (June 14, 2024), 89 FR 52115 (June 21, 2024) (SR–CboeEDGX–2024–034).

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f).

[30] 17 CFR 200.30–3(a)(12).

**DATES:** Issued on October 21, 2024.

*Incident Period:* June 22, 2024, through July 8, 2024.

*Physical Loan Application Deadline Date:* December 16, 2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* June 24, 2025.

**ADDRESSES:** *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:** Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the Confederated Tribes and Bands of the Yakama Nation, dated September 24, 2024, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to December 16, 2024.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Deputy Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2024–24916 Filed 10–24–24; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20782 and #20698; CALIFORNIA Disaster Number CA–20025]**

### Administrative Declaration of a Disaster for the State of California

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of California dated 10/18/2024.

*Incident:* Airport Fire.

*Incident Period:* 09/09/2024 through 10/06/2024.

**DATES:** Issued on 10/18/2024.

*Physical Loan Application Deadline Date:* 12/17/2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* 07/18/2025.

**ADDRESSES:** *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:** Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Riverside.

*Contiguous Counties:*

California: Imperial, Orange, San Bernardino, San Diego.

Arizona: La Paz.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 5.625 |
| Homeowners without Credit Available Elsewhere | 2.813 |
| Businesses with Credit Available Elsewhere | 8.000 |
| Businesses without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations with Credit Available Elsewhere | 3.250 |
| Non-Profit Organizations without Credit Available Elsewhere | 3.250 |
| *For Economic Injury:* | |
| Business and Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere | 3.250 |

The number assigned to this disaster for physical damage is 207825 and for economic injury is 206980.

The States which received an EIDL Declaration are Arizona, California.

(Catalog of Federal Domestic Assistance Number 59008)

**Isabella Guzman,**

*Administrator.*

[FR Doc. 2024–24816 Filed 10–24–24; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20730 and #20731; SAN CARLOS APACHE TRIBE Disaster Number AZ–20007]**

### Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the San Carlos Apache Tribe

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the San Carlos Apache Tribe (FEMA—4833–DR), dated October 4, 2024.

*Incident:* Watch Fire.

*Incident Period:* July 10, 2024, through July 17, 2024.

**DATES:** Issued on October 21, 2024.

*Physical Loan Application Deadline Date:* December 16, 2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* July 7, 2025.

**ADDRESSES:** *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:** Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the San Carlos Apache Tribe, dated 10/04/2024, is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to 12/16/2024.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Deputy Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2024–24914 Filed 10–24–24; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20558 and #20559; NEBRASKA Disaster Number NE–20003]**

### Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Nebraska

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA—4808–DR), dated August 20, 2024.

*Incident:* Severe Storms, Straight-Line Winds, Tornadoes, and Flooding.

*Incident Period:* May 20, 2024, through June 3, 2024.

**DATES:** Issued on October 15, 2024.

*Physical Loan Application Deadline Date:* November 14, 2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* May 20, 2025.

**ADDRESSES:** *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:** Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Nebraska, dated August 20, 2024, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to November 14, 2024. This notice is further amended to include the following areas as adversely affected by the disaster.

*Primary Counties:*

Lincoln, Sarpy.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Deputy Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2024–24894 Filed 10–24–24; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20759 and #20760; FLORIDA Disaster Number FL–20015]**

### Presidential Declaration of a Major Disaster for the State of Florida

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–4834–DR), dated October 11, 2024. Incident: Hurricane Milton.

**DATES:** Issued on October 11, 2024.

*Incident Period:* October 5, 2024, and continuing.

*Physical Loan Application Deadline Date:* December 10, 2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* July 11, 2025.

**ADDRESSES:** *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:** Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 10/11/2024, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties (Physical Damage and Economic Injury Loans):* Brevard, Charlotte, Citrus, Clay, Collier, DeSoto, Duval, Flagler, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Marion, Martin, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, Volusia and the Miccosukee Tribe of Indians of Florida.

*Contiguous Counties (Economic Injury Loans Only):*

Florida: Alachua, Baker, Bradford, Broward, Levy, Miami-Dade, Monroe, Nassau

The Interest Rates are:

| | Percent. |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 5.625 |
| Homeowners without Credit Available Elsewhere | 2.813 |
| Businesses with Credit Available Elsewhere | 8.000 |
| Businesses without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations with Credit Available Elsewhere | 3.250 |
| Non-Profit Organizations without Credit Available Elsewhere | 3.250 |
| *For Economic Injury:* | |
| Business and Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere | 3.250 |

The number assigned to this disaster for physical damage is 207598 and for economic injury is 207600.

(Catalog of Federal Domestic Assistance Number 59008)

**Rafaela Monchek,**

*Deputy Associate Administrator, Office of Disaster Recovery & Resilience.*

[FR Doc. 2024–24895 Filed 10–24–24; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

### Small Business Investment Company License Issuance

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of Small Business Investment Company (SBIC) licenses.

Pursuant to the authority granted to the United States Small Business Administration under section 301(c) of the Small Business Investment Act of 1958, as amended, to grant Small Business Investment Company licenses under the Small Business Investment Company Program, this notice satisfies the requirement effective August 17, 2023 under 13 CFR 107.501(a) to publish in the **Federal Register** the names of SBICs with date of licensure and Total Intended Leverage Commitments. The following SBICs received SBIC licenses as of the date indicated below:

| SBIC Fund name | Date of licensure | Leverage tiers [1] |
|---|---|---|
| Fidus Mezzanine Capital IV, L.P. | 9/30/2024 | 2.00x |
| Tree Line SBIC, L.P. | 9/30/2024 | 2.00x |
| Stifel North Atlantic AM-Forward, L.P. | 9/27/2024 | 2.00x |
| Mosaic Capital Investors II SBIC, L.P. | 9/27/2024 | 1.00x |
| Star Mountain SBIC Fund II, L.P. | 9/18/2024 | 2.00x |
| Lafayette Square SSBIC, L.P. | 9/9/2024 | 2.00x |
| Corbel Equity Partners SBIC, L.P. | 8/26/2024 | 1.25x |
| TZP SBIC Partners I, L.P. | 8/13/2024 | 1.00x |

| SBIC Fund name | Date of licensure | Leverage tiers [1] |
|---|---|---|
| Eagle Fund VI–A, L.P. | 7/8/2024 | 2.00x |

[1] Maximum amount of Leverage expressed as a multiple of Leverageable Capital pursuant to 13 CFR 107.1150. For all SBIC Licensees that submitted a Management Assessment Questionnaire after August 17, 2023, the Notice of SBIC Licenses will include the Total Intended Leverage Commitment at the time of Licensure.

**Bailey DeVries,**

*Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration.*

[FR Doc. 2024–24812 Filed 10–24–24; 8:45 am]

**BILLING CODE 8026–09–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #20716 and #20717; NEBRASKA Disaster Number NE–20007]**

### Administrative Disaster Declaration of a Rural Area for the State of Nebraska

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative disaster declaration of a rural area for the State of Nebraska dated 10/21/2024.

*Incident:* Severe Storms, Straight-line Winds, Tornadoes and Flooding.

*Incident Period:* 05/20/2024 through 06/03/2024.

**DATES:** Issued on 10/21/2024.

*Physical Loan Application Deadline Date:* 12/20/2024.

*Economic Injury (EIDL) Loan Application Deadline Date:* 07/21/2025.

**ADDRESSES:** *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

**FOR FURTHER INFORMATION CONTACT:** Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration of a rural area, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Howard

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 5.375 |
| Homeowners without Credit Available Elsewhere | 2.688 |
| Businesses with Credit Available Elsewhere | 8.000 |
| Businesses without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations with Credit Available Elsewhere | 3.250 |
| Non-Profit Organizations without Credit Available Elsewhere | 3.250 |
| *For Economic Injury:* | |
| Business and Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere | 3.250 |

The number assigned to this disaster for physical damage is 20716B and for economic injury is 207170.

The State which received an EIDL Declaration is Nebraska.

(Catalog of Federal Domestic Assistance Number 59008)

**Isabella Guzman,**

*Administrator.*

[FR Doc. 2024–24846 Filed 10–24–24; 8:45 am]

**BILLING CODE 8026–09–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2024–0030]**

### Cost-of-Living Increase and Other Determinations for 2025

**AGENCY:** Social Security Administration.

**ACTION:** Notice.

**SUMMARY:** Under title II of the Social Security Act (Act), there will be a 2.5 percent cost-of-living increase in Social Security benefits effective December 2024. In addition, the national average wage index for 2023 is $66,621.80. The cost-of-living increase and national average wage index affect other program parameters as described below.

**FOR FURTHER INFORMATION CONTACT:** Kathleen K. Sutton, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3000. Information relating to this announcement is available at *www.ssa.gov/oact/cola/index.html.* For information on eligibility or claiming benefits, call 1–800–772–1213 (TTY 1–800–325–0778) or visit *www.ssa.gov.*

**SUPPLEMENTARY INFORMATION:** Because of the 2.5 percent cost-of-living increase, the following items will increase for 2025:

(1) The maximum Federal Supplemental Security Income (SSI) monthly payment amounts for 2025 under title XVI of the Act will be $967 for an eligible individual; $1,450 for an eligible individual with an eligible spouse; and $484 for an essential person.

(2) The special benefit amount under title VIII of the Act for certain World War II (WWII) veterans will be $725.25 for 2025.

(3) The student earned income exclusion under title XVI of the Act will be $2,350 per month in 2025, but not more than $9,460 for all of 2025.

(4) The dollar fee limit for services performed as a representative payee will be $55 per month ($103 per month in the case of a beneficiary who is determined to be disabled, has an alcoholism or drug addiction condition, and is incapable of managing benefits) in 2025.

(5) The assessment (or ''user fee'') dollar limit on the administrative cost charged when the agency pays authorized representative fees directly out of a claimant's past due benefits will be $120, beginning in December 2024.

The national average wage index for 2023 is $66,621.80. This index affects the following amounts:

(1) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base will be $176,100 for remuneration paid in 2025 and self-employment income earned in tax years beginning in 2025.

(2) The monthly exempt amounts under the OASDI retirement earnings test for tax years ending in calendar year 2025 will be $1,950 for beneficiaries who will attain their Normal Retirement Age (NRA) (defined in the *Retirement Earnings Test Exempt Amounts* section below) after 2025 and $5,180 for those who attain NRA in 2025.

(3) The dollar amounts (bend points) used in the primary insurance amount (PIA) formula for workers who become

eligible for benefits or who die before becoming eligible, in 2025, will be $1,226 and $7,391.

(4) The bend points used in the formula for computing maximum family benefits for workers who become eligible for retirement benefits, or who die before becoming eligible, in 2025, will be $1,567, $2,262, and $2,950.

(5) The taxable earnings a person must have in 2025 to be credited with a quarter of coverage will be $1,810.

(6) The ''old-law'' contribution and benefit base under title II of the Act will be $130,800 for 2025.

(7) The monthly amount of earnings deemed to constitute substantial gainful activity (SGA) for statutorily blind people in 2025 will be $2,700. The corresponding amount of earnings for non-blind people with a determined disability will be $1,620.

(8) The earnings threshold establishing a month as a part of a trial work period will be $1,160 for 2025.

(9) Coverage thresholds for 2025 will be $2,800 for domestic workers and $2,400 for election officials and election workers.

According to section 215(i)(2)(D) of the Act, we must publish the benefit increase percentage and the revised table of ''special minimum'' benefits within 45 days after the close of the third calendar quarter of 2024.

We must also publish the following by November 1: the national average wage index for 2023 (215(a)(1)(D)), the OASDI fund ratio for 2024 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2025 (section 230(a)), the earnings required to be credited with a quarter of coverage in 2025 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2025 (section 203(f)(8)(A)), the formula for computing a PIA for workers who first become eligible for benefits or die in 2025 (section 215(a)(1)(D)), and the formula for computing the maximum benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2025 (section 203(a)(2)(C)).

**Cost-of-Living Increases**

*General*

The cost-of-living increase is 2.5 percent for monthly benefits under title II and for monthly payments under title XVI of the Act. Under title II, OASDI monthly benefits will increase by 2.5 percent for individuals eligible for December 2024 benefits, payable in January 2025 and thereafter. We base this increase on the authority contained in section 215(i) of the Act.

Pursuant to section 1617 of the Act, Federal SSI benefit rates will also increase by 2.5 percent effective for payments made for January 2025 but paid on December 31, 2024.

*Computation*

Computation of the cost-of-living increase is based on an increase in a Consumer Price Index (CPI) produced by the Bureau of Labor Statistics. At the time the Act was amended to provide automatic cost-of-living increases starting in 1975, only one CPI existed, namely the index now referred to as CPI for Urban Wage Earners and Clerical Workers (CPI–W). Although the Bureau of Labor Statistics has since developed other CPIs, we follow precedent by continuing to use the CPI–W. We refer to this index in the following paragraphs as the CPI.

Section 215(i)(1)(B) of the Act defines a ''computation quarter'' to be a third calendar quarter in which the average CPI exceeded the average CPI in the previous computation quarter. The last cost-of-living increase, effective for those eligible to receive title II benefits for December 2023, was based on the CPI increase from the third quarter of 2022 to the third quarter of 2023. Therefore, the last computation quarter is the third quarter of 2023. The law states that a cost-of-living increase for benefits is determined based on the percentage increase, if any, in the CPI from the last computation quarter to the third quarter of the current year. Therefore, we compute the increase in the CPI from the third quarter of 2023 to the third quarter of 2024.

Section 215(i)(1) of the Act states that the CPI for a cost-of-living computation quarter is the arithmetic mean of this index for the 3 months in that quarter. In accordance with 20 CFR 404.275, we round the arithmetic mean, if necessary, to the nearest 0.001. The CPI for each month in the quarter ending September 30, 2023, the last computation quarter, is: for July 2023, 299.899; for August 2023, 301.551; and for September 2023, 302.257. The arithmetic mean for the calendar quarter ending September 30, 2023, is 301.236. The CPI for each month in the quarter ending September 30, 2024, is: for July 2024, 308.501; for August 2024, 308.640; and for September 2024, 309.046. The arithmetic mean for the calendar quarter ending September 30, 2024, is 308.729. The CPI for the calendar quarter ending September 30, 2024, exceeds that for the calendar quarter ending September 30, 2023, by 2.5 percent (rounded to the nearest 0.1). Therefore, beginning December 2024, a cost-of-living benefit increase of 2.5 percent is effective for benefits under title II of the Act.

Section 215(i) also specifies that a benefit increase under title II, effective for December of any year, will be limited to the increase in the national average wage index for the prior year if the OASDI fund ratio for that year is below 20.0 percent. The OASDI fund ratio for a year is the ratio of the combined asset reserves of the OASI and DI Trust Funds at the beginning of that year to the combined cost of the programs during that year. For 2024, the OASDI fund ratio is reserves of $2,788,463 million divided by estimated cost of $1,483,116 million, or 188.0 percent. Because the 188.0 percent OASDI fund ratio exceeds 20.0 percent, the benefit increase for December 2024 is not limited to the increase in the national average wage index.

**Program Amounts That Change Based on the Cost-of-Living Increase**

The following program amounts change based on the cost-of-living increase: (1) title II benefits; (2) title XVI payments; (3) title VIII benefits; (4) the student earned income exclusion; (5) the fee for services performed by a representative payee; and (6) the appointed representative fee assessment.

*Title II Benefit Amounts*

In accordance with section 215(i) of the Act, for workers and family members for whom eligibility for benefits (that is, the worker's attainment of age 62, or disability or death before age 62) occurred before 2025, benefits will increase by 2.5 percent beginning with benefits for December 2024, which are payable in January 2025. For those first eligible after 2024, the 2.5 percent increase will not apply.

For eligibility after 1978, we determine benefits using a formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, we determine benefits by using a benefit table. The table is available at *www.ssa.gov/oact/ProgData/tableForm.html* or by writing to: Social Security Administration, Office of Public Inquiries and Communications Support, 1100 West High Rise, 6401 Security Boulevard, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act requires that, when we determine an increase in Social Security benefits, we will publish in the **Federal Register** a revision of the range of the PIAs and maximum family benefits based on the dollar amount and other provisions

described in section 215(a)(1)(C)(i). We refer to these benefits as ''special minimum'' benefits. These benefits are payable to certain individuals with long periods of low earnings. To qualify for these benefits, an individual must have at least 11 years of coverage. To earn a year of coverage for purposes of the special minimum benefit, a person must earn at least a certain proportion of the old-law contribution and benefit base (described later in this notice). For years before 1991, the proportion is 25 percent; for years after 1990, it is 15 percent. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of PIAs and maximum family benefit amounts after the 2.5 percent benefit increase.

SPECIAL MINIMUM PIAS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 2024

| Number of years of coverage | PIA | Maximum family benefit |
|---|---|---|
| 11 | $52.10 | $79.70 |
| 12 | 106.90 | 162.10 |
| 13 | 161.80 | 244.60 |
| 14 | 216.30 | 326.40 |
| 15 | 270.70 | 408.10 |
| 16 | 325.90 | 490.60 |
| 17 | 380.70 | 573.30 |
| 18 | 435.40 | 655.10 |
| 19 | 490.10 | 737.50 |
| 20 | 545.10 | 818.90 |
| 21 | 600.00 | 902.10 |
| 22 | 654.30 | 983.70 |
| 23 | 710.10 | 1,067.40 |
| 24 | 764.70 | 1,148.80 |
| 25 | 818.90 | 1,230.50 |
| 26 | 874.70 | 1,313.80 |
| 27 | 928.70 | 1,395.90 |
| 28 | 983.50 | 1,477.70 |
| 29 | 1,038.50 | 1,560.50 |
| 30 | 1,093.10 | 1,641.70 |

*Title XVI Payment Amounts*

In accordance with section 1617 of the Act, the Federal benefit rates used in computing Federal SSI payments for the aged, blind, and disabled will increase by 2.5 percent effective January 2025. For 2024, we determined the monthly payment amounts to be—$943 for an eligible individual, $1,415 for an eligible individual with an eligible spouse, and $472 for an essential person. These amounts were derived from yearly, unrounded Federal SSI payment amounts of $11,321.49, $16,980.36, and $5,673.73, respectively. For 2025, these yearly unrounded amounts increase by 2.5 percent to $11,604.53, $17,404.87, and $5,815.57, respectively. We must round each of these resulting amounts, when not a multiple of $12, to the next lower multiple of $12. Therefore, the annual amounts, effective for 2025, are $11,604, $17,400, and $5,808. Dividing the yearly amounts by 12 gives the respective monthly amounts for 2025—$967, $1,450, and $484. For an eligible individual with an eligible spouse, we equally divide the amount payable between the two spouses.

*Title VIII Benefit Amount*

Title VIII of the Act provides for special benefits to certain WWII veterans who reside outside the United States. Section 805 of the Act provides that ''[t]he benefit under this title payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate [the maximum amount for an eligible individual] under title XVI for the month, reduced by the amount of the qualified individual's benefit income for the month.'' Therefore, the maximum monthly benefit for 2025 under this provision is 75 percent of $967, or $725.25.

*Student Earned Income Exclusion*

Children who are blind or have a determined disability can have limited earnings that do not count against their SSI payments if they are students regularly attending school, college, university, or a course of vocational or technical training. The maximum amount of such income that we may exclude in 2024 is $2,290 per month, but not more than $9,230 in all of 2024. These amounts increase based on a formula set forth in regulation 20 CFR 416.1112.

To compute each of the monthly and yearly maximum amounts for 2025, we increase the unrounded amount for 2024 by the latest cost-of-living increase. If the calculated amount is not a multiple of $10, we round it to the nearest multiple of $10. The unrounded monthly amount for 2024 is $2,290.63. We increase this amount by 2.5 percent to $2,347.90, which we then round to $2,350. Similarly, we increase the unrounded yearly amount for 2024, $9,233.49, by 2.5 percent to $9,464.33 and round this to $9,460. Therefore, the maximum amount of the income exclusion applicable to a student in 2025 is $2,350 per month, but not more than $9,460 in all of 2025.

*Fee for Services Performed as a Representative Payee*

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect a monthly fee from a beneficiary for expenses incurred in providing services as the beneficiary's representative payee. In 2024, the fee is limited to the lesser of: (1) 10 percent of the monthly benefit involved; or (2) $54 each month ($100 each month when the beneficiary is entitled to disability benefits, has an alcoholism or drug addiction condition, and is incapable of managing such benefits). The dollar fee limits are subject to increase by the cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. Therefore, we increase the current amounts by 2.5 percent to $55 and $103 for 2025.

*Appointed Representative Fee Assessment*

Under sections 206(d) and 1631(d) of the Act, whenever the agency pays authorized representative fees directly out of a claimant's past due benefits, we must impose an assessment (or ''user fee'') to cover administrative costs. The user fee applied is the lower amount of 6.3 percent of the representative's authorized fee or a dollar amount that is subject to the cost-of-living increase. We derive the dollar limit for December 2024, by increasing the unrounded limit for December 2023, $117.26, by 2.5 percent, which is $120.19. We then round $120.19 to the next lower multiple of $1. The dollar limit effective for December 2024 is, therefore, $120.

**National Average Wage Index for 2023**

*Computation*

We determined the national average wage index for calendar year 2023. It is based on the 2022 national average wage index of $63,795.13, which was published in the **Federal Register** on October 23, 2023 (88 FR 72803), and on the percentage increase in average wages from 2022 to 2023, as measured by annual wage data. We tabulate the annual wage data, including contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated from these data were $61,220.07 for 2022 and $63,932.64 for 2023. To determine the national average wage index for 2023 at a level consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 2022 national average wage index of $63,795.13 by the percentage increase in average wages from 2022 to 2023 (based on SSA-tabulated wage data) as follows. We round the result to the nearest cent.

*National Average Wage Index Amount*

Multiplying the national average wage index for 2022 ($63,795.13) by the ratio of the average wage for 2023 ($63,932.64) to that for 2022

($61,220.07) produces the 2023 index, $66,621.80. The national average wage index for calendar year 2023 is about 4.43 percent higher than the 2022 index.

**Program Amounts That Change Based on the National Average Wage Index**

Under the Act, the following amounts change with annual changes in the national average wage index: (1) the OASDI contribution and benefit base; (2) the exempt amounts under the retirement earnings test; (3) the dollar amounts, or bend points, in the PIA formula; (4) the bend points in the maximum family benefit formula; (5) the earnings required to credit a worker with a quarter of coverage; (6) the old-law contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (7) the substantial gainful activity (SGA) amount applicable to statutorily blind individuals; and (8) the coverage threshold for election officials and election workers. Additionally, under section 3121(x) of the Internal Revenue Code, the domestic employee coverage threshold is based on changes in the national average wage index.

Two amounts also increase under regulatory requirements—the SGA amount applicable to non-blind individuals with a determined disability, and the monthly earnings threshold that establishes a month as part of a trial work period for beneficiaries with a determined disability.

**OASDI Contribution and Benefit Base**

*General*

The OASDI contribution and benefit base is $176,100 for remuneration paid in 2025 and self-employment income earned in tax years beginning in 2025. The OASDI contribution and benefit base serves as the maximum annual earnings on which OASDI taxes are paid. It is also the maximum annual earnings used in determining a person's OASDI benefits.

*Computation*

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2025 is the larger of: (1) the 1994 base of $60,600 multiplied by the ratio of the national average wage index for 2023 to that for 1992; or (2) the current base ($168,600). If the resulting amount is not a multiple of $300, we round it to the nearest multiple of $300.

*OASDI Contribution and Benefit Base Amount*

Multiplying the 1994 OASDI contribution and benefit base ($60,600) by the ratio of the national average wage index for 2023 ($66,621.80 as determined above) to that for 1992 ($22,935.42) produces $176,028.22. We round this amount to $176,100. Because $176,100 exceeds the current base amount of $168,600, the OASDI contribution and benefit base is $176,100 for 2025.

**Retirement Earnings Test Exempt Amounts**

*General*

We withhold Social Security benefits when a beneficiary under the NRA has earnings more than the applicable retirement earnings test exempt amount. The NRA is the age when retirement benefits (before rounding) are equal to the PIA. The NRA is age 66 for those born in 1943–54. It gradually increases to age 67 for those born in 1960 or later. A higher exempt amount applies in the year in which a person attains NRA, but only for earnings in months before such attainment. A lower exempt amount applies at all other ages below NRA. Section 203(f)(8)(B) of the Act provides formulas for determining the monthly exempt amounts. The annual exempt amounts are exactly 12 times the monthly amounts.

For beneficiaries who attain NRA in the year, we withhold $1 in benefits for every $3 of earnings over the annual exempt amount for months before NRA. For all other beneficiaries under NRA, we withhold $1 in benefits for every $2 of earnings over the annual exempt amount.

*Computation*

Under the formula that applies to beneficiaries attaining NRA after 2025, the lower monthly exempt amount for 2025 is the larger of: (1) the 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 2023 to that for 1992; or (2) the 2024 monthly exempt amount ($1,860). If the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

Under the formula that applies to beneficiaries attaining NRA in 2025, the higher monthly exempt amount for 2025 is the larger of: (1) the 2002 monthly exempt amount multiplied by the ratio of the national average wage index for 2023 to that for 2000; or (2) the 2024 monthly exempt amount ($4,960). If the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

*Lower Exempt Amount*

Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio of the national average wage index for 2023 ($66,621.80) to that for 1992 ($22,935.42) produces $1,946.19. We round this to $1,950. Because $1,950 exceeds the current exempt amount of $1,860, the lower retirement earnings test monthly exempt amount is $1,950 for 2025. The lower annual exempt amount is $23,400 under the retirement earnings test.

*Higher Exempt Amount*

Multiplying the 2002 retirement earnings test monthly exempt amount of $2,500 by the ratio of the national average wage index for 2023 ($66,621.80) to that for 2000 ($32,154.82) produces $5,179.77. We round this to $5,180. Because $5,180 exceeds the current exempt amount of $4,960, the higher retirement earnings test monthly exempt amount is $5,180 for 2025. The higher annual exempt amount is $62,160 under the retirement earnings test.

**Primary Insurance Amount Formula**

*General*

The Social Security Amendments of 1977 provided a method for computing benefits that generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's average indexed monthly earnings (AIME) to compute the PIA. We adjust the formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or index, a worker's earnings to reflect the change in the general wage levels that occurred during the worker's years of employment. Such indexing ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during their working lifetime. To compute the AIME, we first determine the required number of years of earnings. We then select the number of years with the highest indexed earnings, add the indexed earnings for those years, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the AIME.

*Computing the PIA*

The PIA is the sum of three separate percentages of portions of the AIME. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount above $1,085.

We call the dollar amounts in the formula governing the portions of the AIME the bend points of the formula. Therefore, the bend points for 1979 were $180 and $1,085.

To obtain the bend points for 2025, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2023 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of $180 and $1,085 by the ratio of the national average wage index for 2023 ($66,621.80) to that for 1977 ($9,779.44) produces the amounts of $1,226.24 and $7,391.49. We round these to $1,226 and $7,391. Therefore, the portions of the AIME to be used in 2025 are the first $1,226, the amount between $1,226 and $7,391, and the amount above $7,391.

Therefore, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2025, or who die in 2025 before becoming eligible for benefits, their PIA will be the sum of:

(a) 90 percent of the first $1,226 of their AIME, plus

(b) 32 percent of their AIME between $1,226 and $7,391, plus

(c) 15 percent of their AIME above $7,391.

We round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment are stated in section 215(a) of the Act.

**Maximum Benefits Payable to a Family**

*General*

The 1977 amendments continued the policy of limiting the total monthly benefits that a worker's family may receive based on the worker's PIA. Those amendments also continued the relationship between maximum family benefits and PIAs but changed the method of computing the maximum benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a worker with a determined disability. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For workers with determined disabilities who are initially entitled to disability benefits before July 1980 or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

*Computing the Old-Age and Survivor Family Maximum*

The formula used to compute the family maximum is similar to that used to compute the PIA. It involves computing the sum of four separate percentages of portions of the worker's PIA. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount above $433. We refer to such dollar amounts in the formula as the bend points of the family-maximum formula.

To obtain the bend points for 2025, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2023 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of $230, $332, and $433 by the ratio of the national average wage index for 2023 ($66,621.80) to that for 1977 ($9,779.44) produces the amounts of $1,566.86, $2,261.73, and $2,949.78. We round these amounts to $1,567, $2,262, and $2,950. Therefore, the portions of the PIAs to be used in 2025 are the first $1,567, the amount between $1,567 and $2,262, the amount between $2,262 and $2,950, and the amount above $2,950.

So, for the family of a worker who becomes age 62 or dies in 2025 before age 62, we compute the total benefits payable to them so that it does not exceed:

(a) 150 percent of the first $1,567 of the worker's PIA, plus

(b) 272 percent of the worker's PIA between $1,567 and $2,262, plus

(c) 134 percent of the worker's PIA between $2,262 and $2,950, plus

(d) 175 percent of the worker's PIA above $2,950.

We then round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment are stated in section 203(a) of the Act.

**Quarter of Coverage Amount**

*General*

The earnings required for a quarter of coverage in 2025 is $1,810. A quarter of coverage is the basic unit for determining if a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with (1) a quarter of coverage for each quarter in which they were paid wages of $50 or more or (2) four quarters of coverage for every tax year in which they earned $400 or more of self-employment income. Beginning in 1978, employers generally report wages annually instead of quarterly. With the change to yearly reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 up to a maximum of four quarters of coverage for the year. The amendment also provided a formula for years after 1978.

*Computation*

Under the prescribed formula, the quarter of coverage amount for 2025 is the larger of: (1) the 1978 amount of $250 multiplied by the ratio of the national average wage index for 2023 to that for 1976; or (2) the current amount ($1,730). Section 213(d) provides that if the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

*Quarter of Coverage Amount*

Multiplying the 1978 quarter of coverage amount ($250) by the ratio of the national average wage index for 2023 ($66,621.80) to that for 1976 ($9,226.48) produces $1,805.18. We then round this amount to $1,810. Because $1,810 exceeds the current amount of $1,730, the quarter of coverage amount is $1,810 for 2025.

**Old-Law Contribution and Benefit Base**

*General*

The old-law contribution and benefit base for 2025 is $130,800. This base would have been effective under the Act without the enactment of the 1977 amendments.

The old-law contribution and benefit base is used by:

(a) the Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments that correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (section 230(d) of the Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to compute benefits for people who are also eligible and receiving pensions based on employment not covered under section 210 of the Act. We credit a year of coverage, for this purpose only, for each year in which earnings equal or exceed 25 percent of the old-law base.

*Computation*

The old-law contribution and benefit base is the larger of: (1) the 1994 old-law base ($45,000) multiplied by the ratio of the national average wage index for 2023 to that for 1992; or (2) the current old-law base ($125,100). If the resulting amount is not a multiple of $300, we round it to the nearest multiple of $300.

*Old-Law Contribution and Benefit Base Amount*

Multiplying the 1994 old-law contribution and benefit base ($45,000) by the ratio of the national average wage index for 2023 ($66,621.80) to that for 1992 ($22,935.42) produces $130,714.02. We round this amount to $130,800. Because $130,800 exceeds the current amount of $125,100, the old-law contribution and benefit base is $130,800 for 2025.

**Substantial Gainful Activity Amounts**

*General*

A finding of disability under titles II and XVI of the Act requires that a person, except for a child with a disability determined under title XVI, be unable to engage in SGA. A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies the formula for determining the SGA amount for statutorily blind individuals under title II while our regulations (20 CFR 404.1574 and 416.974) specify the formula for determining the SGA amount for non-blind individuals with a determined disability.

*Computation*

The monthly SGA amount for statutorily blind individuals under title II for 2025 is the larger of: (1) the amount for 1994 multiplied by the ratio of the national average wage index for 2023 to that for 1992; or (2) the amount for 2024. The monthly SGA amount for non-blind individuals with a determined disability for 2025 is the larger of: (1) the amount for 2000 multiplied by the ratio of the national average wage index for 2023 to that for 1998; or (2) the amount for 2024. In either case, if the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

*SGA Amount for Statutorily Blind Individuals*

Multiplying the 1994 monthly SGA amount for statutorily blind individuals ($930) by the ratio of the national average wage index for 2023 ($66,621.80) to that for 1992 ($22,935.42) produces $2,701.42. We then round this amount to $2,700. Because $2,700 exceeds the current amount of $2,590, the monthly SGA amount for statutorily blind individuals is $2,700 for 2025.

*SGA Amount for Non-Blind Individuals Who Have a Determined Disability*

Multiplying the 2000 monthly SGA amount for non-blind individuals with a determined disability ($700) by the ratio of the national average wage index for 2023 ($66,621.80) to that for 1998 ($28,861.44) produces $1,615.83. We then round this amount to $1,620. Because $1,620 exceeds the current amount of $1,550, the monthly SGA amount for non-blind individuals with a determined disability is $1,620 for 2025.

**Trial Work Period Earnings Threshold**

*General*

During a trial work period of 9 months in a rolling 60-month period, a beneficiary receiving Social Security disability benefits may test their ability to work and still receive monthly benefit payments. To be considered a trial work period month, earnings must be over a certain level. In 2025, any month in which earnings exceed $1,160 is considered a month of services for an individual's trial work period.

*Computation*

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b). Monthly earnings in 2025, used to determine whether a month is part of a trial work period, is the larger of: (1) the amount for 2001 ($530) multiplied by the ratio of the national average wage index for 2023 to that for 1999; or (2) the amount for 2024. If the resulting amount is not a multiple of $10, we round it to the nearest multiple of $10.

*Trial Work Period Earnings Threshold Amount*

Multiplying the 2001 monthly earnings threshold ($530) by the ratio of the national average wage index for 2023 ($66,621.80) to that for 1999 ($30,469.84) produces $1,158.84. We then round this amount to $1,160. Because $1,160 exceeds the current amount of $1,110, the monthly earnings threshold is $1,160 for 2025.

**Domestic Employee Coverage Threshold**

*General*

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2025, this threshold is $2,800. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

*Computation*

Under the formula, the domestic employee coverage threshold for 2025 is equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2023 to that for 1993. If the resulting amount is not a multiple of $100, we round it to the next lower multiple of $100.

*Domestic Employee Coverage Threshold Amount*

Multiplying the 1995 domestic employee coverage threshold ($1,000) by the ratio of the national average wage index for 2023 ($66,621.80) to that for 1993 ($23,132.67) produces $2,879.99. We then round this amount to $2,800. Therefore, the domestic employee coverage threshold amount is $2,800 for 2025.

**Election Official and Election Worker Coverage Threshold**

*General*

The minimum amount an election official and election worker must earn so the earnings are covered under Social Security or Medicare is the election official and election worker coverage threshold. For 2025, this threshold is $2,400. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

*Computation*

Under the formula, the election official and election worker coverage threshold for 2025 is equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 2023 to that for 1997. If the amount we determine is not a multiple of $100, we round it to the nearest multiple of $100.

*Election Official and Election Worker Coverage Threshold Amount*

Multiplying the 1999 coverage threshold amount ($1,000) by the ratio of the national average wage index for 2023 ($66,621.80) to that for 1997 ($27,426.00) produces $2,429.15. We then round this amount to $2,400. Therefore, the election official and election worker coverage threshold amount is $2,400 for 2025.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income)

The Commissioner of the Social Security Administration, Martin O'Malley, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is a Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

**Faye I. Lipsky,**

*Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.*

[FR Doc. 2024–24871 Filed 10–24–24; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2024–0071]**

### Agency Information Collection Activities: Request for Comments for a New Information Collection

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by December 24, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number 0071 by any of the following methods:

*Website:* For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.*

Follow the online instructions for submitting comments.

*Fax:* 1–202–493–2251.

*Mail:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

*Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Derek Constable, (202) 366–4606, Office of Bridges and Structures, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue Southeast, Washington, DC 20590. Office hours are from 7 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* FY24 Competitive Highway Bridge Program (CHBP).

*Background:* The Consolidated Appropriations Act, 2024, Public Law 118–42, section 126, March 9, 2024, provides $250 million to be awarded by the Federal Highway Administration (FHWA) for a Competitive Highway Bridge Program.

Eligible applicants are States that have a population density of less than 115 individuals per square mile and less than 26% of total bridges classified as in good condition; or greater than or equal to 5.2% of total bridges classified in poor condition. States meeting the population criteria and that have greater than 14% of total bridges classified as in poor condition are eligible to receive no less than $32,500,000. The funds shall be used for highway bridge replacement or rehabilitation projects on public roads that demonstrate cost savings by bundling multiple highway bridge projects. Population density is calculated based on the latest available data from the decennial census conducted under section 14(a) of title 13, United States Code. Percentages of bridge counts are based on the National Bridge Inventory as of June 2023. (Consolidated Appropriations Act, 2024, Pub. L. 118–42, sec. 126, March 9, 2024.)

Population density is calculated based on the latest available data on March 9, 2024, the date which the Consolidated Appropriations Act, 2024, became law. Resident population density is used. The percentages are based on number of bridges. Funds shall be obligated by September 30, 2027.

Based on these requirements, eligible applicants are the State Departments of Transportation (State DOTs) of Alaska, Arkansas, Iowa, Kansas, Kentucky, Louisiana, Maine, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Utah, West Virginia, Wisconsin, and Wyoming. State DOTs that are eligible to receive no less than $32,500,000 include Iowa, Maine, South Dakota, and West Virginia.

Awards will be made only to a State DOT. Applications by non-State Dot entities must be submitted by the State DOT in which they are located.

Each application will require the following project narrative:

- A discussion and supporting information that describes the project description, location, and project parties,
- a discussion and supporting information on proposed project funding including the sources and availability of funds to supplement a grant award and to supplement the Federal share,
- a discussion and supporting information on how the project meets the CHBP merit criteria,
- a discussion and supporting information on project readiness and environmental status to include discussion and supporting information on technical feasibility, project schedule, status of required approvals including environmental permits and reviews, status of State, metropolitan, and local planning document approvals, and an assessment of project risks and mitigation strategies.

Each applicant selected for CHBP grant funding will be required to execute a project agreement which is a type of grant agreement for administration of funds to a State DOT in FHWA's Fiscal Management System. In the agreement, the recipient must describe the project that FHWA agreed to fund, which is the project that was described in the application or a reduced-scope version of that project. The agreement also includes project schedule milestones, a budget, and project-related goals.

Each applicant selected for CHBP grant funding (awardee) will be required to collect and report project monitoring information. This will include information on the project's performance using performance indicators supplied by FHWA that relate to CHBP goals. Performance reporting continues for several years after project construction is completed. Each awardee will submit progress and monitoring reports on a quarterly basis until completion of the project as determined by FHWA. This information will be used to monitor awardees' use of Federal funds, ensuring accountability and financial transparency.

These requirements will be further detailed in the Notice of Funding Opportunity.

This notice seeks comments on the proposed information collection, which will collect information necessary to support the evaluation of applications and selection of project awards, the funding agreement negotiation stage for awards, and project monitoring.

*Respondents:* Any eligible State DOT can submit as many as three applications. A limit of three applications will be specified in the

Notice of Funding Opportunity. There are 18 eligible States.

*Frequency:* The information will be collected once.

*Estimated Average Burden per Response:* 100 hours per respondent per application. In addition, each awarded project is estimated to require 60 hours for negotiating and signing the funding agreement and project monitoring reporting including performance indicator and financial monitoring. FHWA is estimates that project monitoring will occur for four years.

*Estimated Total Burden Hours:* It is estimated that the respondents will complete approximately 27 applications for an estimated total of 2,700 burden hours. In addition, it is estimated that there will be 18 awarded projects for an estimated total of 1,080 additional burden hours.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on October 22, 2024.

**Jazmyne Lewis,**

*Information Collection Officer.*

[FR Doc. 2024–24845 Filed 10–24–24; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2024–0025]**

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 12 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on October 21, 2024. The exemptions expire on October 21, 2026.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

#### I. Public Participation

*A. Viewing Comments*

To view comments go to *www.regulations.gov.* Insert the docket number, (FMCSA–2024–0025) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Older-Newer),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

*B. Privacy Act*

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

#### II. Background

On September 16, 2024, FMCSA published a notice announcing receipt of applications from 12 individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (89 FR 75634). The public comment period ended on October 16, 2024, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

#### III. Discussion of Comments

FMCSA received no comments in this proceeding.

#### IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel. The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. A summary of each applicant's seizure history was discussed in the September 16, 2024, **Federal Register** notice (89 FR 75634) and will not be repeated in this notice.

These 12 applicants have been seizure-free over a range of 20 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

## V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5T; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

## VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

## VII. Conclusion

Based upon its evaluation of the 12 exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition in § 391.41(b)(8), subject to the requirements cited above:

Millie Baker (MI)

Todd Burrey (OH)

Eric Garcia (CA)

Marcel Gore (DE)

Breanna Kersey-Evans (IN)

Hyun Kim (NJ)

Dylan Kortan (MN)

Michael Malone (CT)

Joe Delgado-Orozco (IL)

Vincent Perry (WA)

Michael Pesino (CT)

Michael Prichard (MT)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2024–24853 Filed 10–24–24; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2014–0212; FMCSA–2015–0322; FMCSA–2016–0007; FMCSA–2018–0050; FMCSA–2018–0052; FMCSA–2018–0053; FMCSA–2020–0050; FMCSA–2020–0051]**

### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 10 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

**DATES:** Each group of renewed exemptions are applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before November 25, 2024.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2014–0212, Docket No. FMCSA–2015–0322, Docket No. FMCSA–2016–0007, Docket No. FMCSA–2018–0050, Docket No. FMCSA–2018–0052, Docket No. FMCSA–2018–0053, Docket No. FMCSA–2020–0050, or Docket No. FMCSA–2020–0051 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2014–0212, FMCSA–2015–0322, FMCSA–2016–0007, FMCSA–2018–0050, FMCSA–2018–0052, FMCSA–2018–0053, FMCSA–2020–0050, or FMCSA–2020–0051) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.

• *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.

• *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

### *A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2014–0212, Docket No. FMCSA–2015–0322, Docket No. FMCSA–2016–0007, Docket No. FMCSA–2018–0050, Docket No. FMCSA–2018–0052, Docket No. FMCSA–2018–0053, Docket No. FMCSA–2020–0050, or Docket No. FMCSA–2020–0051), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2014–0212, FMCSA–2015–0322, FMCSA–2016–0007, FMCSA–2018–0050, FMCSA–2018–0052, FMCSA–2018–0053, FMCSA–2020–0050, or FMCSA–2020–0051) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

### *B. Viewing Comments*

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2014–0212, FMCSA–2015–0322, FMCSA–2016–0007, FMCSA–2018–0050, FMCSA–2018–0052, FMCSA–2018–0053, FMCSA–2020–0050, or FMCSA–2020–0051) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

### *C. Privacy Act*

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

## II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The 10 individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

## III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

## IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 10 applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The 10 drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of November and are discussed below. As of November 15, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Kevin Beamon (NY)
Henry Counts (MD)
Terry Hamby (NC)
Gerald Klein (ID)
Thomas Kline (PA)
Jeffrey T. Lang (PA)
Troy Nichols (TX)
Thomas Ork (NY)

The drivers were included in docket number, FMCSA–2015–0322, FMCSA–2016–0007, FMCSA–2018–0050, FMCSA–2018–0052, FMCSA–2018–0053, FMCSA–2020–0050, or FMCSA–2020–0051. Their exemptions are applicable as of November 15, 2024 and will expire on November 15, 2026.

As of November 27, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers: Billy Hunter (KY); and Devyn Roberts (KY).

The drivers were included in docket number FMCSA–2020–0051. Their exemptions are applicable as of November 27, 2024 and will expire on November 27, 2026.

## V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

## VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

## VII. Conclusion

Based on its evaluation of the 10 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2024–24854 Filed 10–24–24; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2024–0015]**

### Qualification of Drivers; Exemption Applications; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 13 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on October 21, 2024. The exemptions expire on October 21, 2026.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

*A. Viewing Comments*

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2024–0015) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Older-Newer),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

*B. Privacy Act*

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

## II. Background

On September 16, 2024, FMCSA published a notice announcing receipt of applications from 13 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (89 FR 75633). The public comment period ended on October 16, 2024, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater

than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

## III. Discussion of Comments

FMCSA received no comments in this proceeding.

## IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on relevant scientific information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce, the Agency finds the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

## V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must report any crashes or accidents as defined in § 390.5T; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

## VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

## VII. Conclusion

Based upon its evaluation of the 13 exemption applications, FMCSA exempts the following drivers from the hearing standard; in § 391.41(b)(11), subject to the requirements cited above:

Matthew Adams (IN)
Calvin Anderson (WI)
Vanessa Arnao (VA)
Roxanne Blind (TX)
Wayne Haffner (NC)
David Hollandsworth (IN)
Mara Jean Francois (CT)
Abdifatah Jimale (MN)
Kang Lin (NY)
Manasseh O'Brien (NY)
Joshua Ofiu (CA)
Lee Smith (ID)
Edwin Toscano (GA)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2024–24851 Filed 10–24–24; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2013–0124; FMCSA–2014–0104; FMCSA–2015–0326; FMCSA–2015–0329; FMCSA–2017–0058; FMCSA–2017–0059; FMCSA–2017–0060; FMCSA–2018–0135; FMCSA–2020–0027; FMCSA–2022–0035; FMCSA–2022–0036]**

### Qualification of Drivers; Exemption Applications; Hearing

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 15 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below. Comments must be received on or before November 25, 2024.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2013–0124, Docket No. FMCSA–2014–0104, Docket No. FMCSA–2015–0326, Docket No. FMCSA–2015–0329, Docket No. FMCSA–2017–0058, Docket No. FMCSA–2017–0059, Docket No.

FMCSA–2017–0060, Docket No. FMCSA–2018–0135, Docket No. FMCSA–2020–0027, Docket No. FMCSA–2022–0035, or Docket No. FMCSA–2022–0036 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2013–0124, FMCSA–2014–0104, FMCSA–2015–0326, FMCSA–2015–0329, FMCSA–2017–0058, FMCSA–2017–0059, FMCSA–2017–0060, FMCSA–2018–0135, FMCSA–2020–0027, FMCSA–2022–0035, or FMCSA–2022–0036) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

### *A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2013–0124, Docket No. FMCSA–2014–0104, Docket No. FMCSA–2015–0326, Docket No. FMCSA–2015–0329, Docket No. FMCSA–2017–0058, Docket No. FMCSA–2017–0059, Docket No. FMCSA–2017–0060, Docket No. FMCSA–2018–0135, Docket No. FMCSA–2020–0027, Docket No. FMCSA–2022–0035, or Docket No. FMCSA–2022–0036), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2013–0124, FMCSA–2014–0104, FMCSA–2015–0326, FMCSA–2015–0329, FMCSA–2017–0058, FMCSA–2017–0059, FMCSA–2017–0060, FMCSA–2018–0135, FMCSA–2020–0027, FMCSA–2022–0035, or FMCSA–2022–0036) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

### *B. Viewing Comments*

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2013–0124, FMCSA–2014–0104, FMCSA–2015–0326, FMCSA–2015–0329, FMCSA–2017–0058, FMCSA–2017–0059, FMCSA–2017–0060, FMCSA–2018–0135, FMCSA–2020–0027, FMCSA–2022–0035, or FMCSA–2022–0036) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

### *C. Privacy Act*

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

## II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

The 15 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

## III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of

the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

**IV. Basis for Renewing Exemptions**

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 15 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 15 drivers in this notice remain in good standing with the Agency. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of November and are discussed below.

As of November 25, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Stephen Arellano (CO)
Jimmy Benavides (TX)
Robert Burnett (AZ)
Leslie Crump (MI)
Clark Dobson (CA)
Tonnette Garza (FL)
Paul Mansfield (KS)
Michael Murrah (GA)
Joseph Woodle (KY)

The drivers were included in docket number FMCSA–2013–0124, FMCSA–2015–0326, FMCSA–2015–0329, FMCSA–2017–0058, FMCSA–2017–0059, FMCSA–2020–0027, FMCSA–2022–0035, or FMCSA–2022–0036. Their exemptions are applicable as of November 25, 2024 and will expire on November 25, 2026.

As of November 30, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following six individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Deontae Blanks (TX)
Alan Bridgeford (AZ)
Michael Dohanish (OH)
Bruce Dunn (LA)
Teela Gilmore (GA)
Adalberto Rodriguez (NY)

The drivers were included in docket number FMCSA–2014–0104, FMCSA–2017–0058, FMCSA–2017–0060, or FMCSA–2018–0135. Their exemptions are applicable as of November 30, 2024 and will expire on November 30, 2026.

**V. Conditions and Requirements**

The exemptions are extended subject to the following conditions: (1) each driver must report any crashes or accidents as defined in § 390.5T; and (2) report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

**VI. Preemption**

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

**VII. Conclusion**

Based upon its evaluation of the 15 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2024–24852 Filed 10–24–24; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Community Reinvestment Act Regulation; Correction

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice; correction.

**SUMMARY:** The OCC published a document in the **Federal Register** of October 21, 2024, concerning request for comments as part of its continuing effort to reduce paperwork and respondent burden, as required by the Paperwork Reduction Act of 1995 (PRA). The document contained an incorrect estimated number of respondents.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

**SUPPLEMENTARY INFORMATION:**

**Correction**

In the **Federal Register** of October 21, 2024, in FR Doc. 2024–24194, on page 84248, in the first column, correct the ''Estimated Number of Respondents'' to read:

*Estimated Number of Respondents:* 2,181.[5]

Dated: October 21, 2024.

**Patrick T. Tierney,**

*Assistant Director, Office of the Comptroller of the Currency.*

[FR Doc. 2024–24821 Filed 10–24–24; 8:45 am]

BILLING CODE 4810–33–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Internal Revenue Service Advisory Council Meeting

**AGENCY:** Internal Revenue Service, Department of Treasury.

**ACTION:** Notice of public meeting.

[5] The *Estimated Number of Respondents* and *Estimated Total Annual Burden* were updated to (1) include Federally insured branches, (2) confirm the use of up-to-date bank asset sizes, and (3) make other clarifying revisions to ensure accurate estimates.

**SUMMARY:** The Internal Revenue Service Advisory Council will hold a public meeting.

**DATES:** Wednesday, November 20, 2024.

**ADDRESSES:** 1111 Constitution Ave. NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Anna Millikan, Office of National Public Liaison, at 202–317–6564 or send an email to *PublicLiaison@irs.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act, the Internal Revenue Service announces the Internal Revenue Service Advisory Council (IRSAC) will hold a public meeting on Wednesday, November 20, 2024, from 9 a.m. to 12:30 p.m. eastern.

The meeting will be held in person at 1111 Constitution Ave. NW, Washington, DC. Members of the public planning to attend should register by November 18 by contacting Anna Millikan at 202–317–6564 or sending an email to *PublicLiaison@irs.gov.*

Issues to be discussed may include, but are not limited to: IRS Funding; Strategic Operating Plan Assessment and Analysis; Reporting of Level of Service Data; Hiring; Online Accounts Promotion; Online Accounts Technical Support; Capabilities for Business Online Tax Accounts; Authorization Techniques to Enable Businesses to Utilize Online Accounts; Identity Theft Prevention and Resolution; PTIN Database and Renewal System; Oversight of Return Preparers; Broadening Continuing Education for Enrolled Agents to Include Practice Management Topics; Process for Issuing New and Revised Forms and Obtaining Comments; Worker Classification Clarifications Needed Due to New Department of Labor Test; SECURE Act Request for Certain IRA Tax Reporting Guidance; SECURE 2.0 Act Qualified Tuition Program Transfer to Roth IRA; Businesses Need Support from IRS Large Corporation Representatives; Form 15397, Application for Extension of Time to Furnish Recipient Statements, Needs Updating to Include Additional Reasons; Electronic Recipient Statement for Form 1099–DA, Digital Asset Proceeds From Broker Transactions; Streamline E-Filing of Forms 1042; Streamlining LB&I Examination Procedures; Processing of Net Operating Loss Carryback Claims Under the CARES Act of 2020 and Erroneously Rejected Claims; Revising and Expanding the Streamlined Domestic Offshore Procedures; Simplify Reporting for Individuals Electing to be Taxed Under Section 962 at Corporate Rates on Income Inclusions; Penalties, Defenses to Penalties, and Tools to Resolve Penalties; Educating the Public on the Revenue Officer Position; Disaster Assistance to Improve the Taxpayer Experience; Increasing Tax Parity for Tribal Government Issued Tax Exempt Bonds; TEOS and E.O. BMF Improvements; Improving Communications and Data Sharing Between IRS and Various State Agencies; Section 401(a) Individually Designed Plans Determination Letter Program; Template for Exempt Organizations to Seek Penalty Abatement for Late Filed Returns; Providing Submission Acknowledgements to Exempt Organization Filers; Voicebots and Chatbots; Volunteer Income Tax Assistance (VITA) for the Gig Economy; Alternatives to Wet Ink Signatures for Forms 2848 and 8821; and Expanding and Accelerating Transcript Access. Last-minute agenda changes may preclude advance notice.

Should you wish the IRSAC to consider a written statement germane to the Council's work, file the statement by sending an email to *PublicLiaison@irs.gov* by November 15, 2024.

Dated: October 21, 2024.

**John A. Lipold,**

*Designated Federal Official, Office of National Public Liaison, Internal Revenue Service.*

[FR Doc. 2024–24815 Filed 10–24–24; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Comment Request for Form 8912

**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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 13614–C series and Form 13614–NR, Intake/Interview & Quality Review Sheet.

**DATES:** Comments should be received on or before November 25, 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:* Credit to Holders of Tax Credit Bonds.

*OMB Number:* 1545–2025.

*Form Number:* 8912.

*Abstract:* Form 8912, Credit to Holders of Tax Credit Bonds, was developed to carry out the provisions of Internal Revenue Code sections 54 and 1400N(l). The form provides a means for the taxpayer to claim the credit for the following tax credit bonds: Clean renewable energy bond (CREB), New clean renewable energy bond (NCREB), Qualified energy conservation bond (QECB), Qualified zone academy bond (QZAB), Qualified school construction bond (QSCB), and Build America bond (BAB).

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, farms.

*Estimated Number of Respondents:* 50.

*Estimated Time per Response:* 13 hours, 47 minutes.

*Estimated Total Annual Burden Hours:* 689 hours.

*Authority:* 44 U.S.C. 3501 *et seq.*

**Melody Braswell,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2024–24874 Filed 10–24–24; 8:45 am]

**BILLING CODE 4830–01–P**

## UNIFIED CARRIER REGISTRATION PLAN

### Sunshine Act Meetings

**TIME AND DATE:** October 24, 2024, 12:00 p.m. to 3:00 p.m., Eastern Time.

**PLACE:** The meeting will take place at the Atlanta Marriott Northwest at Galleria 200 Interstate North Parkway, Atlanta, GA 30339. The meeting will also be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll), Meeting ID: 959 2582 0112, to listen and participate in this

meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJEkdeygrDsrG9aZGuO8EERziWj3QruXVtwg.*

**STATUS:** Portions of this meeting will be open to the public. A portion of this meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** The Unified Carrier Registration Plan Board of Directors (the ''Board'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

**Proposed Agenda**

**Portions Open to the Public**

*I. Welcome and Call to Order—UCR Board Chair*

The UCR Board Chair will welcome attendees, call the meeting to order, call roll for the Board, confirm the presence of a quorum, and facilitate self-introductions.

*II. Verification of Publication of Meeting Notice—UCR Executive Director*

The UCR Executive Director will verify publication of the meeting notice on the UCR website and distribution to the UCR contact list via email, followed by subsequent publication of the notice in the **Federal Register**.

*III. Review and Approval of Board Agenda—UCR Board Chair*

For Discussion and Possible Board Action

The proposed Agenda will be reviewed. The Board will consider action to adopt.

Ground Rules

➢ Board actions taken only in designated areas on the agenda.

*IV. Approval of Minutes of the August 15, 2024, UCR Board Meeting—UCR Board Chair*

For Discussion and Possible Board Action

Draft Minutes from the August 15, 2024, UCR Board meeting will be reviewed. The Board will consider action to approve.

*V. Report of FMCSA—FMCSA Representative*

The Federal Motor Carrier Safety Administration (FMCSA) will provide a report on any relevant agency activity, including the status of the FMCSA's Notice of Proposed Rulemaking concerning the 2025 UCR Registration Fee.

*VI. Subcommittee Reports*

Audit Subcommittee—UCR Audit Subcommittee Chair

Require all UCR Participating States To Utilize the Address of the UCR's National Registration System in Idaho Falls, ID, for the Remittance of All Mailed UCR Registration Fees—UCR Audit Subcommittee Chair

For Discussion and Possible Board Action

The Audit Subcommittee Chair will discuss a proposal to require all participating Sates to utilize the address of the UCR's National Registration System in Idaho Falls, ID, for the remittance of all mailed UCR registration fees. The Board may consider a proposal to require all UCR participating states to utilize the address of the UCR's National Registration System in Idaho Falls, ID, for the remittance of all mailed UCR registration fees.

Dispute Resolution Subcommittee—UCR Dispute Resolution Subcommittee Chair

No report.

Education and Training Subcommittee—UCR Education and Training Subcommittee Chair

The UCR Education and Training Subcommittee Chair will discuss the development of key projects. The projects that will be discussed include the development of the educational audit certificate program, the optimization and redesign of the website, and the creation of a video explaining the purpose and value of the UCR Plan and the National Registration System it operates.

Enforcement Subcommittee—UCR Enforcement Subcommittee Chair

No report.

Finance Subcommittee—UCR Finance Subcommittee Chair and UCR Depository Manager

A. 2022 Financial Audit Recommendations—UCR Finance Subcommittee Chair and UCR Depository Manager

For Discussion and Possible Board Action

The UCR Finance Subcommittee Chair and the UCR Depository Manager will provide an update on UCR's 2022 Financial Audit recommendations made by the external auditor. The Board will consider whether to adopt the recommendations made by the external auditor.

B. The Finance Subcommittee Recommendation to the UCR Board for the Selection of an External Auditor To Audit the Unified Carrier Registration Plan Depository for the Year Ended December 31, 2023—UCR Finance Subcommittee Chair and UCR Depository Manager

For Discussion and Possible Board Action

The UCR Finance Subcommittee Chair and the UCR Depository Manager will provide an update on the selection of an audit firm to conduct the 2023 external audit. The UCR Finance Subcommittee recommends the appointment of Williams Benator and Libby, LLP (''WBL'') to serve as the external auditors for the 2023 financial year. The Board may take action to engage the services of an external auditor for the Unified Carrier Registration Plan Depository for the year ended December 31, 2023.

Industry Advisory Subcommittee—UCR Industry Advisory Subcommittee Chair

No report.

*VII. Contractor Reports—UCR Board Chair*

UCR Executive Director Report

The UCR Executive Director will provide a report covering his recent activity for the UCR Plan including any changes in the dates of UCR meetings in 2024.

UCR Administrator Report (Kellen)

The UCR Chief of Staff will provide a management update covering recent activity for the Depository, Operations, and Communications.

DSL Transportation Services, Inc.

DSL Transportation Services, Inc. will report on the latest data from the FARs program, Tier 5 and 6 unregistered motor carriers, and other matters.

Seikosoft

Seikosoft will provide an update on its recent/new activity related to the UCR's National Registration System.

**Portion Closed to the Public**

Pursuant to the Government in the Sunshine Act at 5 U.S.C. 552b(d)(1), the Board will now vote to approve closing the portion of the meeting dealing with item VIII on the agenda.

UCR's Legal Counsel has advised that the Board may close this portion of this meeting pursuant to Government in the Sunshine Act exemptions (9)(B) and (10). By approving this action, the Board determines that public participation would likely disclose information for

which premature disclosure would likely frustrate implementation of a proposed agency action and/or specifically concern the discussion of information, the premature disclosure of which would likely negatively impact the agency's participation in an ongoing civil action or proceeding. Therefore, by approving this action, the Board is invoking exemptions (9)(B) and (10) to close this portion of the meeting (5 U.S.C. 552b(c)(9)(B) and (10)).

A copy of the vote on the closure of this portion of this meeting will be made publicly available on the Unified Carrier Registration Plan website within one day of the vote taken herein (*https://plan.ucr.gov*).

*VIII. Discussion and Possible UCR Board Action Concerning the Federal Trademark Cancellation Proceeding Initiated by the Small Business in Transportation Coalition, Inc. (''SBTC'') Before the Trademark Trial and Appeal Board (''TTAB'')—UCR Legal Counsel*

For Discussion and Possible Action

UCR Legal Counsel will discuss the federal Trademark Cancellation Proceeding initiated by the SBTC before the TTAB. UCR Legal Counsel will also discuss the legal and financial options available to the UCR in responding to the letter received on September 5, 2024, from legal counsel to the SBTC proposing settlement terms for the TTAB proceeding. The Board may vote to authorize legal and/or financial responses to the September 5, 2024, settlement letter.

**Portions Open to the Public**

*IX. UCR Legal Counsel Will Announce Any Action Taken by the UCR Board*

*X. Other Business—UCR Board Chair*

The UCR Board Chair will call for any other business, old or new, from the floor.

*XI. Adjournment—UCR Board Chair*

The UCR Board Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, October 17, 2024, at: *https://plan.ucr.gov.*

*Contact Person for More Information:* Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

**Alex B. Leath,**

*Chief Legal Officer, Unified Carrier Registration Plan.*

[FR Doc. 2024–24933 Filed 10–23–24; 11:15 am]

**BILLING CODE 4910–YL–P**


# FEDERAL REGISTER

Vol. 89 Friday,
No. 207 October 25, 2024

Part II

## Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reclassification of the Red-Cockaded Woodpecker From Endangered to Threatened With a Section 4(d) Rule; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R4–ES–2019–0018; FXES1113090FEDR–223–FF09E22000]**

**RIN 1018–BE09**

# Endangered and Threatened Wildlife and Plants; Reclassification of the Red-Cockaded Woodpecker From Endangered to Threatened With a Section 4(d) Rule

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service or USFWS), are reclassifying the red-cockaded woodpecker (*Dryobates* (= *Picoides*) *borealis*) from endangered to threatened (*i.e.,* downlisting it) under the Endangered Species Act of 1973, as amended (Act). This action is based on our evaluation of the best available scientific and commercial information, which indicates that the species' status has improved such that it is not currently in danger of extinction throughout all or a significant portion of its range, but that it is still likely to become so in the foreseeable future. We also finalize protective regulations under the authority of section 4(d) of the Act that are necessary and advisable to provide for the conservation of the red-cockaded woodpecker. In addition, we correct the List of Endangered and Threatened Wildlife to reflect that Picoides is not the current scientifically accepted generic name for this species.

**DATES:** This rule is effective November 25, 2024.

**ADDRESSES:** This final rule is available on the internet at *https://www.regulations.gov.* Comments and materials we received are available for public inspection at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2019–0018.

*Availability of supporting materials:* Supporting materials we used in preparing this rule, such as the 5-year review, the recovery plan, and the species status assessment report, are available on the Service's website at *https://fws.gov/species/red-cockaded-woodpecker-dryobates-borealis,* at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2019–0018, or both.

**FOR FURTHER INFORMATION CONTACT:** Nicole Rankin, Manager Division of Conservation and Classification, U.S. Fish and Wildlife Service, Southeast Regional Office, 1875 Century Boulevard, Atlanta, GA 30345; telephone 404–679–7089. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

## Executive Summary

*Why we need to publish a rule.* Under the Act, a species warrants reclassification from endangered to threatened if it no longer meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range). The red-cockaded woodpecker is listed as endangered, and we are reclassifying (downlisting) it as threatened. We have determined the red-cockaded woodpecker does not meet the Act's definition of an endangered species, but it does meet the definition of a threatened species (likely to become an endangered species throughout all or a significant portion of its range within the foreseeable future). Reclassifying a species as a threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*). Finally, we are changing the scientific name of the red-cockaded woodpecker on the List of Endangered and Threatened Wildlife from *Picoides borealis* to *Dryobates borealis,* and such revisions to the Code of Federal Regulations can be accomplished only by issuing a rule.

*What this document does.* This final rule reclassifies the red-cockaded woodpecker from endangered to threatened (*i.e.,* ''downlists'' the species) on the List of Endangered and Threatened Wildlife and issues protective regulations under the authority of section 4(d) of the Act that are necessary and advisable to provide for the conservation of this species.

*The basis for our action.* Under the Act, we may determine that a species is an endangered species or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We may reclassify a species if the best available commercial and scientific data indicate the species no longer meets the applicable definition in the Act. Based on the status review, the current threats analysis, and evaluation of conservation measures discussed in this final rule, we conclude that the red-cockaded woodpecker no longer meets the Act's definition of an endangered species and should be reclassified to a threatened species. The species is no longer in danger of extinction throughout all or a significant portion of its range but is likely to become so within the foreseeable future.

We have determined that red-cockaded woodpecker is a threatened species due to the following threats:

- Lack of suitable roosting, nesting, and foraging habitat due to legacy effects from historical logging, incompatible forest management, and conversion of forests to urban and agricultural uses (Factor A).
- Fragmentation of habitat, with resulting effects on genetic variation, dispersal, and connectivity to support demographic populations (Factor A).
- Stochastic events such as hurricanes, ice storms, and wildfires, exacerbated by the environmental effects of climate change (Factor E).
- Small populations (Factor E).

## Acronyms and Initialisms Used in This Document

We provide the following list for the convenience of the reader:

ANHC—Arkansas Natural Heritage Commission
BMPs—best management practices
CCPs—comprehensive conservation plans
DoD—Department of Defense
EPA—Environmental Protection Agency
ESMCs—endangered species management components
FFWCC—Florida Fish and Wildlife Conservation Commission
HCP—habitat conservation plan
INRMPs—integrated natural resources management plans
LDWF—Louisiana Department of Wildlife and Fisheries
LRMPs—land and resource management plans
NCWRC—North Carolina Wildlife Resources Commission
NEPA—National Environmental Policy Act
NRCS—Natural Resources Conservation Service
NWR—National Wildlife Refuge
PBG—potential breeding group
RFA—Regulatory Flexibility Act
SSA—species status assessment
TPWD—Texas Parks and Wildlife Department
USACE—U.S. Army Corps of Engineers
USFS—U.S. Forest Service
WMA—wildlife management area

**Previous Federal Actions**

Please refer to the proposed reclassification rule (85 FR 63474) for the red-cockaded woodpecker published on October 8, 2020, and the subsequent revised proposed 4(d) rule (87 FR 6118) published on February 3, 2022, for detailed descriptions of previous Federal actions concerning this species.

**Peer Review**

A species status assessment (SSA) team prepared an SSA report for the red-cockaded woodpecker. The SSA team was composed of Service biologists, which consulted with other species experts during the process. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the red-cockaded woodpecker SSA report. As discussed in the proposed rule, we sent the SSA report to six independent peer reviewers and received three responses. The peer reviews can be found at *https://www.regulations.gov* and *https://fws.gov/species/red-cockaded-woodpecker-dryobates-borealis.* In preparing the proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which was the foundation for the proposed rule and this final rule. A summary of the peer review comments and our responses can be found in the Summary of Comments and Recommendations below.

**Summary of Changes From the Proposed Rule**

In preparing this final rule, we reviewed and fully considered comments from the public on the proposed rule. In addition to minor editorial changes, we updated information in this final rule and the SSA report (USFWS 2022, entire) based on comments and additional information provided, as follows.

We incorporated information examining the effects of climate on breeding phenology and productivity in 19 populations across the range of the woodpecker (DeMay and Walters 2019). While we have added this information to our discussion of climate change in this rule, we find that this information does not change our conclusion about the species' current risk of extinction.

We revised our discussion in the *Status Throughout a Significant Portion of Its Range* section to clarify the statutory difference between an endangered species and a threatened species in relation to the Service's significant portion of a species' range analysis. We added a discussion addressing catastrophic risks from natural events and how they are being effectively managed (*e.g.,* through prompt post-storm response) and that small populations are not currently in danger of extinction due to ongoing active management (*e.g.,* translocation, habitat management, artificial cavity installation) such that the species is not currently in danger of extinction in any portion of its range.

In the SSA report, we added information regarding partial brood loss in relation to habitat quality in eastern Texas (McCormick et al. 2004, entire, USFWS 2022, p. 25) and clarified ''encroachment partnership'' (USFWS 2022, p. 76). Additionally, we corrected an error in the SSA report stating that red-cockaded woodpeckers currently inhabit 12 ecoregions (USFWS 2022, p. 92) by revising it to 13 ecoregions, and adding the Mississippi River Alluvial Plain to the list of ecoregions.

Edits were made to tables 3, 5–9, 19–20, 24, 30, and 34 in the SSA report (USFWS 2022, pp. 108–109, 112–116, 141–142, 147, 153, and 158). The changes addressed the slight underreporting of population sizes and rate of growth for Babcock Webb Wildlife Management Area (WMA), Corbett WMA, McCurtain County Wilderness Area, and Lewis Ocean Bay Heritage Preserve properties. The current population size for Yawkey Wildlife Center was also updated from 14 to 15 individuals. Additionally, figure 24 was updated to address an error in how the high-resiliency populations were represented and to update the population changes for the properties outlined above (USFWS 2022, p. 110). Finally, figure 26 was updated to include a tropical storm and hurricane centerline track map for 2012–2022 (USFWS 2022, p. 121). Collectively, these minor updates to the SSA report do not change our overall understanding of the species' viability.

Finally, we made the following changes to the discussion and/or regulatory text of the 4(d) rule:

- We made editorial corrections to the wording of certain exceptions in the discussion and regulatory text of the 4(d) rule to increase clarity and to better align the language with existing regulations and law; these editorial corrections do not alter the original meaning of these prohibitions and exceptions.
- Under the *Exceptions* discussion, we removed several paragraphs that described the Safe Harbor program, now known as the Conservation Benefit program, in greater detail. We made this change to reduce confusion by readers and redundancy in the text. One of the deleted paragraphs included a typographical error; the paragraph stated that there are currently 295 active clusters on lands that are enrolled in Safe Harbor Agreements (SHAs). Currently, across the species' range there are 273 red-cockaded woodpecker active clusters in SHAs, which may be converted into Conservation Benefit Agreements (CBAs) at some point, if needed. This issue is described in further detail in our response to *Comment 85.*

**Summary of Comments and Recommendations**

In the proposed rule published on October 8, 2020 (85 FR 63474), we requested that all interested parties submit written comments on the proposal by December 7, 2020. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposed rule. Newspaper notices inviting general public comment were published in USA Today. We received a request for a public hearing. We held a public hearing on December 1, 2020, that was announced in the **Federal Register** on November 16, 2020 (85 FR 73012). We published a revised proposed 4(d) rule on February 3, 2022 (87 FR 6118), and requested that all interested parties submit written comments on the proposal by March 7, 2022. All substantive information received during the comment periods has either been incorporated directly into this final determination or is addressed below.

*Peer Reviewer Comments*

As discussed in Peer Review above, we received comments from three peer reviewers on the draft SSA report. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the contents of the SSA report. For example, peer reviewers provided additional nuanced information on species biology, including but not limited to, forest composition of specific National Forests, recommendations for cavities, and background on

kleptoparasitism; we updated the SSA report accordingly with this information. The peer reviewers also provided new references, or corrected existing references we cited in our SSA report, which we revised or in which we included relevant references, as appropriate. We also received a few comments from peer reviewers on recovery or listing policy that were outside the intended scope of the peer review of the SSA. The peer reviewers generally concurred with our methods and conclusions and provided support for thorough and descriptive narratives of assessed issues, additional information, clarifications, and suggestions to improve the final SSA report and rule. Peer reviewer comments are addressed in the following summary and were incorporated into the version 1.4 of the SSA report and this final rule as appropriate.

*Comment 1:* One peer reviewer expressed concern that timber harvesting was being promoted in the SSA report as a necessary strategy for maintaining quality red-cockaded woodpecker habitat when fire is the essential management application.

*Our Response:* In the SSA report, timber harvesting is mentioned as a potential management tool when hazardous large and small fuels have accumulated in red-cockaded woodpecker habitat, resulting in a significant impediment to a continuing program of prescribed fire. Timber harvesting is one option to reduce hazardous conditions through salvage of down or severely damaged timber and mulching of other debris and small-diameter excessive hardwoods. Both management options are included in the SSA report as timber harvesting is often used as a tool for restoration management for red-cockaded woodpecker habitat while fire is more frequently used for maintenance of habitat.

*Comment 2:* One peer reviewer expressed concern that the benefits of flying squirrel removal had been understated given the potential impacts of cavity kleptoparasitism (a cavity created and used by a red-cockaded woodpecker that is usurped by another species) by flying squirrels (Laves and Loeb, 1999; Mitchell et al., 1999). They also referenced that snakes may have a positive indirect effect on red-cockaded woodpeckers by consuming cavity kleptoparasites, in addition to their direct negative impacts on the species (Kappes and Sieving, 2011).

*Our Response:* Occasional loss of nests or cavities to kleptoparasitism is unlikely to have population-level impacts in red-cockaded woodpecker populations that are healthy and of medium to large size. However, critically small populations or isolated groups may not be able to tolerate high rates of kleptoparasitism. While we agree that there can be value to removing kleptoparasites in small populations (Laves and Loeb, 1999), there have yet to be studies indicating population-level effect of flying squirrels on red-cockaded woodpeckers (Mitchell et al. 1999) to suggest that flying squirrel removal should be implemented for larger populations.

*Federal and State Agency Comments*

We also received comments from Federal and State agencies on the proposed reclassification and 4(d) rule during the comment period. We summarize and respond to these below. When appropriate, we combined similar comments received from public commenters into these comment summaries.

Delisting

*Comment 3:* In response to the original proposed downlisting rule, three State agencies (the Texas Parks and Wildlife Department (TPWD), Arkansas Natural Heritage Commission, and the North Carolina Wildlife Resources Commission (NCWRC)) and several public commenters expressed their belief that delisting the species would be premature because the active management that the species requires may not continue if the species were to lose all Federal protection.

*Our Response:* We do not find that the species currently warrants delisting. On the contrary, we find that the red-cockaded woodpecker is likely to become in danger of extinction within the foreseeable future; in other words, we find that the species meets the definition of a threatened species. As a conservation-reliant species, securing management commitments for the foreseeable future would ensure that red-cockaded woodpecker populations grow or are maintained. However, given that the red-cockaded woodpecker will still face a variety of stressors in the future (*e.g.,* hurricanes, small population sizes) and due to the lack of certainty that effective management will continue in the foreseeable future, we find that this species meets the definition of a threatened species. We address the States' concerns about the decline in active management if the species' status changes in *Comment 4,* below.

Downlisting

*Comment 4:* The Louisiana Department of Wildlife and Fisheries (LDWF), NCWRC, and public commenters expressed concerns that a shift in status would divert critical funds away from the recovery and management efforts of the red-cockaded woodpecker.

*Our Response:* We acknowledge that the red-cockaded woodpecker is a conservation-reliant species and responds well to active management. For State agencies, a change from endangered to threatened does not change the eligibility of funding under section 6 of the Act.

*Comment 5:* LDWF and multiple public commenters expressed concern that downlisting the species will undermine goals outlined in management plans if agencies decide to alter or reduce voluntary protections. Public commenters also worried that downlisting could introduce additional stressors on the species, due to increased pressure from development, logging, and/or oil, mineral, and gas exploration on public lands.

*Our Response:* While we do not have commitments that all current management will continue, there is no information indicating that a downlisting would alter current management plans. It is important to note that downlisting the species from an endangered to a threatened status does not eliminate or alter the same need to achieve its recovery, and agencies are already managing red-cockaded woodpeckers in an effort to reach this goal. As mentioned, the management protections have always been voluntary, and the agencies could have altered or reduced them at any time, yet they have chosen not to due to their commitment to achieving recovery.

Regarding the risk of downlisting introducing additional stressors to the species on public lands, section 7(a)(2) obligations are the same regardless of whether a species is listed as an endangered species or a threatened species, *i.e.,* every Federal agency must ensure that their actions are not likely to result in jeopardizing the continued existence of the species.

*Comment 6:* The NCWRC claimed that the proposed rule states that 65 percent of populations have to reach moderate to high resiliency to justify downlisting of the red-cockaded woodpecker; however, the Service also stated in the proposed rule that only 13 percent of all existing clusters have moderate to very high resiliency. Therefore, the NCWRC

believes red-cockaded woodpeckers do not meet this standard for downlisting.

*Our Response:* We recognize that we made an error when we stated that 13 percent of all current red-cockaded woodpecker clusters are within moderate, high, or very highly resilient populations (85 FR 63474, October 8, 2020); this statement was incorrect, and we have rectified the error in this final rule. In fact, 13 percent of the 124 demographic populations analyzed in the SSA have moderate to very high resilience; this amounts to 16 populations. However, 65 percent of all known clusters (5,062 out of 7,794) occur in these 16 populations. Thus, 65 percent (not 13 percent) of all known red-cockaded woodpecker clusters are within moderate, high, or very highly resilient populations.

The proposed rule (85 FR 63474, October 8, 2020) does not specify that 65 percent of the populations must reach moderate to high resiliency to justify downlisting of the red-cockaded woodpecker. The proposed rule referenced 65 percent in the following context: Of the 98 populations for which trend data are available, only 13 percent are declining; in addition, over 65 percent of red-cockaded woodpecker clusters are currently in moderate to very high resiliency populations. Regardless, the species currently has sufficient levels of resiliency, redundancy, and representation, in large part due to effective habitat management, such that the species is no longer in danger of extinction (see Determination of Red-Cockaded Woodpecker Status below).

*Comment 7:* The LDWF and one public commenter requested clarification on how the guidelines and provisions of the 2003 Red-cockaded Woodpecker Recovery Plan (hereafter the ''2003 recovery plan'') are applicable under the rule, noting that the revised 4(d) rule describes recovery plans as being strategies to guide conservation and not regulatory documents, but also states that the provisions of the 2003 recovery plan may still be applicable under the 4(d) rule.

*Our Response:* The 4(d) rule does not state that the provisions of the recovery plan will still be applicable. Recovery plans are not regulatory documents, but rather they provide a strategy to guide the conservation and recovery of the identified species. The 2003 recovery plan outlined the actions that, to the best of current understanding at the time, would aid in the recovery of the red-cockaded woodpecker. The 2003 recovery plan will still guide continued management for the species, and provisions of the 4(d) rule are crafted to encourage this type of management.

*Comment 8:* LDWF requested a list of management plans for all red-cockaded woodpecker recovery units, including the dates of recent revisions and a timeline for next revision. They requested that the information be incorporated into the downlisting documents (we believe LDWF is referring to our SSA report and final rule) to provide insight into timing and frequency of the refinement of red-cockaded woodpecker population goals given that the proposed 4(d) rule relies on voluntary management plans for Federal agencies.

*Our Response:* While management plans are outside of the scope of the 4(d) rule, we encourage the LDWF to request management plan information from properties they are interested in. As noted in the Background of this rule, below, Federal agencies' section 7 consultation obligations are not and cannot be removed by rules under section 4(d) of the Act. Federal agencies will still consult under section 7 of the Act if their actions may affect red-cockaded woodpeckers. As such, the management plans will still be subject to the consultation requirements of section 7 of the Act.

Policy and Process

*Comment 9:* The Arkansas Natural Heritage Commission (ANHC) and a public commenter questioned whether the peer review process was adequate. ANHC recommended that the SSA report be submitted to peer review journals, and the public commenter asked why we had sought peer review from six individuals but received review from only three.

*Our Response:* The peer review process for the SSA report complied with our July 1, 1994, peer review policy (59 FR 34270), the Office of Management and Budget's December 16, 2004, Final Information Quality Bulletin for Peer Review, and our August 22, 2016, memorandum clarifying the peer review process.

The 2016 memorandum clarifying the peer review process requires that the Service solicit review from three or more objective and independent peer reviewers. In the case of the red-cockaded woodpecker SSA report, we sought review from six qualified peer reviewers. While our policies do not require us to receive three responses from peer reviewers (just to seek review from at least three peer reviewers), we received comments back from three reviewers, which we made available to the public when we published our proposed rule. A summary of the comments received, and how they were addressed, can be found in the *Peer Reviewer Comments* section above. We are not aware of why three peer reviewers chose not to respond.

Recovery

*Comment 10:* Several State agencies (ANHC, LDWF, and the NCWRC) and public commenters expressed concerns about inconsistencies between the 2003 recovery plan and the SSA report; they believed that the 2003 recovery plan, rather than the SSA report, should be used as guidance for evaluating whether a change in species status is warranted.

*Our Response:* Recovery plans provide roadmaps to species recovery but are not required to achieve recovery of a species or to evaluate it for delisting or downlisting. A determination of whether a valid, extant species should be delisted or downlisted is made solely on the question of whether it meets the Act's definitions of an ''endangered species'' or a ''threatened species.'' The SSA framework is an analytical approach developed by the Service to deliver foundational science for informing decisions under the Act (Smith et al. 2018, entire). The SSA characterizes species' viability (the ability of a species to sustain populations in the wild over time) based on the best scientific understanding of current and future abundance and distribution within the species' ecological settings using the conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 308–311). The SSA report provides decisionmakers with a scientifically rigorous characterization of a species' status and the likelihood that the species will sustain populations over time, along with key uncertainties in that characterization.

The 2003 recovery plan provides management guidelines fundamental to the conservation and recovery of the red-cockaded woodpecker. The best available information in the SSA report does not invalidate the habitat management guidelines in the recovery plan. We continue to strongly encourage the application of these guidelines to the management of woodpecker populations on public and private lands.

*Comment 11:* ANHC and several public commenters suggested that the Service should have updated the 2003 recovery plan before considering a downlisting and noted specific guidance they believe should be updated.

*Our Response:* The SSA report for red-cockaded woodpeckers represents a compilation of the best available

scientific and commercial information on the current and future viability of the species. We used this analysis to inform our determination of the species' status. We did not need to consider the recommended management strategies outlined in the 2003 recovery plan to inform our decision regarding the species' status under the Act.

Updating recovery plans is a discretionary action; the Service may choose to update a species' recovery plan at any point, but it is not required to incorporate new science into recovery plans when the science becomes available, as stated in *Center for Biological Diversity* v. *Bernhardt,* 509 F. Supp. 3d 1256 (D. Montana 2020).

*Comment 12:* The LDWF and NCWRC expressed concern that some populations of red-cockaded woodpeckers have either only partially met or have not met recovery criteria for downlisting. Additionally, several commenters thought it was too soon to downlist the species and provided ideas for conditions that should be met, such as waiting for the population to become more stable, before downlisting would be appropriate.

*Our Response:* While recovery plans provide management guidelines fundamental to the conservation and recovery of species, they are guidance and not regulatory documents. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all recovery criteria being fully met. The overriding considerations in determining listing status are the five factors listed in section 4(a)(1) of the Act.

Since the recovery plan was last revised in 2003, the number of red-cockaded woodpecker active clusters has increased from 5,627 to over 7,800 (USFWS 2022, entire). The population size objectives to meet applicable downlisting criteria have been met for 15 of 20 designated populations. All of these designated populations show stable or increasing long-term population growth rates ($\lambda \geq 1$).

Ecology and Populations

*Comment 13:* TPWD shared that in Texas, there was a 70 percent decline in red-cockaded woodpeckers on State lands between 1991 and 2019 and a 17 percent decline on private lands in the State during the same period. Additionally, Texas suggested that those populations that have increased in size occur on U.S. Forest Service (USFS) lands, which house 90.5 percent of the woodpeckers in the State; they suggested this indicates that, in Texas, the species is highly dependent on the continued application of effective management practices.

The USFS also shared that their implementation of land and resource management plans (LRMPs) that were specifically designed to recover the red-cockaded woodpecker has increased the number of active red-cockaded woodpecker territories on National Forests from 2,000 to almost 3,700 over the past two decades.

*Our Response:* While we appreciate the trend information that TPWD and the USFS provided, without site-level detail, we were not able to compare this information to the SSA. However, we receive property reports from Federal, State, and Safe Harbor program lands with red-cockaded woodpeckers on an annual basis; these property reports informed the demographic information in our SSA, so we are confident that the SSA captures the trend information these commenters provided. Moreover, the general trends that TPWD and the USFS describe align with the findings of our SSA.

We also agree that the species remains highly dependent on active management. The currently stable or increasing growth rates, even in small populations, demonstrate the effectiveness of the current active management regime. New restoration techniques and changes in silvicultural practices have led to a substantial increase in the number and distribution of populations. Sixty-five percent of all red-cockaded woodpecker clusters are within moderate, high, or very high resiliency populations, and populations are spread across multiple ecoregions, providing for redundancy and representation. We fully expect this conservation management to continue into the foreseeable future, and we have structured our final 4(d) rule to facilitate the continuation of such management.

Population Stressor

*Comment 14:* The LDWF and members of the public raised concern about the risk of inbreeding depression in the majority of red-cockaded woodpecker populations (*i.e.,* those with fewer than 100 clusters), due to their small size and isolation. They highlighted the importance of translocations given that red-cockaded woodpeckers do not typically disperse between populations, given they are geographically isolated from each other. As a result, commenters felt that it is premature to reduce protections for the species.

*Our Response:* We agree that small populations having high degrees of isolation and habitat fragmentation are the most susceptible to risk from inbreeding depression and negative genetic impacts and acknowledge the importance of habitat management and translocations for maintaining healthy populations. However, the species no longer meets the definition of an endangered species and instead meets the definition of a threatened species.

Because the species is still protected under the Act and because reclassification as a threatened species does not increase any existing permitting requirements that pertain to translocation, we expect current translocation efforts to continue unaffected. In fact, there are fewer permitting requirements for recovery efforts, such as translocation, for threatened species (*e.g.,* 50 CFR 17.31(b) and 50 CFR 17.32) than those for endangered species (*e.g.,* 50 CFR 17.21(c)(5) and 50 CFR 17.22). Additionally, most properties on public lands harboring red-cockaded woodpeckers have implemented management programs to sustain or increase habitat availability and connectivity and to meet population size objectives in the 2003 recovery plan or other management plans. Accordingly, managers are reducing fragmentation by restoring and increasing habitat and through the strategic placement of recruitment clusters to reduce gaps within and between populations.

Climate Change and Catastrophic Events

*Comment 15:* Multiple State agencies (Florida Fish and Wildlife Conservation Commission (FFWCC), ANHC, LDWF, NCWRC) and public commenters discussed how hurricanes are already intensifying and becoming more frequent along the Atlantic coast due to climate change and that this situation will only worsen in the future, resulting in detrimental effects on the recovery of the species, especially given that the majority of populations occur in coastal plain ecoregions. FFWCC noted that, despite active management, populations have not been able to reach their goal on Picayune Strand State Forest because of the impacts of such natural disasters.

*Our Response:* We agree that red-cockaded woodpecker populations and their habitats are periodically subjected to significant disturbances (*e.g.,* hurricanes) that increase mortality and destroy cavity trees, which can lead to temporary population declines. We acknowledge that every population in the coastal plain ecoregions has been affected by one or more hurricanes over the past two decades. As such, in the proposed rule and in this final rule, we identified hurricanes, and other naturally occurring disturbances that

destroy pines used for cavities and foraging, as one of the stressors affecting the species. However, populations can withstand and persist after hurricanes if biologists and land managers implement prompt, effective post-storm recovery actions, such as installing artificial cavities, reducing hazardous fuels, and restoring forests to suitable habitat. This emergency response and routine management are well-understood and are currently being implemented across the range of the woodpecker. Additionally, much of the red-cockaded woodpecker's currently occupied habitat is now protected under various management plans. As such, despite the regular occurrence of hurricanes within red-cockaded woodpecker habitat, 87 percent of populations evaluated in the SSA demonstrate stable to increasing growth rates, illustrating the effectiveness of currently ongoing active management in preventing species-level impacts from hurricanes (USFWS 2022, p. 112).

We recognize the impacts natural disasters have had on the Picayune Strand State Forest. Annual property report data from 2019–2021 show that the active clusters in Picayune Strand State Forest have maintained 14 active clusters. This number is due in large part to the management actions conducted by the land managers. Further details about impacts of hurricanes on the species can be found in the Habitat Loss and Degradation section, below.

*Comment 16:* The LDWF, NCWRC, and public commenters noted that it could take years to gather reliable population counts to fully understand impacts from a given natural disaster. They provided preliminary estimates of the impacts from Hurricanes Laura and Delta on Fort Polk, the Evangeline Unit of the Kisatchie National Forest, and the Alexander State Forest WMA, suggesting over 1,221 total cavity trees were lost.

*Our Response:* As these commenters acknowledge, we do not yet have monitoring data to illuminate the impacts of the most recent hurricane seasons on red-cockaded woodpecker populations. While we do not yet have data on the species' response to the most recent hurricane events, we know from responses to previous storms that populations can withstand and persist after hurricanes if biologists and land managers implement prompt, effective post-storm recovery actions, such as installing artificial cavities, reducing hazardous fuels, and restoring forests to suitable habitat. Such actions have been occurring after storm events for managed populations, such as the quick response after Hurricane Michael in October 2018.

We recognize the impacts natural disasters have had on Fort Polk, the Evangeline Unit of Kisatchie National Forest, and the Alexander State Forest WMA. Annual property report data from 2019–2021 shows that Fort Polk has maintained between 46 and 49 active clusters; the Evangeline Unit of Kisatchie National Forest has increased the active clusters from 135 to 141; and the Alexander State Forest WMA has maintained 13 active clusters. These results are due in large part to the management actions conducted by the land managers. Both this emergency response and routine management are well-understood and are currently being implemented across the range of the woodpecker. In addition, much of the red-cockaded woodpecker's currently occupied habitat is now protected under various management plans. Please reference our response to *Comment 15* for more information on these findings.

*Comment 17:* The FFWCC, NCWRC, and public commenters called for updating the methods in the SSA analysis to better account for the effects of climate change and hurricanes on the species' future resiliency. One commenter provided a recent paper (DeMay and Walters 2019, entire) suggesting that our failure to consider this paper in our analysis demonstrates an inadequate consideration of climate change's effects on long-term population health.

*Our Response:* As we acknowledge in the SSA report, due to uncertainty and limitations in modeling, the projections from the future simulation models should not be viewed as definitively known future conditions (USFWS 2022, p. 136). Therefore, the projected resiliency in our three future scenarios may overestimate or underestimate potential future resiliency, as all models include assumptions about the future trends of threats, and the species' response to them. As our ability to model the species' response reliably and quantitatively to climate change improves, we may be able to provide greater clarity on the potential effects of hurricanes on red-cockaded woodpecker populations in the future.

We are aware of preliminary investigations that show correlation between breeding phenology and productivity and changing climate variables like temperature and wetness (DeMay and Walters 2019, entire). Although our SSA did not incorporate the findings of DeMay and Walters (2019), since it was published after the SSA report neared completion, the SSA report noted that southwestern populations have lower productivity (USFWS 2022, p. 26) and considered earlier research which similarly suggested that climate change has the potential to influence productivity through anticipated changes in temperature and precipitation patterns (USFWS 2022, p. 92; Schiegg et al. 2002, entire). Thus, while we have added a summary of the paper by DeMay and Walters (2019) to our discussion of climate change in this rule, we find that it does not provide any new information to change our conclusion about the species' current risk of extinction. Additional information on climate change can be found in the Habitat Loss and Degradation section below and in the SSA report (USFWS 2022, pp. 121–124).

*Comment 18:* The ANHC suggested that figure 26 in the SSA report, which depicted tropical storm and hurricane tracks between 2003 and 2011, is outdated, especially given changes that have occurred over the most recent 5 years. They also claimed that the timeframe depicted in this figure is too narrow to be relevant.

*Our Response:* We recognize that figure 26 does not present a full picture of hurricanes and tropical storms that have occurred throughout the range of red-cockaded woodpeckers in the past few decades and have added an updated figure 26 to the SSA report (USFWS 2022, p. 122). However, it is important to note that the intent of this figure is to illustrate the potential stressor that hurricanes pose to red-cockaded woodpeckers, and the vulnerability of many populations to storms. This figure is not intended to present an exact quantitative measure of the number and types of storms that have occurred within the species' range; as we discuss in the SSA report, due to uncertainty and limitations in modeling, the projections from the future simulation models should not be viewed as definitive outcome for future conditions (USFWS 2022, p. 135).

Habitat Stressor and Conservation

*Comment 19:* LDWF, FFWCC, and public commenters provided feedback emphasizing the species' reliance on extensive and continual habitat management; they reiterated that the species is not yet self-sustaining and needs this active management (*e.g.,* thinning, prescribed fire, provision of artificial cavities, and translocation) to maintain stability. As a result, they requested that the species not be reclassified without the continued support for existing management strategies. Additionally, one commenter

requested guidance on how to better manage the species on public lands.

*Our Response:* We recognize that the red-cockaded woodpecker is a conservation-reliant species and responds well to active management (USFWS 2022, p. 159). As such, the species is not being delisted and will continue to be afforded protections under the Act. Furthermore, we have structured our final 4(d) rule to facilitate the continuation of conservation management.

While we do not have commitments that all current management will continue, there is no information indicating that a downlisting would alter current management plans. It is important to note that downlisting the species from an endangered to a threatened status does not eliminate or alter the need to achieve its recovery, and agencies are already managing red-cockaded woodpeckers in an effort to reach this goal. As mentioned, the management protections have always been voluntary, and the agencies could have altered or reduced them at any time yet have chosen not to, due to their commitments to achieving recovery.

A species' reliance on conservation management does not, by definition, suggest that it must always be listed as endangered. With effective assurances of such management, or with sufficient viability, species that require active management may not be at risk of imminent extinction. We have listed multiple conservation-reliant species as threatened (*e.g.,* Hawaiian goose, Peirson's milk-vetch, humpback chub) and have even delisted conservation-reliant species, when appropriate commitments to necessary management are in place (*e.g.,* interior least tern, running buffalo clover, Kirtland's warbler).

Guidance on how to better manage the red-cockaded woodpecker on public lands can be found in the 2003 recovery plan, integrated natural resources management plans (INRMPs), forest management plans, National Wildlife Refuge plans, National Park plans, and State plans, among other sources.

*Comment 20:* The LDWF suggested that the downlisting proposal did not adequately address the current condition of red-cockaded woodpecker habitat on the landscape by not properly acknowledging that much of the currently occupied and potential red-cockaded woodpecker habitat remains degraded and is in need of additional restoration (*e.g.,* timber stand improvement via thinning or prescribed burning) before populations could achieve maximum resiliency.

*Our Response:* As we discuss in greater detail under Summary of Conservation Management below, with the potential exception of several ecologically unique populations in pond pine and related habitat on organic soils in northeast North Carolina, none of the current or estimated future populations are capable of naturally persisting without ongoing management. The proposed downlisting rule relies on the analysis provided in the SSA report, which describes the many influences on viability, including foraging habitat loss, land use/construction, conservation management, and habitat degradation.

Most properties on public lands harboring red-cockaded woodpeckers have implemented management programs to sustain or increase populations consistent with population size objectives in the 2003 recovery plan or other plans. The species is reliant on active habitat management, as discussed in the SSA report (USFWS 2022, p. 131).

General Stressors

*Comment 21:* The NCWRC expressed concern that we have not adequately considered the stressor of human population expansion and encroachment into red-cockaded woodpecker habitat. They informed us that the area of private lands between the Sandhills Game Lands and Fort Bragg (now Fort Liberty), known collectively as ''the Gap,'' is in need of continued active management or this area will not be able to serve to connect isolated populations on public lands.

*Our Response:* The effects of human expansion and encroachment have been taken into consideration. The SSA report describes many influences on viability, including foraging habitat loss, land use/construction, conservation management, and habitat degradation (USFWS 2022, pp. 124–131). Current red-cockaded woodpecker populations are highly dependent on active conservation management with prescribed fire, beneficial and compatible silvicultural methods to regulate forest composition and structure, the provision of artificial cavities where natural cavities are insufficient, translocation to sustain and increase small vulnerable populations, and effective monitoring to identify limiting factors for management (USFWS 2022, pp. 121–131). We recognize that human impacts, including development, have the potential to negatively affect red-cockaded woodpeckers through loss or degradation of habitat; however, through the continued protections under the Act, we are ensuring that any action with a Federal nexus will be required to make sure that the continued existence of the species will not be jeopardized.

*Comment 22:* The FFWCC commented that we had not identified invasive exotic vegetation as a threat. They suggested that invasive plants are a major issue in Florida, especially in south Florida, and provided the following examples: Melaleuca (*Melaleuca quinquenervia*) monocultures appearing after fire, higher intensity wildfires that kill native pines, and decreased effectiveness of prescribed burns when Brazilian pepper (*Schinus terebinthifolius*) is present. They also recommended that we include invasive vegetation as a stressor in the final rule, given these negative effects and the fact that eradication is difficult.

*Our Response:* We agree that the rule does not state specific examples of the invasive, nonnative, exotic vegetation types that exist within various open pine habitat types throughout the red-cockaded woodpecker's range. However, the SSA report specifically identifies invasive species as an example of disturbances that have the potential to impact red-cockaded woodpecker habitat and, therefore, red-cockaded woodpecker population resilience (USFWS 2022, p. 74).

Throughout the SSA report, we acknowledge the importance of prescribed fire and its overall impact on the structure, function, and process of the open pine/grass systems (USFWS 2022, pp. 37–39, 124–127). We do agree and report that most of the prescribed fire references are generally linked to the improvements in hardwood midstory control, fuel load reduction, and overall open pine habitat restoration. However, we also recognize in the ''Current Condition'' portion of this document (below) that there are impacts from disturbance that represent hazardous fire fuels like those reported by the FFWCC, and these structural habitat components are potential threats to red-cockaded woodpecker resiliency.

*Comment 23:* The FFWCC suggested that we still do not know the effects of an ongoing hydrologic restoration project (Picayune Strand Restoration Project) on the Picayune Strand State Forest essential support population, and that this project's increased water flows could reduce the intensity of future wildfires; the FFWCC recommended that we also consider adaptive management strategies for mitigating any impacts to the red-cockaded woodpecker from increased water and prolonged hydroperiods.

*Our Response:* We appreciate the suggestion to consider the Picayune hydrologic restoration project and its potential indirect effects on red-cockaded woodpeckers. We also appreciate the request to consider an adaptive management approach as a means to mitigate for any unanticipated negative impacts that would be correlated with the hydrologic project. Since this comment was submitted, modeling efforts conducted by the U.S. Army Corps of Engineers (USACE) have predicted impacts from the anticipated flooding. The model results indicate that the red-cockaded woodpecker habitat will shift below the standard of management as the project progresses. While it is still unclear how quickly slashpine will react to being inundated, modeling efforts suggest there is a potential projected loss of up to 3 clusters as the result of this project. We are actively working with the USACE through the section 7 process to minimize any impacts.

The Service has a long history of supporting the application of adaptive management. When applied, assumption-based applications have rigorous datasets that support informed decision making. We support adaptive management approaches that (1) conceptualize the problem, (2) plan actions and monitoring, (3) implement actions and monitoring, (4) analyze, use, and adapt from the data, and (5) capture and share the learning. Based on the FFWCC comments, we fully support Picayune State Forest implementing an assumption-based (adaptive management) scientific approach in order to provide early detection of potential adverse impacts to the forest's red-cockaded woodpecker population.

Conservation Efforts and Plans

*Comment 24:* The NCWRC suggested two conservation initiatives that would aid in the management of the species after downlisting: (1) a conservation fund to support future land management and (2) a post-downlisting monitoring plan.

*Our Response:* As we continue down the path towards full recovery of red-cockaded woodpeckers, we will use the best available science to inform and facilitate further conservation efforts that benefit the species. While we do not have a specific conservation fund for red-cockaded woodpecker land management, we encourage partners to apply to grant opportunities available (*e.g.,* Partners for Fish and Wildlife, Natural Resources Conservation Service (NRCS), section 6 funding (for State lands).

We are not required to create a post-downlisting monitoring plan; a specific monitoring plan is required only after delisting a species due to recovery. However, annual population monitoring of red-cockaded woodpeckers will continue once they are downlisted. For example, anyone enrolled with an SHA will continue to provide annual reports that include the number of breeding groups and increases/decreases in active clusters. Additionally, annual property reports from section 10(a)(1)(A) permits will include data on active clusters, inactive clusters, potential breeding groups, and descriptions of habitat management completed. Furthermore, the 4(d) rule requires Federal agencies and Department of Defense (DoD) properties to provide a report on their red-cockaded woodpecker populations to the Service annually.

4(d) Rule Exceptions

*Comment 25:* LDWF expressed concern that the 4(d) rule does not define ''short-term'' with regard to incidental take of red-cockaded woodpecker during habitat conversion, if there are short-term impacts to the species. The State agency requested that the Service define ''short-term'' and provide greater clarification on the magnitude of impact that habitat conversions can have on a given red-cockaded woodpecker population.

*Our Response:* The terms ''short-term'' and ''magnitude'' have not been defined in the rule because they have different meanings depending on many variables. In terms of wildlife species and biological populations, both short- and long-term effects, and the magnitude of those effects, depend on many influential inherent and external biological, ecological, and environmental factors like lifespan, reproductive timing, and generational time; population size, growth rate, and connectivity; population dynamics and demographics; and availability of natural resources. In this rule, it is anticipated that the temporal scale of short-term adverse effects (*e.g.,* reducing a stand below the managed stability standard) to red-cockaded woodpeckers are likely to occur within one or two generations (*i.e.,* 4–8 years; USFWS 2022, p. 71) in a resident population. The magnitude of long-term beneficial impacts from those same short-term adverse management actions are expected to be high and to span over multiple generations (three generations or more) within a resident population.

The 4(d) rule provides take exceptions only when habitat management actions are intended to further conservation of the species. However, any incidental adverse effects to red-cockaded woodpeckers from these beneficial management actions would likely be low in magnitude; therefore, in this context, incidental adverse effects are not likely to rise to the level of incidental take of red-cockaded woodpeckers.

4(d) Rule Artificial Cavity Provisions

*Comment 26:* The South Carolina Department of Natural Resources recommended the threshold minimum diameter of 15 inches for cavity inserts should be followed and that areas lacking trees of sufficient size for insert installation should use the Copeyon method for drilled cavities (Copeyon 1990, pp. 303–311). Separately, a public commenter noted that Picayune Strand and Big Cypress rely on South Florida slash pine, which are naturally much smaller in diameter even when mature. They indicated they would have overall 32 percent fewer artificial cavities on the landscape if they had to select trees ≥14 inches.

*Our Response:* We currently support the artificial cavity standards defined by Allen (1991, p. 19), Copeyon (1990, pp. 303–311), and USFWS (2022, pp. 85–87). For the cavity insert technique, the guidance requires selected trees have a minimum of 15 inches diameter at cavity height, while the guidance for the drilled cavity technique generally requires knowledge of the tree's sapwood (3.5 inches or less) to heartwood (7 inches or more) ratios at cavity height. We agree that the drilled cavity technique provides more opportunity to utilize smaller diameter trees at cavity height where sapwood/heartwood ratios are suitable, and we continue to advocate drilled cavities as the preferred method. However, many landscapes are challenged with limited access restrictions. The number of return visits for drilled cavity applications, which includes screening, checks for resin leakage, and routine maintenance checks is often limited for those on access restricted landscapes. While we support the standards outlined above, we acknowledge that there are unique habitats in the region, such as Picayune and Big Cypress, that require site-specific application of this technique. These standards have been previously approved by the Service and are fundamentally based on the heartwood/sapwood ratio rather than the diameter of the tree.

4(d) Rule Military Exception

*Comment 27:* The LDWF requested that the annual property reporting language for DoD and other Federal properties be changed from ''could'' to

''must'' when detailing the requirements for the annual report in the following sentence: ''could include the property's recovery goal; the number of active, inactive, and recruitment clusters; information on habitat quality; and the number of artificial cavities the property installed.''

*Our Response:* The annual property report language is outside of the scope of the 4(d) rule and played no part in our determination. However, as the DoD adjusts and modifies their INRMPs to best coordinate with the findings in the 4(d) rule, we anticipate the content of the INRMP to reflect mutually agreed upon conservation, protection, and management of fish and wildlife resources as stated in the Sikes Act (16 U.S.C. 670 *et seq.*). Per the Sikes Act, this will include requirements to monitor and improve the effectiveness of the plan.

4(d) Rule Provisions for Prescribed Burning and Herbicides

*Comment 28:* The LDWF requested that best management practices (BMPs) be used when prescribed burns are conducted in red-cockaded woodpecker clusters and associated foraging habitat and in protection of red-cockaded woodpecker cavity trees. Additionally, they recommended the 4(d) rule further define the BMPs using existing language from the SSA report. Similarly, a public commenter requested additional information be provided to clarify what is compatible or incompatible practice for prescribed fires and herbicide applications.

*Our Response:* This 4(d) rule includes the requirement, in § 17.41(h)(4)(iii)(A)–(B), to follow applicable BMPs and applicable Federal and State laws for both prescribed burns and herbicide application. Privately and other non-federally owned lands may have different needs and should tailor those individual needs to their BMPs. We continue to recommend the use of the 2003 recovery plan for guidance on compatible or incompatible practices for prescribed fires and herbicide applications.

4(d) Rule Exception for Service- or State-Approved Management Plans

*Comment 29:* Multiple commenters brought up issues that may impact landowner willingness to participate in the Safe Harbor program, currently known as the Conservation Benefit program, and expressed concerns over the permitting process (*i.e.,* lack of enforcement, ability to return to baseline conditions, and the burdensome process). Additionally, the South Carolina Department of Natural Resources indicated concern that the prescribed fire and herbicide exception could disincentivize further Safe Harbor program enrollment (currently known as the Conservation Benefit program).

*Our Response:* We acknowledge these concerns now that landowners will have additional flexibility on how to manage their land for red-cockaded woodpeckers. Although the 4(d) rule and SHAs, currently known as CBAs, may provide many of the same benefits on managed non-Federal lands, the Conservation Benefit program provides the additional flexibility for land managers to remove new (above-baseline) clusters that emerge on their property without violating certain section 9 prohibitions of the Act. Without the incidental take exceptions in this 4(d) rule, take resulting from these activities would be prohibited, thus requiring a section 10(a)(1)(a) permit associated with a CBA or section 10(a)(1)(b) permit and habitat conservation plan (HCP) prior to implementation. These incidental take exceptions are applicable to all private lands regardless of participation in existing SHAs or future CBAs as long as the activity meets the stipulations described above. It is important to note that the 4(d) rule does not nullify existing SHAs or future CBAs. Existing enrollment and participation in SHAs or future CBAs does not preclude an enrollee from exceptions of the 4(d) rule (see ''Provisions of the 4(d) Rule'').

4(d) Rule General Issue

*Comment 30:* The Alabama Division of Wildlife and Freshwater Fisheries requested clarification on prohibitions and exemptions regarding insecticide use. A public commenter requested insecticide use within the cluster area be approved by the Service and used only when necessary.

*Our Response:* This rule prohibits take, as set forth at § 17.21(c)(1) for endangered wildlife. We did not include any exceptions to this prohibition for take resulting from the use of insecticides from the prohibitions of section 9. If the property has red-cockaded woodpeckers, then there is a potential for take to occur from such activities and incidental take could still be exempted through a section 10 permit or an incidental take statement associated with a biological opinion. Thus, the 4(d) rule does not cause a change in the process for authorization of insecticide use in red-cockaded woodpecker clusters.

*Public Comments*

We received 234 unique comments from the general public on the proposed listing and 4(d) rule during the 2 public comment periods. We summarize and respond to these comments below. However, we do not repeat issues that we have already addressed above and instead address only new issues that were not raised by peer reviewers or State or Federal agencies.

Downlisting

*Comment 31:* One public commenter indicated that the Service's targets for downlisting have not been met and that public records indicated the Service had been planning to downlist or delist the species if State and Federal agencies were able to provide necessary assurances of continued management.

*Our Response:* Assurances of continued management are not required for reclassification of a species. Although there are uncertainties about the continuation of some management commitments, we fully expect much of the conservation management for red-cockaded woodpecker to continue into the foreseeable future and have structured our final 4(d) rule to encourage the continuation of such management.

*Comment 32:* Multiple commenters emphasized the importance of longleaf pine ecosystems in supporting biodiversity in the southeastern United States and the role of red-cockaded woodpeckers as umbrella and keystone species. Several of these commenters suggested that conserving red-cockaded woodpeckers, via management of longleaf pine ecosystems, provides cascading benefits to many other species, including other at-risk species, and proposed that the species remain protected for that reason.

*Our Response:* While we recognize the importance of the longleaf pine habitat, as referenced in the ''Background'' and ''Summary of Stressors'' below, section 4(a)(1) requires that the Secretary determine whether a species is an endangered species or threatened species because of any of the five factors listed. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.'' Thus, we cannot factor the need to protect other at-risk species or the ecosystem at large into the decision of whether or not a species meets the definition of threatened or endangered.

*Comment 33:* Some commenters believed that, since woodpeckers currently occupy less than their historical range, they should not be downlisted.

*Our Response:* Neither downlisting nor delisting require that the species

reoccupy their historical range. Under the Act, a species' status must be assessed using the five factors: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization of the species for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence.

*Comment 34:* One commenter expressed concern that, if the species is downlisted, land managers will return to past practices of reducing the use of fire, reducing control of woody understory vegetation, and illegally removing cavity trees on private lands; all of these actions would reduce habitat quality and quantity.

*Our Response:* The red-cockaded woodpecker will continue to receive protections under the Act as a threatened species. The 4(d) rule is designed to encourage continued habitat management by including exceptions to the prohibitions for incidental take caused by application of prescribed burns or herbicides on private lands to create or maintain habitat (*i.e.,* open pine ecosystems) or sustain and grow red-cockaded woodpecker populations, provided that the landowner, or their representative: (1) Follows applicable BMPs for prescribed burns and applicable Federal and State laws; (2) applies herbicides in a manner consistent with applicable BMPs and applicable Federal and State laws; and (3) applies prescribed burns and herbicides in a manner that minimizes or avoids adverse effects to known active clusters and red-cockaded woodpecker roosting and nesting behavior to the maximum extent practicable.

Our intent for this provision is to provide a simple means by which to encourage private landowners to pursue certain types of voluntary forest management activities (*i.e.,* prescribed burns and herbicide application) in a way that reduces impacts to the species and also removes any potential barriers to the implementation, such as the potential for violating the Act, of this beneficial forest management. Collaboration with partners in the forestry industry and their voluntary conservation and restoration of red-cockaded woodpecker habitat has helped advance red-cockaded woodpecker recovery to the point of downlisting; this provision would continue to encourage this beneficial management.

*Comment 35:* One commenter suggested that the downlisting would not alter any of the protections the species receives and is thus merely a symbolic gesture.

*Our Response:* Downlisting the red-cockaded woodpecker is not merely a symbolic gesture. The species has achieved major gains in recovery in the past several decades. These gains have benefited the species to the point that it no longer meets the definition of an endangered species. While the species has not yet achieved full recovery, it is paramount in the effective implementation of the Act to ensure every listed species has the appropriate status, based on the best available scientific information regarding its extinction risk. In the case of the red-cockaded woodpecker, since the species no longer meets the definition of an endangered species, we are revising its classification to ensure its listed status aligns with the latest information on its viability.

While downlisting the red-cockaded woodpecker will continue to provide protections under the Act, the 4(d) rule includes exceptions to take prohibitions that provide additional management flexibilities that do not apply while the species is listed as endangered (*e.g.,* exception for take resulting from prescribed burns on private lands; exception for take resulting from installation of artificial cavities) (see ''Provisions of the 4(d) Rule'' below).

*Comment 36:* One commenter suggested that the species' status had not changed considerably since the 2006 5-year status review, in which we recommended that the species should remain listed as endangered and that the threats to the species have not been sufficiently ameliorated.

*Our Response:* Since the 5-year review in 2006, the species' status has continued to improve. Based on the best available scientific information including new information available since the 2006 5-year review (*i.e.,* the new analysis in the SSA), 87 percent of red-cockaded woodpecker demographic populations for which we have trend data demonstrate stable to increasing trends. The continued growth of populations since 2006, and the species' current stability, suggests the red-cockaded woodpecker is not in immediate danger of extinction. We are also downlisting the species because we believe the threats currently acting on the species are effectively managed. Since 2006, managers have continued to install more artificial cavities, have continued to actively manage habitat to improve quality, and have continued to translocate birds to enhance genetic health and viability. These activities have contributed to the stabilization of the populations, and management of threats. Our rigorous analysis of stressors and species' condition in the SSA demonstrates the improved status of the species and effectiveness of current management.

Policy and Process

*Comment 37:* Multiple commenters expressed confusion about the status of the species' 5-year status reviews, and the relationship of these reviews to the proposed rule.

*Our Response:* The December 2, 2020, proposed rule to reclassify the red-cockaded woodpecker as a threatened species fulfilled the requirements of a 5-year status review for the species (85 FR 63474). While the proposed rule referenced biological information in the SSA report, the SSA alone does not represent the 5-year status review. According to the Act, a 5-year status review must contain an evaluation of the five listing factors for the species, and a recommendation as to the species' current status based on the relevant threats under those factors. In the proposed rule, we provided a thorough account of the stressors affecting the species and aligned these stressors with the five factors under the Act.

Our analysis in the proposed rule also took into account the submissions we received in response to the 5-year review initiation notice; we are not required to respond to each of these submissions individually, as we do for public comments on a proposed rulemaking. The public had an opportunity to provide feedback on our determination of species' status during the comment period on the proposed rule, and we have addressed that feedback here.

*Comment 38:* Multiple commenters took issue with our ''significant portion of the range'' analysis, suggesting that we did not adequately explain why the Florida Peninsula, West Gulf Coastal Plain, and southernmost near-coastal extension of the Upper West Gulf Coastal Plain ecoregions are not ''significant.'' Other commenters believed that our discussion of significance was not consistent with our ''Significant Portion of the Range'' policy and court rulings concerning this policy.

*Our Response:* We revised our ''significant portion of the range'' analysis in this rule in response to these comments and to increase consistency with current practice. We removed the discussion of the significance of the portion that includes the Florida Peninsula, West Gulf Coastal Plain, and southernmost near-coastal extension of

the Upper West Gulf Coastal Plain ecoregions.

Ultimately, this discussion of significance was not necessary for our analysis since this portion does not have a different status than the whole. Despite the vulnerability of these areas to hurricanes, this stressor is not currently accelerating extinction risk in this part of the range, due to effective conservation management. Populations can withstand and persist after hurricanes if biologists and land managers implement prompt, effective post-storm recovery actions, such as installing artificial cavities, reducing hazardous fuels, and restoring forests to suitable habitat. Both this emergency response and routine management are well-understood and are currently being implemented across the range of the woodpecker. In addition, much of the red-cockaded woodpecker's currently occupied habitat is now protected under various management plans. As such, despite the regular occurrence of hurricanes within red-cockaded woodpecker habitat, 89 percent of the populations for which we have trend data demonstrate stable to increasing growth rates in this portion of the range, illustrating the effectiveness of currently ongoing active management in preventing broad impacts from hurricanes and other stressors (USFWS 2022, p. 112).

This risk may be particularly high in the foreseeable future in the Florida Peninsula, West Gulf Coastal Plain, and the southernmost near-coastal extension of the Upper West Gulf Coastal Plain ecoregions. Therefore, although some threats to the red-cockaded woodpecker are concentrated in these ecoregions, the timing of the effects of the threats in that portion is the same as that for the entire range—the foreseeable future. As a result, the red-cockaded woodpecker is not in danger of extinction now in this portion of its range. Given the fact that this portion has the same status as the species throughout all of its range, we do not need to evaluate its significance.

*Comment 39:* Commenters suggested other areas that could be considered a significant portion of the species' range (*e.g.,* the populations that have low or very low resiliency and the western portion of the species' range, where there are no ''high'' or ''very high'' resiliency populations).

*Our Response:* Based on feedback from the comments, we considered whether the portion of the species' range that contains low or very low resiliency populations could constitute a portion that provides a basis for determining that the species is in danger of extinction throughout a significant portion of its range. Based on our analysis, we did not find that this portion of the species' range, or any combination of areas that lack moderate, high, or very high resiliency populations, met the definition of an endangered species. Managers are currently applying active management to these small populations. As a result of this active management, the vast majority of these low or very low resiliency populations have stable or increasing growth rates, demonstrating the effectiveness of this active management in supporting the persistence of these small populations. Of the 108 demographic populations in low or very low resiliency classes, 86 have data on growth rates; 86 percent of these populations have growth rates greater than or equal to one (USFWS 2022, pp. 108–110). Under this current paradigm, these small populations are not currently in danger of extinction due to the active management (*e.g.,* translocation, habitat management, artificial cavity installation) that supports their stability and growth. As a result, the red-cockaded woodpecker is not currently in danger of extinction in this portion of its range. Given the fact that this portion has the same status as the species throughout all of its range, we do not need to evaluate its significance.

*Comment 40:* One commenter expressed concern that the Service, contrary to the best available science, has been trying to downlist or delist the red-cockaded woodpecker to appease Federal partners. This commenter also questioned an interagency agreement signed with the Army on the same day that we announced the proposal to downlist the red-cockaded woodpecker, indicating concern that the agreement set a goal of eliminating section 7 consultations in favor of general INRMP consultations.

*Our Response:* The analysis in this rulemaking is based on the best available science, summarized in the SSA report. This scientific information has been peer-reviewed, and the public was provided with opportunities to review and comment on our analysis during two comment periods and one public meeting. We are required to coordinate, collaborate, and use the expertise of State agencies in developing the scientific foundation upon which the Service bases its determinations for listing actions (*i.e.,* SSA reports) per the 1994 joint policy and 2016 Revised Interagency Cooperative Policy Regarding the Role of State Agencies in Endangered Species Act Activities (State Representation of Species Status Assessment Teams). We also frequently collaborate with Federal partners in the development of SSAs to ensure we have the best available data and a thorough understanding of Federal management that may affect the species. In the development of the red-cockaded woodpecker SSA, we followed these common practices. We sought information from our State and Federal partners to inform the SSA, our understanding of relevant ongoing management, and any proposed status change under the Act.

Based on the best available information in the SSA, we have determined that the species no longer meets the definition of an endangered species under the Act. However, while many of the landowners and managers within the range of the species have committed to continuing to implement their conservation programs into the future, we do not have certain commitments that all current management will continue and that it will adapt as necessary to effectively address emerging stressors (*e.g.,* intensifying hurricanes). As a conservation-reliant species, securing management commitments for the foreseeable future would ensure that red-cockaded woodpecker populations grow or are maintained. This conclusion is reinforced by the future-scenario simulations, which indicate that management efforts equal to or greater than current levels will further increase the number of moderate to very high resiliency populations and preserve small populations. Thus, uncertainties about the continuation of the management upon which the species relies informed our determination that a downlisting status of threatened is appropriate.

The purpose of the interagency agreement is to promote the conservation of the red-cockaded woodpecker. This agreement did not factor into the proposal to downlist the species. Additionally, it is important to note that Federal agency section 7 consultations obligations have not been altered in any way with this final rule.

*Comment 41:* One commenter believed that the Service's selection of 25 years as the foreseeable future was arbitrary and too short to reasonably forecast effects of threats to the species (*e.g.,* climate change impacts), especially considering the species' reliance on very old pine trees.

*Our Response:* We determined the foreseeable future to be 25 years from present, because it is a timeframe in which we can reasonably estimate population responses to natural factors and management. As discussed under *Future Conditions* below, in the SSA

report, future population conditions under different management scenarios were simulated and modeled to 25 years into the future. During this process it was determined that we can rely on the timeframe presented in the scenarios and predict how future stressors and management will affect the red-cockaded woodpecker. This timeframe, given the species' life history, is also sufficient to identify any effects of stressors or conservation measures on the red-cockaded woodpecker's viability at both population and species levels. Finally, 25 years represents four to five generations of red-cockaded woodpecker, which would be sufficient time for population-level impacts from stressors and management to be detected.

*Comment 42:* One commenter contended that the proposed 4(d) rule fails to explain how it is necessary and advisable, because the rule's effect on private landowners and voluntary conservation is not considered. In addition, the commenter expressed concern that the Service did not explain why the Regulatory Flexibility Act (RFA) and National Environmental Policy Act (NEPA) analyses were not prepared for the proposed 4(d) rule.

*Our Response:* As discussed in our February 3, 2022, proposed reclassification rule, section 4(d) of the Act provides that the ''Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation'' of species listed as threatened. As discussed in the Background, the courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. Thus, regulations promulgated under section 4(d) of the Act provide the Secretary with wide latitude of discretion to select appropriate provisions tailored to the specific conservation needs of the threatened species.

We considered the effect on private landowners of our proposed rule. The proposed rule explains that if a manager has received or receives a permit for a particular activity (*e.g.,* a section 10(a)(1)(A) permit for monitoring red-cockaded woodpeckers, a permit issued for an existing SHA, CBA, or HCP), any take that occurs as a result of activities covered by this permit would remain exempted from the rule's prohibitions on take. Furthermore, our rule encourages private landowners to continue to enroll in the CBA program, under which the landowners receive formal regulatory assurances from the Service regarding their management responsibilities in return for contributions to benefit the listed species. Any landowner who enrolls in a CBA is allowed to return their property to ''baseline'' conditions at any time. Additionally, this final rule excepts take from activities completed by a landowner that, when the species was endangered, would have required a permit under the Act.

Regarding the commenter's concern that a NEPA analysis was not undertaken, it is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare a NEPA analysis in connection with regulations adopted pursuant to section 4(a) of the Act (see National Environmental Policy Act section below).

Regarding the commenter's concern that an RFA analysis was not provided, the Secretary, in making a determination of endangered or threatened species status under section 4(b)(1)(A) of the Act, ''shall make determinations solely on the basis of the best scientific and commercial data available.'' Economic considerations are in addition to such data and cannot be part of the basis for the species' status determination, which includes the 4(d) rule. The rationale for sole use of best scientific and commercial information available is provided in the legislative history for the 1982 amendments to the Act, which describes the purposes of the amendments using the following language: ''to prevent non-biological considerations from affecting [listing] decisions,'' Conf. Rep. (H.R.) No. 97–835 (1982) (''Conf. Rep.''), at 19. As noted in the House Report, economic considerations have no relevance to determinations regarding the status of species and the economic analysis requirements of Executive Order 12291, and such statutes as the RFA and the Paperwork Reduction Act, will not apply to any phase of the listing process. Conf. Rep. (H.R.) No. 97–835 (p. 24153; 1982).

*Comment 43:* One commenter requested that the Service be more involved with assessing, approving, and enforcing actions affecting species protected under the Act so that the State agencies are not left with the burden of interpreting the 4(d) rule.

*Our Response:* We acknowledge the importance of our conservation partnership with State agencies and the role they play when interpreting rules for federally listed species in response to public inquiries. In addition to providing Frequently Asked Questions documents about the 4(d) rule, our local field offices are available to provide technical assistance. State agencies can direct questions to field offices to assist with the interpretation of the 4(d) rule in addition to requesting assistance when enforcing protections for federally protected species.

*Comment 44:* Another commenter recommended that non-Federal management plans, including analyses of potential impacts from ongoing and proposed activities (within the time covered), be more ''programmatic'' in nature, such as ''worst case'' estimates included in some Army INRMP endangered species management components (ESMCs).

*Our Response:* While we are available to provide technical assistance to private landowners, we do not have the authority to tell private landowners how to manage their properties. The suggestion described by the commenter would be a relatively unique and specific situation to occur. We anticipate that people will follow the intent of the 4(d) rule and, as such, will apply appropriate management for the species to their properties.

General Biology, Ecology, and Population Issues

*Comment 45:* Several commenters provided critiques of the data and methodologies used in the SSA. One commenter expressed concerns that the data they provided for the SSA was the best possible outcome and worried that all the data might be inflated. Another commenter indicated concern that the ''moderate'' resiliency class included both populations that were declining and were not declining. Yet another commenter stated that the Service did not adequately articulate uncertainties related to the model.

*Our Response:* The data for the SSA was collected and analyzed according to established scientific procedures. Expert solicitation and peer review provided opportunities for public comment, and all analysis and decisions were based on the data provided. We rely on and trust that land managers provided accurate data.

The SSA report provides a description of the approach and method used to delineate demographic populations. The report also describes how the moderate category is a transitional resilience category, in which population sizes range from 102 to 248 active clusters and consist of both increasing and stable populations. The moderate category populations, unlike those in the high and very high categories, may vary considerably in their resilience depending on population size, management, and the spatial distribution and density of active clusters (USFWS 2022, p. 113).

We also described uncertainties within the SSA report, including the uncertainties associated with performing analyses with an imputed data set. With imputed data, a single value is provided for each missing value and analyzed as though it were true, while in reality there is uncertainty about the value of each missing observation (USFWS 2022, p. 227).

All of the issues raised were either already addressed in the SSA report or have been incorporated into the SSA report and/or this final rule.

*Comment 46:* One commenter provided details about concerns that the way the 2003 recovery plan delineated populations of red-cockaded woodpeckers was incorrect.

*Our Response:* SSA reports are scientific documents meant to be a single source for the species' biological information needed to inform decision-making in the rule. The SSA report did not use the same population boundaries as the 2003 recovery plan. As reviewed in the 2003 recovery plan, red-cockaded woodpecker populations functioned as demographically closed populations due to infrequent long-distance dispersal (USFWS 2003, pp. 25, 32). In the 2003 recovery plan, territory densities or distances among territories were not defined to explicitly categorize demographic populations. In the SSA, we instead used red-cockaded woodpecker dispersal data from long-term monitoring data and radio-telemetry studies to spatially delimit demographic populations according to nearest neighbor active clusters within 6 km (3.7 miles) (USFWS 2022, pp. 80–82). Ultimately, we delineated 124 demographic populations. In the SSA report, the essential support population this commenter referenced was split into nine demographic populations for our analysis. Although we are not currently contemplating changes to the 2003 recovery plan, we will consider this commenter's suggestion if we embark on any revisions to this plan.

Population Stressors

*Comment 47:* One commenter shared that, according to the North American Breeding Bird Survey, the woodpecker has had a cumulative population decline of 86 percent between 1966 and 2014, with an average of over 3.3 percent population decline per year (Red-cockaded Woodpecker Life History); they believed this decline would continue until the species becomes extinct.

*Our Response:* The Breeding Bird Survey is a roadside survey of North American birds that primarily covers the continental United States and southern Canada. Every June, experienced birders volunteer to conduct surveys along established roadside routes to facilitate the estimation of population change for birds that are encountered during surveys. Although the Breeding Bird Survey provides a very large data set, there are potential problems with estimates of population change that are derived from Breeding Bird Survey data. Therefore, ''regional credibility measures'' are used to check certain attributes of the survey data, such as relative abundance on survey routes, precision of trends, and the completeness of the data set. It is possible that data analysis can be inaccurate and imprecise, depending on the level of data deficiency in a region; thus, the data are categorized into three credibility categories to assist in assessing reliability of the results. The Breeding Bird Survey results for the red-cockaded woodpecker reflect that the majority of the data are in the red category, meaning the data have important deficiencies and are not of sufficient quality to use in estimates of population change or for other reasons.

Decades of species-specific, red-cockaded woodpecker survey data have been obtained using standardized data collection methodology, and are the data that the Service relied upon in the SSA and to inform this rule. These data sets provide a large amount of high-quality data for assessing attributes of red-cockaded woodpecker populations and informing management decisions. Data collected during red-cockaded woodpecker surveys represent the best available species' information and are superior to species' data provided by the Breeding Bird Survey and any other means.

*Comment 48:* Several commenters believed that because a majority of populations have low resiliency to stochastic events and threats (primarily due to small population sizes), they remain in immediate danger of extirpation and do not have sufficient resiliency to warrant downlisting.

*Our Response:* These commenters correctly accounted for the number of demographic populations in the low and very low resiliency categories. However, the majority (65 percent) of total active clusters (5,062 active clusters out of 7,794 total active clusters) across the range of the species are in the 16 moderate-to-very-high resiliency populations. Furthermore, of the 98 populations for which we had sufficient data to measure growth rates, only 13 percent are in decline; in other words, 87 percent of red-cockaded woodpecker populations (for which we had sufficient data) are stable or increasing, including the vast majority of low and very low resiliency populations (USFWS 2022, pp. 112–116). These stable and positive growth rates are indicative of the positive effects of red-cockaded woodpecker conservation management programs on these locations and the ability of such management to offset inherently low or very low population resilience.

In summary, after evaluating the threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find that the stressors identified above continue to negatively affect the red-cockaded woodpecker, but new restoration techniques and changes in silvicultural practices have led to stabilization of the red-cockaded woodpeckers' viability and even resulted in a substantial increase in the number and distribution of populations. Sixty-five percent of all current red-cockaded woodpecker clusters are within moderately, highly, or very highly resilient populations, and populations are spread across multiple ecoregions, providing for redundancy and representation. Given these current levels of resiliency, redundancy, and representation, we conclude that the red-cockaded woodpecker is not currently in danger of extinction throughout all or a significant portion of its range (*i.e.,* it no longer meets the definition of an endangered species).

*Comment 49:* Multiple commenters expressed concern about the continued loss of suitable habitat constraining population growth of the species, with one commenter stating that the Service did not adequately address carrying capacity issues in the SSA report.

*Our Response:* We recognize that some habitat loss may still be occurring and acknowledge that the lingering impacts of historical clearcutting and incompatible forest management, and conversion to urban and agricultural land still negatively affect the ability of red-cockaded woodpecker populations to grow, even when managed, as the carrying capacity of suitable forest areas across much of the range can be quite low. However, restoration activities such as prescribed fire and strategic placement of recruitment clusters can reduce gaps between populations and increase habitat and population size toward current carrying capacity. These activities are occurring across the range of the red-cockaded woodpecker on properties actively managed for red-cockaded woodpecker conservation (85 FR 63474 at 63479, October 8, 2020).

Carrying capacity was taken into consideration when assessing population size within the foreseeable

future in the simulations and scenarios run in the SSA. Values for each population were acquired from property and population managers who estimated carrying capacity for their populations at the end of the 25-year period. Carrying capacity reflected the estimated future amount of nesting and foraging habitat, and whether a potential increase in active territories to capacity was the result of recruitment clusters, budding, or pioneering (USFWS 2022, pp. 12–13). Additionally, we acknowledged in the SSA report (USFWS 2022, p. 14) that carrying capacity may have been underestimated in our analysis. The high densities of red-cockaded woodpeckers that occur in high-quality habitat suggest that carrying capacity estimates are overly conservative. If so, greater growth than our conservative simulations project and larger differences between management scenarios are possible.

*Comment 50:* One commenter shared their concern that small woodpecker populations in low-quality habitats, experiencing additional stressors, can quickly lose their pools of helper birds, leading to rapid population decline.

*Our Response:* Helpers are non-breeding adult offspring that remain on their natal territories for one or more years after fledging. Helpers assist in the rearing of young and other essential activities during years of delayed dispersal or until becoming replacement breeders on their natal territories. Annual levels of productivity and mortality may affect the following year's total number of helpers and the total number of groups with helpers found within a small red-cockaded woodpecker population; however, these variables do not similarly affect the total number of potential breeding groups (PBGs) in that same population. We acknowledge that small population size and limited availability of resources are impacting the species' viability within the foreseeable future, thus contributing to our decision to reclassify the red-cockaded woodpecker as a threatened species to ensure continued protections under the Act.

Climate Change and Catastrophic Events

*Comment 51:* Multiple commenters expressed that red-cockaded woodpeckers will not be able to shift to new areas or habitats, given their reliance on old, mature pines, rendering them even more vulnerable to climate-related stressors. One commenter suggested the need to protect and restore new habitats as climate refugia to ensure the continued survival of red-cockaded woodpeckers.

*Our Response:* We agree that red-cockaded woodpeckers are habitat specialists that rely on habitat management occurring in specific areas; they thus have limited capacity to shift their range in response to future climate changes. The majority of clusters are in moderate to very high resiliency populations, and 87 percent of populations with sufficient data indicate stable to increasing growth rates (USFWS 2022, pp. 107–112). However, if climate change decreases the suitability of habitat in certain parts of the species' range, as DeMay and Walters (2019, entire) suggest, it could increase extinction risk, due to the lack of unoccupied suitable habitat at more northern latitudes. Since red-cockaded woodpeckers have limited capacity to shift their range, ongoing, nimble habitat management applications, designed to meet changing climate conditions, will help the species achieve long-term population viability. Thus, while the species' limited capacity to shift their range is not currently manifesting in any declines in resiliency, redundancy, or representation, it is possible that, without effective management, this limited capacity could result in future viability declines. We cannot predict the scope of these potential declines due to limitations in our modeling. Consequently, while enhancing the resiliency of inland populations could further increase species' viability in the face of future impacts from climate change, the species currently has sufficient resiliency, redundancy, and representation such that it no longer meets the definition of an endangered species and warrants reclassification to a threatened species.

*Comment 52:* Public commenters suggested that the Service inadequately analyzed the potential synergistic effects of climate change on other stressors, such as large wind events, wildfires, sea level rise, tornadoes, ice storms, and pine beetles.

*Our Response:* In the SSA report, we discuss the stressors that wildfire (USFWS 2022, pp. 126–127); large wind events, tornadoes, sea level rise, and ice storms (USFWS 2022, pp. 84, 96, 121); and pine beetles (USFWS 2022, pp. 84, 126) can present to the species. While these natural disturbances are already occurring in parts of the species' range, effective management after disturbances (*e.g.,* installing artificial cavities, reducing hazardous fuels, and restoring forests to suitable habitat) results in these disturbances currently only influencing individuals or temporarily affecting populations. As a result, these stressors are not currently having detrimental species-level effects. As evaluated in the SSA, the stable to increasing population trend in 87 percent of the populations demonstrates that effective management has ameliorated these stressors such that they only have isolated and temporary negative effects (USFWS 2022, p. 112).

However, as these commenters suggest, uncertainty remains as to how these stressors may influence the species in the future. We were not able to model how resiliency of red-cockaded woodpecker populations might change in the future as a result of bark beetle outbreaks, sea level rise, tornados, drought, and other influences due to inconsistency in or unavailability of data (USFWS 2022, appendix 2, pp. 6–7). Should these stressors increase their scope or intensity in the future, and should effective management not keep pace with these increases, they could start to negatively affect populations, though we do not know of any research suggesting this will occur. We fully expect this post-disturbance management to continue into the foreseeable future, and we have structured our final 4(d) rule to facilitate the continuation of such management. The information these commenters provided supports our conclusion that, while the red-cockaded woodpecker is not currently in danger of extinction, the effects of climate change, paired with uncertain future management means that the species continues to meet the definition of a threatened species.

General Stressors

*Comment 53:* One commenter suggested that the Service did not adequately consider the cumulative effects of stressors on red-cockaded woodpeckers when making the decision to downlist the species.

*Our Response:* We incorporated the cumulative effects of stressors into the SSA when we characterize the current and future condition of the species. In order to assess the current and future condition of the species, we completed an iterative analysis that encompassed and incorporated threats individually and then accumulated and evaluated the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrated the cumulative effects of the factors and replaced a standalone cumulative effects analysis. To help clarify, we have added a brief discussion of cumulative effects to the

Summary of Biological Status and Threats section of this rule.

*Comment 54:* Multiple commenters took issue with the fact that the proposed downlisting did not consider the effects of southern pine beetles as a potential stressor.

*Our Response:* We agree that loss of cavity trees resulting from both outbreak (*i.e.,* epidemic) and non-outbreak (*i.e.,* endemic) southern pine beetles can substantially impact red-cockaded woodpeckers, as noted in the SSA report (USFWS 2022, pp. 39–40). In the SSA report we detail how southern pine beetles do not directly impact red-cockaded woodpeckers but do directly impact cavity trees. Southern pine beetle outbreaks can be minor or locally significant through killing the cavity trees and other pines used for foraging. The practice of thinning stands with outbreaks can cause direct loss of active clusters; however, the long-term benefits of stopping the outbreak often outweigh the short-term impacts of losing a few clusters (USFWS 2022, p. 84). Even though the SSA report provided a description of issues facing the red-cockaded woodpecker as it relates to southern pine beetles, these variables were not explicitly modeled; instead, they were implicitly present in the resulting models in the intercept and residual error terms, to the extent that they affected changes in population size over time (USFWS 2022, appendix 2, p. 5). Despite known outbreak events within red-cockaded woodpecker habitat (USFWS 2022, p. 140), 87 percent of populations evaluated in the SSA demonstrate stable to increasing growth rates, illustrating the effectiveness of currently ongoing active management such as described in the SSA report regarding species-level impacts from hurricanes (USFWS 2022, p. 112).

*Comment 55:* Multiple commenters suggested that we did not adequately consider the stressor of diseases, such as avian keratin disorder, in our SSA report or proposed rule.

*Our Response:* Given that avian keratin disorder research is ongoing, we could not explicitly include the data in the species-wide analysis (USFWS 2022, appendix 2, p. 5). Currently, there is no evidence that this disease or other novel diseases are having more than an individual-level effect on the species.

4(d) Rule Take Prohibitions

*Comment 56:* One commenter expressed their concern that potential section 9 violations are not being properly investigated, resulting in no punitive actions taken.

*Our Response:* We encourage the commenter to bring any information about specific potential section 9 violations to the attention of our Office of Law Enforcement.

*Comment 57:* One commenter expressed frustration that the Service did not account for economic costs when developing the 4(d) rule and indicated that failing to do so would make people see red-cockaded woodpeckers as a liability. Additionally, they indicated that the Service did not have sufficient justification for extending restrictions and costs associated with the section 9 prohibition and that this approach does not meet the ''necessary and advisable'' standard.

*Our Response:* In 1982, Congress amended the Act to add the requirement that listing determinations are to be made solely on the basis of the best scientific and commercial data available. In the Conference Report for the 1982 amendments to the Act, Congress specifically stated that economic considerations are not to be considered in determinations regarding the status of species and that the economic analysis requirements of Executive Order 12291 and such statutes as the Regulatory Flexibility Act do not apply to any phase of determining the listing status of an entity under the Act. If we determine that a species is a threatened species under the Act, part of our consideration for completing the listing process is to consider what regulations are necessary and advisable to provide for the conservation of the species under section 4(d) of the Act. As a result, a cost benefit analysis is not part of the process required to propose or finalize a section 4(d) rule.

We described on page 6120 of the revised proposed rule (87 FR 6118, February 3, 2022) that we have developed revisions to the section 4(d) rule that are designed to address the red-cockaded woodpecker's specific threats and conservation needs. The statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9; however, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the red-cockaded woodpecker.

As stated in the revised proposed rule, the section 4(d) rule will provide for conservation of the red-cockaded woodpecker by adopting the same prohibitions that apply to an endangered species under section 9 of the Act and 50 CFR 17.21 and several exceptions to those prohibitions (87 FR 6118 at 6122, February 3, 2022). Included in the proposed rule are the revisions to the proposed section 4(d) rule that are designed to address the red-cockaded woodpecker's specific threats and conservation needs (87 FR 6118 at 6120, February 3, 2022). These revisions have been carried forward into this final 4(d) rule.

4(d) Rule Exceptions

*Comment 58:* One commenter requested that the Service provide additional guidance in the Background, or in subsequent documents, to enable land managers to understand beneficial silviculture and management actions that would minimize incidental take versus actions that would likely be adverse for which the exceptions would apply.

*Our Response:* We acknowledge this concern and are committed to continuing to provide guidance pertaining to silvicultural and habitat management actions on red-cockaded woodpecker conservation. Additional guidance is also available by contacting the local Ecological Services Field Office.

*Comment 59:* Multiple commenters expressed concern that Federal agencies will start harvesting the older age classes of pines for the purpose of red-cockaded woodpecker habitat management or to gain timber sales revenue. They requested that take exemptions provided under this rule not extend to the removal of older age classes of pines and that such activities be undertaken only in consultation with the Service.

*Our Response:* We acknowledge the importance of older pine trees for red-cockaded woodpecker management; however, it is important to note that the incidental take exceptions in this 4(d) rule are intended to encourage necessary and beneficial habitat restoration and species' management to advance recovery. To increase and maintain sustainable current and future habitat, red-cockaded woodpecker populations may require conversion of older age class stands of loblolly, slash, or other planted pines to site-appropriate species, as well as regenerating stands of older pines thereby providing a diversity of age-classes necessary to ensure the availability of foraging and nesting habitat in the future. We recognize that short-term adverse effects to red-cockaded woodpecker may be necessary to provide improved habitat quality and quantity in the long term with the expectation of increasing numbers of

red-cockaded woodpecker. While incidental take resulting from these activities may be excepted under certain circumstances, Federal action agencies would still need to fulfill their section 7 obligations under the Act. Through section 7 consultation, we would have the opportunity to review these activities and provide input on how to minimize impacts to the species.

*Comment 60:* One public commenter recommended that 50 CFR 17.41(h)(4)(iii) exceptions for private properties be strengthened by making the following changes: (1) explicitly incorporating the methods of cavity tree protections from the 2003 recovery plan into the rule and (2) requiring a take permit with specific requirements for how to avoid and minimize disturbances to roosting and nesting behavior when applying herbicide or prescribed burning.

*Our Response:* (1) The methods and levels of cavity tree protection needed varies across properties and ownership according to local habitat conditions, availability of resources for management, and several other factors; thus, land managers have latitude to incorporate appropriate, site-specific measures into their red-cockaded woodpecker habitat management plans, as long as those measures provide sufficient cavity tree protections. (2) These types of habitat management parameters are appropriately addressed in a population's red-cockaded woodpecker habitat management plan rather than a legal regulation, such as this rule.

*Comment 61:* Several public commenters requested the Service define the following terminology in the rule: (1) ''known active cluster,'' (2) ''red-cockaded woodpecker habitat restoration and management,'' and (3) ''conditions not able to support red-cockaded woodpeckers.''

*Our Response:* (1) ''Active cluster'' is defined in the revised rule as a cluster in which one or more of the cavity trees exhibit fresh resin as a result of red-cockaded woodpecker activity or in which one or more red-cockaded woodpeckers are observed, and the word ''known'' is used in this context by the common definition found to be generally recognized in Merriam-Webster's dictionary. Our intent for the term ''known active cluster'' is to encourage private landowners to pursue certain types of voluntary forest management activities (*i.e.,* prescribed burns and herbicide application) in a way that reduces impacts to the species but also removes any potential barriers to the implementation of this beneficial forest management, such as fear of prosecution for take of the red-cockaded woodpecker. (2) Red-cockaded woodpecker habitat restoration and management encompasses a variety of activities designed to improve conditions for the species but that must be developed on site-specific bases to account for local habitat complexities. (3) The minimum habitat and resource conditions needed to support red-cockaded woodpeckers exhibit variation within and among populations across the species' range and are dependent on site-specific conditions and, therefore, are not quantifiable in this rule in a standard way that is representative of every population.

*Comment 62:* One public commenter expressed concern about language in the October 8, 2020, proposed rule (85 FR 63474) that indicated take would be limited to only ''active cavity trees or suitable foraging habitat'' and stated that this limitation could drastically reduce a red-cockaded woodpecker group's ability to persist given their dependency upon old pines for foraging and nesting.

*Our Response:* The rule language noted by the commenter was intended to give an example of take but was not meant to be a comprehensive list of what could cause take for the species. Under the Act, take is defined as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.'' This language was removed in the most recent proposed rule (87 FR 6118, February 3, 2022).

*Comment 63:* One public commenter requested that State employees continue to report any red-cockaded woodpecker injuries, deaths, or other impacts in a manner consistent with section 10 permittees if they are excepted by the proposed 4(d) rule.

*Our Response:* The 4(d) rule does not change this reporting process. Under section 6, State agencies will continue to report red-cockaded woodpecker injuries, deaths, and/or other impacts to the Service.

*Comment 64:* One commenter requested exceptions for incidental take resulting from other forest management activities, specifically mechanical brush clearing and thinning operations.

*Our Response:* We recognize the need for and support mechanical brush clearing and thinning when conducted to maintain or enhance red-cockaded woodpecker foraging and nesting habitat. However, incidental take resulting from such activities is not anticipated when conducted outside red-cockaded woodpecker clusters as it is not expected to significantly impair essential behavioral patterns, including breeding, feeding, or sheltering. Within clusters during the breeding season, these activities may repeatedly disturb roosting and nesting red-cockaded woodpeckers, thereby significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering, potentially resulting in cavity abandonment or nest failure thus resulting in incidental take. Within clusters outside the breeding season, these activities are not anticipated to result in incidental take when avoided within at least 1 or 2 hours of dawn and dusk. Thus, flexibility exists to conduct such activities with red-cockaded woodpecker clusters outside the breeding season without the need for a take exception.

4(d) Rule Artificial Cavity Provisions

*Comment 65:* One public commenter expressed support of the Service's efforts to automate/streamline the permitting process associated with installing artificial cavity inserts, but questioned if it would require much more effort to amend permits if the Service employee is already going to have to review and file documentation letters for new trainees.

*Our Response:* We agree that this specific exception may not be substantial for all practitioners, but many partners have expressed that the permitting approval process is significantly delayed. To help clarify, we will be requiring only an acknowledgement letter from the certified trainer that the trainee has met the certification requirement. The letter should go to the Service's National Red-cockaded Woodpecker Coordinator and not through the permit process.

*Comment 66:* A few public commenters stated that there should be no exception for take associated with installation of artificial cavities and cavity restrictors, with several commenters expressing concern over risks associated with cavity restrictors if they are not installed and monitored properly.

*Our Response:* We acknowledge that we have had reports where red-cockaded woodpeckers have been adversely impacted due to issues related to artificial cavities. However, we advocate that proper installation protocols and training, onsite supervision, and attentive cavity maintenance scheduling will reduce potential adverse impacts. For example, take that occurs from the installation of artificial cavities and cavity restrictors is unfortunate; however, because proper training and maintenance protocols remain as they always have been, we expect take from artificial cavity

installation and restrictor plates to remain limited across the range.

*Comment 67:* Multiple commenters provided feedback pertaining to the minimum diameter of trees for artificial cavity installation, as well as recommendations for cavity maintenance (*e.g.,* screening damaged unusable artificial cavity inserts, checking cavity trees annually) and safe installation practices (*i.e.,* inspection by a federally permitted biologist).

*Our Response:* The current standards for cavity tree selection and artificial cavity installation continue to satisfy the best available science standard and will remain as the standards used to guide artificial cavity tree selection and installation. We currently support the artificial cavity standards defined by Allen (1991, p. 19), Copeyon (1990, pp. 303–311), and USFWS (2022, pp. 85–87). For the cavity insert technique, the guidance requires selected trees to have a minimum of 15-inch diameter at cavity height, while the drilled cavity technique, generally, requires knowledge of the tree's sapwood (3.5 inches or less) to heartwood (7 inches or more) ratios at cavity height.

We agree that attending to unsuitable cavities or cavities in disrepair should be part of a regular maintenance routine. Many of the procedures used to protect red-cockaded woodpeckers from unsuitable cavity conditions includes screening to minimize adverse effects. The SSA report describes protocols and procedures that are designed and intended to avoid and limit potential adverse effects to red-cockaded woodpeckers for both suitable and unsuitable cavities that have fallen into disrepair (USFWS 2022, pp. 22, 41, 42, and 53).

*Comment 68:* One public commenter suggested that the training requirements for the number of installed artificial cavity inserts and drilled cavities be the same as the existing permit requirements and provided some potential detailed language to include in the rule in § 17.41(h)(4)(iv)(A).

*Our Response:* The training requirements are not the same as the permit requirements so that the trainer is able to ensure the proficiency and skill level appropriate for the situation, as determined by the trainer. Training requirements for the number of installed artificial cavity inserts and drilled cavities can be obtained from the Service's National Red-cockaded Woodpecker Coordinator.

4(d) Rule Military Exception

*Comment 69:* Many public commenters expressed concern that the INRMP process is insufficient and indicated mistrust that military installations would maintain the highest level of ecosystem habitat management without requirements in place.

*Our Response:* The Sikes Act states that INRMPs shall reflect mutual agreement of the military service, the Service, and the States on the conservation, protection, and management of fish and wildlife resources. Mutual agreement is reflected by signature of the plan or letter of concurrence. As such, we believe that the INRMP process is sufficient and trust in the commitment of the military installations to implement them.

*Comment 70:* One commenter questioned why the DoD installation exception was needed given existing Army Red-cockaded Woodpecker Guidelines already provide reduced restrictions as installations approach, meet, and/or exceed their population goals.

*Our Response:* The conditions described in the 1996 ''Management Guidelines for the Red-Cockaded Woodpecker on Army Installations'' would still apply as site conditions dictate their applicability; however, newly constructed INRMPs would better align with the conditions proposed in the 4(d) rule. In part, this is because the Army's Red-cockaded Woodpecker Guidelines were developed and implemented with the red-cockaded woodpecker listed as endangered, which in turn requires installations to develop an ESMC. It is clear then that not all the requisites of an ESMC will be applicable under the 4(d) rule. Additionally, site-specific military operations are not part of the Army-wide guidelines but are proposed as an integral component to best utilize the 4(d) rule's structure. Finally, with the implementation of the 4(d) rule, it is likely the Army may consider revising their guidelines to better align with the 4(d) rule.

*Comment 71:* Regarding the DoD installation exception, one commenter expressed concern that the Service approval of INRMPs would be a continuation of historical practices but with more exception requirements. Additionally, without the Service's approval of an INRMP, there is no valid exception for any take incidental to military training or management to maintain or restore red-cockaded woodpecker habitat and that the Service's denial of an INRMP approval could, by this exception, appear to be an additional form of notification for joint resolution among agencies, or to lead to formal consultation.

*Our Response:* The Sikes Act states that INRMPs *shall* reflect mutual agreement of the military service, the Service, and the States on the conservation, protection, and management of fish and wildlife resources. If the process of approving INRMPs, by way of the requirements of the Sikes Act, were at a point of impasse between the Service and the DoD, then we agree that a notification for joint resolution among agencies or a request to enter formal consultation are potential solutions to achieve resolution.

*Comment 72:* Commenters recommended numerous additional conditions and amendments be applied to the exceptions for DoD installations. A summary of some of the recommendations include: (1) Creating standards for the INRMP process, (2) using a population-driven approach for the exceptions (for example, excluding the DoD exception for installations with populations in decline that have not met population goals), (3) requiring compliance with management guidelines for exceptions to apply, and (4) requiring that each INRMP under this rule has an ESMC.

*Our Response:* ''Standards'' would be valuable and are likely to enhance both INRMPs and new project proposals when articulating the expectations for evaluating and implementing red-cockaded woodpecker management applications under the 4(d) rule. Of course, we would likewise prefer that take, under either scenario, is limited. However, because many red-cockaded woodpecker populations have site-specific conditions, we anticipate local plan and project determinations to be most effective when guarding against population reductions. We anticipate red-cockaded woodpecker managers to align with, and continue to work toward, the regionwide description of the desired future condition that characterizes the optimal red-cockaded woodpecker habitat conditions.

*Comment 73:* One commenter requested clarification around long-term habitat projects in the vicinity of military bases currently being used by some military installations to offset destruction of red-cockaded woodpecker habitat. They indicated that these programs attempt to rely on an installation's promises that it will restore off-base habitat that it has acquired, which may not be suitable for either nesting or foraging, to offset takes from the destruction of currently suitable nesting and/or foraging habitat within the installation. This commenter asked that the Service not allow this by, at a minimum, ensuring that the long-term habitat projects do not fall under the ''habitat management and military

training activities'' outlined in the proposed rule.

*Our Response:* Section 4(d) of the Act requires that the Secretary issue regulations that are necessary and advisable to provide for the conservation of threatened species. Similarly, the intent of the INRMP is to follow the ESA and provide regulatory flexibility for the conservation of protected species. As a reminder, there are no changes in section 7 responsibilities for Federal agencies due to a 4(d) rule. With regard to the commenter's concerns, there are rigorous requirements through formal consultation with the Service that would have to be met before an Army ''compatible use buffer'' property could be used as an offset (*e.g.,* land is permanently encumbered for protections, an endowment is set up to provide funding for management, the land has been validated by way of a spatially explicit population model that red-cockaded woodpecker will occupy the habitat in the future, there is a unique management plan). The details of consultation language, along with the parameters identified, would be reflected in the INRMP.

4(d) Rule Provisions for Prescribed Burning and Herbicides

*Comment 74:* A public commenter reported concerns that most private landowners are unlikely to contact a State agency prior to burning and that State agencies may not be aware of the protected status of the species.

*Our Response:* There are already requirements in place for private landowners to contact State wildlife agencies when conducting prescribed fires within red-cockaded woodpecker populations. Given the many decades of cooperation between the Service and the State wildlife agencies, and the past and present conservation programs enacted for the conservation of the red-cockaded woodpecker by these State wildlife agencies, we contend that all State wildlife agencies in the range of the red-cockaded woodpecker are aware of the species' status under the Act.

*Comment 75:* One commenter stated that there is a risk of take occurring during prescribed burns on private lands for clusters lacking intensive monitoring, and that raking around cavity trees can only minimize the risk. Another commenter stated that habitat management intended to benefit the species should not result in take and requested a distinction in the exceptions for both Federal and private lands for take of actual woodpeckers compared to forms of harm or harassment.

*Our Response:* Take can result knowingly or otherwise, by direct and indirect impacts, and intentionally or incidentally. Additionally, there is a difference between short-term take of an individual and the long-term benefit to the conservation of the species from habitat management actions taken to benefit the species. This section 4(d) rule would prohibit take on both public and private lands with exceptions as described in § 17.41(h)(4)(ii)–(iii). Incidental take that results from activities such as prescribed burns could be allowed under certain authorizations, including being excepted under this section 4(d) rule, authorized by a permit under the Act (*e.g.,* section 10(a)(1)(A) permit issued for a CBA, section 10(a)(1)(B) permit issued for an HCP), or exempted through section 7 consultation (*e.g.,* consultations that cover landowners enrolled in NRCS or Partners for Fish and Wildlife conservation programs).

Given the array of management activities and how each could result in one or more forms of incidental take, distinguishing between take of individuals directly through killing or indirectly through harm or harassment affecting other aspects of the species' ecology or behavior is not practical as both may result in lethal take. Federal agencies would still consult under section 7 of the Act if their actions may affect red-cockaded woodpecker, and if take is anticipated, the form of take would be identified in the subsequent biological opinion. This includes intraservice section 7 consultation for the issuance of section 10(a)(1)(A) permits for existing SHAs or future CBAs on private land, which identify the anticipated forms of take. Additionally, we agree that managers have a responsibility to avoid killing red-cockaded woodpeckers, as we included language that Federal land management agencies must incorporate appropriate conservation measures to minimize or avoid adverse effects of excepted habitat management activities on the red-cockaded woodpecker foraging habitat, on clusters, and on the species' roosting and nesting behavior to the maximum extent practicable.

4(d) Rule Exception for Service- or State-Approved Management Plans

*Comment 76:* One commenter noted that not all State agencies involved in red-cockaded woodpecker conservation have section 6 cooperative agreements with the Service and thus are not able to utilize exceptions. Additionally, they stated that many conservation plans required for section 6 cooperative agreements with the Service are out of date or lack the level of detail necessary for red-cockaded woodpecker management.

*Our Response:* We acknowledge that not all State agencies conducting red-cockaded woodpecker management activities have section 6 agreements with the Service. Section 6 cooperative agreements are limited to a State agency that establishes and maintains an adequate and active program for the conservation of endangered species and threatened species fitting the requirements of section 6(c)(1). Given the requirements, section 6 is often limited to State wildlife agencies with State regulatory authority, thus other State agencies that may manage for red-cockaded woodpeckers on their lands are ineligible.

We also acknowledge that State conservation plans throughout the red-cockaded woodpecker range vary and recognize that State agencies possess valuable expertise and foster crucial relationships with State conservation agency partners contributing to woodpecker conservation. The exceptions for conservation actions (50 CFR 17.31(b)) apply only to any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act.

*Comment 77:* In general, commenters recommended additional detail and conditions be added to the Federal land management agency exception (§ 17.41(h)(4)(ii)). A summary of the recommendations include: (1) Clarify in the Background how the three requirements will be assessed, (2) use a population-driven approach for the exceptions, (3) conduct thorough Service review of proposed take due to management/restorations actions, and (4) add clarification on types of analyses and information in Federal habitat management plans with regard to ''habitat management actions.''

*Our Response:* Population dynamics of the red-cockaded woodpecker are complex, involving number of adults and helpers and amount, type, and spatial arrangement of suitable roosting, nesting, and foraging habitat. Therefore, we believe it is appropriate for Ecological Services Field Office staff and species leads to cooperate with Federal partners during preparation, review, and/or revision of Federal plans, annual reviews, and/or reporting requirements, if applicable, and section 7 consultations. Because of this complexity, we chose not to specify how the three requirements associated with the exception for Federal land management agency properties will be

assessed or a limit to any decline or reduction in the property population size that may result because of implementing beneficial conservation management.

Federal land management agencies often cooperate with the Service and the States to prepare their habitat management plans (*e.g.,* LRMPs and National Wildlife Refuge comprehensive conservation plans (CCPs)) and incorporate management methods to sustain and increase red-cockaded woodpecker populations as detailed in the 2003 recovery plan. Also, they have established procedures to give Federal, State, and local governments and the public adequate notice and an opportunity to participate in the planning process. Lastly, under this or any section 4(d) rule Federal land management agencies would still need to fulfill their section 7 obligations under the Act. As a result, Service approval of Federal agency habitat management plans is not needed for this exception to apply for the red-cockaded woodpecker.

While this 4(d) rule does not provide additional guidance reflecting our intent for plans or detailed guidance describing the kinds of information expected in the exception, it is important to note that this 4(d) rule would not alter or invalidate the 2003 recovery plan. Recovery plans are not regulatory documents, but rather provide a strategy to guide conservation and recovery of listed species.

*Comment 78:* One commenter suggests that the Service should (1) provide examples of suitable management plan details in the Background section, (2) provide consistent guidance to Federal agencies on the kinds of measures needed to effectively minimize and avoid adverse effects, and (3) require an analysis of the effects of certain types of management, which the Service should also be willing to provide as guidance or by other forms.

*Our Response:* Population dynamics of the red-cockaded woodpecker are complex, including but not limited to number of adults and helpers and amount, type, and spatial arrangement of suitable roosting, nesting, and foraging habitat. Therefore, we believe it is appropriate for Ecological Services Field Office staff and species leads to cooperate with Federal partners during preparation, review, and/or revision of Federal plans, annual reviews, and/or reporting requirements, if applicable, and section 7 consultations. Much of the guidance and examples being requested are already provided in various forms (*e.g.,* 2003 recovery plan, Management Guidelines for the Red-cockaded Woodpecker on Army Installations, Service memos, site-specific red-cockaded woodpecker consultation documents, among other sources).

*Comment 79:* One commenter suggests that the term ''maximum extent practicable'' be deleted as it could be misinterpreted.

*Our Response:* If a Federal agency's ability to manage for the species is limited for any reason, this information will be described with justification in their consultation with us. Federal agencies are responsible for implementing the recovery goals and subsequent recovery criteria and should share the goal of moving the red-cockaded woodpecker to the point where the size, number, and distribution of populations will be sufficient to be delisted in the future. As a result, the terminology ''maximum extent practicable'' has remained in the final rule.

*Comment 80:* One public commenter requested that ''State conservation agency'' be defined in the rule and requested a table listing the agencies within each State that are authorized to permit red-cockaded woodpecker impacts.

*Our Response:* We will still be responsible for issuing and managing all section 10 permits and Federal agencies will continue to consult with us on activities that may affect the red-cockaded woodpecker. State agencies are responsible for the State-approved plans but are unable to permit or approve take under the ESA. As a result, it would not be necessary to include a table listing the specific State agencies responsible for authorizing permits.

*Comment 81:* Several commenters expressed some confusion regarding SHAs. One commenter requested clarification regarding the numbers cited in the rule for active clusters (295) and above baseline clusters (241) on Safe Harbor properties. They wanted to know if the 295 referred to baseline clusters. Another commenter asked that there be exception for SHAs, now known as CBAs, only if the ''above baseline'' clusters have exceeded State recovery goals.

*Our Response:* The description of red-cockaded woodpecker clusters and SHAs in the proposed 4(d) rule did not specify the number of baseline red-cockaded woodpecker clusters enrolled in these agreements. The number provided for active clusters includes both above baseline and baseline active clusters. The number provided for above baseline clusters on Safe Harbor properties includes both active and inactive above baseline clusters. Currently there are 273 red-cockaded woodpecker active clusters (both above baseline and baseline) in SHAs across the species' range; 295 was written in error. We have excluded this level of detail in the rule to simplify the language and focus on our intended description that this section 4(d) rule does not alter this valuable program or the permits associated with it.

The regulations being promulgated by this 4(d) rule do not change or authorize the reduction of baseline clusters associated with existing SHAs or future CBAs. Take exceptions for privately owned properties would not provide any additional flexibility. The permits associated with existing SHAs and future CBAs authorize take associated with prescribed burns, herbicide use, and other activities, as long as landowners follow the stipulations in their SHA or CBA and do not decrease the number of red-cockaded woodpecker clusters below their baseline. Restricting excepted take to only above baseline clusters would not provide additional protection to red-cockaded woodpecker populations on private lands and may disincentivize beneficial habitat management. Additionally, limiting these exceptions to only properties exceeding their recovery goal could be detrimental to red-cockaded woodpecker populations below their recovery goal that require habitat management activities necessary to ensure sustainable nesting and foraging habitat. Excepted take resulting from the habitat management activities described in this 4(d) rule is intended to increase and maintain sustainable current and future habitat. We recognize that short-term adverse effects to red-cockaded woodpecker may be necessary to provide improved habitat quality and quantity in the long term with the expectation of increasing numbers of red-cockaded woodpecker.

*Comment 82:* One commenter questioned why properties enrolled in SHAs have ''baseline'' and ''above baseline'' and military installations have ''protected'' and ''unprotected'' clusters, but that similar mechanisms are not in place for the USFS, State agencies, and private landowners not enrolled in SHAs, now known as CBAs.

*Our Response:* All public land managers and applicable State land management agencies are able to enroll and participate in the Conservation Benefit Agreement program. While the mechanism for ''protected'' and ''unprotected'' clusters was originally developed for military installations, if the USFS, State agencies, and private landowners would like the same coverage, they can seek consultation

with the Service. It is important to note that, in this context, ''unprotected'' and ''protected'' clusters only pertains to areas where military training can or cannot occur. Only training that would not be expected to impact red-cockaded woodpeckers could occur within ''unprotected'' clusters, whereas military training cannot occur within ''protected'' clusters.

*Comment 83:* One public commenter suggested that the Service except take associated with activities done in accordance with the private lands guidelines set forth in the 2003 recovery plan. The commenter stated that the plan clearly lists habitat management practices that benefit the species and that forest landowners are already implementing across the landscape.

*Our Response:* The Service is not excepting take associated with activities done in accordance with the private lands guidelines. We support beneficial forest management practices conducted in accordance with the private lands guidelines in the 2003 recovery plan guidelines. Incidental take resulting from such activities is not anticipated when they are conducted outside red-cockaded woodpecker clusters or inside red-cockaded woodpecker clusters outside the breeding season but not within at least 1 or 2 hours of dawn and dusk as such activities are not expected to significantly impair essential behavioral patterns, including breeding, feeding, or sheltering. Within clusters during the breeding season, these activities may repeatedly disturb roosting and nesting red-cockaded woodpeckers thereby significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering, potentially resulting in cavity abandonment or nest failure, thus resulting in incidental take. Thus, flexibility exists to conduct such activities within red-cockaded woodpecker foraging habitat and nesting habitat outside the breeding season without the need for a take exception.

*Comment 84:* One public commenter asked if the Service is required to request a formal intraservice section 7 consultation on the effect of any final 4(d) rule. They noted that they did not see any information about this requirement in the proposed rule and expressed that this would be an opportunity to provide additional guidance to agencies and landowners on how best to manage for the species.

*Our Response:* The Service is required to conduct an intraservice section 7 consultation on any final 4(d) rule. We described this consultation requirement in the revised proposed rule (87 FR 6118, February 3, 2022). In the rule we clarify that section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

4(d) Rule General Issues

*Comment 85:* We received multiple comments on the 4(d) rule as originally proposed in our October 8, 2020, proposed rule (85 FR 63474). These comments expressed confusion and concern about the framing of the prohibitions and exceptions. Some commenters believed the 4(d) rule, as originally proposed, was overly restrictive (even more restrictive than the regulations that apply while the species is listed as endangered), while other commenters believed the proposed 4(d) rule provided inadequate protection.

*Our Response:* We reconsidered the proposed 4(d) rule and published a revised proposed 4(d) rule on February 3, 2022 (87 FR 6118). The revisions addressed the vast majority of concerns raised in the public comments on the October 8, 2020, proposed rule (85 FR 63474).

## Final Reclassification Determination

### Background

A thorough review of the taxonomy, range and distribution, life history, and ecology of red-cockaded woodpecker is presented in the SSA report (USFWS 2022, pp. 16–34; available at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2019–0018) and is briefly summarized here.

Red-cockaded woodpeckers were first described as *Picus borealis* (Vieillot 1807, p. 66). However, in the recent 59th supplement to the checklist of North American birds by the American Ornithological Society (AOS), the AOS Committee on Classification and Nomenclature changed the classification of *Picoides borealis* to *Dryobates borealis* (Chesser et al. 2018, pp. 798–800). We accept the change of the red-cockaded woodpecker's classification from *Picoides borealis* to *Dryobates borealis,* and in this final rule, we amend the scientific name to match the currently accepted AOS nomenclature.

The red-cockaded woodpecker is a territorial, non-migratory bird species that makes its home in mature pine forests in the southeastern United States. The red-cockaded woodpecker is a relatively small woodpecker. Both male and female adult red-cockaded woodpeckers are black and white with a ladder back and large white cheek patches. Males have a tiny red streak, or red ''cockade'', on their upper cheek.

Red-cockaded woodpeckers live in groups that share, and jointly defend, territories throughout the year. In cooperative breeding systems, some mature adults forgo reproduction and instead assist in raising the offspring of the group's breeding male and female (Emlen 1991, entire). A potential breeding group (PBG) may consist of zero to as many as five helpers, but most PBGs consist of only a breeding pair plus one to two helpers.

Young birds either disperse in their first year or remain on the natal territory and become helpers. First-year dispersal is the dominant strategy for females, but both strategies are common among males (Walters et al. 1988, pp. 287–301; Walters and Garcia 2016, pp. 69–72). Male helpers may become breeders by inheriting breeding status on their natal territory or by dispersing to fill a breeding vacancy at another territory (Walters et al. 1992, p. 625). Female helpers almost never inherit the breeding position on their natal territory, instead relying on dispersal to neighboring territories to become breeders.

Red-cockaded woodpeckers are unique among North American woodpeckers in that they nest and roost in cavities they excavate in living pines (Steirly 1957, p. 282; Jackson 1977, entire). Cavities are an essential resource for red-cockaded woodpeckers throughout the year, because the birds use them for roosting year-round, as well as nesting seasonally. The aggregation of active and inactive cavity trees within the area defended by a single group is termed the cavity tree cluster (Conner et al. 2001, p. 106).

Red-cockaded woodpeckers were once common throughout open, fire-maintained pine ecosystems, particularly longleaf pine that covered approximately 92 million acres before European settlement (Frost 1993, p. 20). Original pine forests were old and open, and contained a structure dominated by two layers, a canopy and diverse herbaceous ground cover, maintained by frequent low-intensity fire (Brockway et al. 2006, pp. 96–98).

Currently, nesting and roosting habitat of red-cockaded woodpeckers varies across the species' range. The largest populations tend to occur in the longleaf pine woodlands and savannas of the East Gulf Coastal Plain, South Atlantic Coastal Plain, Mid-Atlantic Coastal Plain, and Carolina Sandhills (Carter 1971, p. 98; Hooper et al. 1982, entire; James 1995, entire; Engstrom et

al. 1996, p. 334). The shortleaf/loblolly forests of the Piedmont, Cumberlands, and Ouachita Mountain regions (Mengel 1965, pp. 306–308; Sutton 1967, pp. 319–321; Hopkins and Lynn 1971, p. 146; Steirly 1973, p. 80) are another important habitat type. Red-cockaded woodpeckers also occupy a variety of additional pine habitat types at the edges of their range, including slash (*Pinus elliottii*), pond (*P. serotina*), pitch (*P. rigida*), and Virginia pines (*P. virginiana*) (Steirly 1957, entire; Lowery 1974, p. 415; Mengel 1965, pp. 206–308; Sutton 1967, pp. 319–321; Jackson 1971, pp. 12–20; Murphy 1982, entire).

Once a common bird distributed contiguously across the southeastern United States, the red-cockaded woodpecker was estimated range-wide around the time of listing in 1970 to be fewer than 10,000 individuals (approximately 1,500 to 3,500 active clusters; an aggregate of cavity trees used by a group of woodpeckers for nesting and roosting) in widely scattered, isolated, and declining populations (Jackson 1971, pp. 12–20; Jackson 1978, entire; USFWS 1985, p. 22; Ligon et al. 1986, pp. 849–850). Today, the Service's conservative estimate is that there are 7,800 active clusters range-wide (USFWS 2022, pp. 16, 108–110), almost double the number of clusters that existed in 1995.

*Recovery Criteria*

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the Lists of Endangered and Threatened Wildlife and Plants.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species, is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently, and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

The original recovery plan was issued by the Service on August 24, 1979. A first revision was issued on April 11, 1995, and the second, and current, revision on January 27, 2003. The 2003 recovery plan provided management guidelines fundamental to the conservation and recovery of red-cockaded woodpeckers. The Service continues to strongly encourage the application of these guidelines to the management of woodpecker populations on public and private lands. Implementation of the 2003 recovery plan has been carried out through the incorporation of management guidelines for installing artificial cavities, management of cavity trees and clusters, translocation, silviculture, and prescribed fire into various Federal and State land management plans. In addition to the management guidelines, the 2003 recovery plan provides guidelines to private landowners for managing foraging habitat on private lands occupied by red-cockaded woodpeckers. After the issuance of the 2003 recovery plan, two additional sets of foraging guidelines were developed (USFWS 2005, entire). As described in the 2005 guidance, the recovery standard for good quality foraging habitat is intended for recovery management to sustain and increase populations.

The 2003 recovery plan contains both downlisting and delisting criteria (USFWS 2003, pp. 141–145). The current status of red-cockaded woodpecker partially meets the 2003 downlisting criteria. The number of red-cockaded woodpecker active clusters has increased from 5,627 to more than 7,800 since 2003 (USFWS 2022, entire). The population size objectives to meet applicable downlisting criteria have been met for 15 of 20 designated populations. All of these designated populations show stable or increasing long-term population growth rates ($\lambda \geq 1$). However, not all of the designated recovery populations are demographically a single functional population as intended by the 2003 recovery plan. Nine of the 20 designated recovery populations that count toward fulfilling downlisting population size criteria consist of multiple smaller demographic populations. Based on the largest single demographic population for a designated recovery population, 14 of 20 designated recovery populations have achieved downlisting population size criteria. As to delisting criteria, because the delisting criteria all require all-natural cavities, none of the delisting criteria have been fully met. With continued forest management to retain and produce sufficient old pines for natural cavity excavation, future populations would no longer be dependent on artificial cavities. Regardless, there has been encouraging progress towards meeting the delisting criteria, as 12 of 29 demographically delineated populations corresponding to designated recovery populations currently have achieved population sizes that meet the delisting criteria. We described that status of the downlisting and delisting criteria in detail in the proposed rule (85 FR 63474, October 8, 2020).

For the red-cockaded woodpecker, although all of the population objectives from the 2003 recovery plan have yet to be reached, the primary recovery task of increasing existing populations on Federal and State lands has been successful, and the population growth rates indicate sufficient resiliency to stochastic disturbances with effective management. In addition, redundancy of moderate to very high resiliency populations suggests that risks from future catastrophic events to overall viability are low.

**Regulatory and Analytical Framework**

*Regulatory Framework*

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal

Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. On April 5, 2024, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and what criteria we apply when designating listed species' critical habitat (89 FR 24300). On the same day, the Service published a final rule revising our protections for endangered species and threatened species at 50 CFR 17 (89 FR 23919). These final rules are now in effect and are incorporated into the current regulations. Our analysis for this final decision applied our current regulations. Given that we proposed reclassifying this species under our prior regulations (revised in 2019), we have also undertaken an analysis of whether our decision would be different if we had continued to apply the 2019 regulations and we concluded that the decision would be the same. The analyses under both the regulations currently in effect and the 2019 regulations are available on *https://www.regulations.gov.*

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. We consider these same five factors in downlisting a species from endangered to threatened.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor (M–37021, January 16, 2009; ''M-Opinion,'' available online at *https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf*). The foreseeable future extends as far into the future as the Services can make reasonably reliable predictions about the threats to the species and the species' responses to those threats. We need not identify the foreseeable future in terms of a specific period of time. We will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability. In other words, the foreseeable future is the period of time over which we can make reasonably reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.

*Analytical Framework*

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be reclassified as a threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess red-cockaded woodpecker viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions

about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time, which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report (USFWS 2022, entire) can be found at Docket No. FWS–R4–ES–2019–0018 on *https://www.regulations.gov* and at *https://ecos.fws.gov/ecp/species/7614*.

**Summary of Biological Status and Threats**

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. In addition, the SSA report (USFWS 2022, entire) documents our comprehensive biological status review for the species, including an assessment of the potential threats to the species.

The following is a summary of this status review and the best available information gathered since that time that have informed this decision. In the discussion below, we summarize the conclusions of that assessment, which we provide in full under Docket No. FWS–R4–ES–2019–0018 on *https://www.regulations.gov* and at *https://fws.gov/species/red-cockaded-woodpecker-dryobates-borealis*.

*Summary of Species Needs*

In the SSA report, we discuss individual-, population-, and species-level needs of the red-cockaded woodpecker in detail (USFWS 2022, pp. 32–104). Red-cockaded woodpeckers require open pine woodlands and savannas with large, old pines for nesting and roosting. Old pines are required as cavity trees because cavity chambers must be completely within the heartwood to prevent pine resin in the sapwood from entering the chamber (Conner et al. 2001, pp. 79–155); a tree must be old and large enough to have sufficient heartwood to contain a cavity. In addition, old pines have a higher incidence of the heartwood decay that greatly facilitates cavity excavation. Cavity trees must be in open stands with little or no hardwood midstory and few or no overstory hardwoods. Hardwood encroachment on cavity trees resulting from fire suppression is a well-known cause of cluster abandonment.

Red-cockaded woodpeckers also require adequate foraging habitat. Over 75 percent of the red-cockaded woodpecker's diet consists of arthropods. Individuals generally capture arthropods on and under the outer bark of live pines and in dead branches of live pines. A large proportion of the arthropods on pine trees crawl up into the trees from the ground, which implies the condition of the ground cover is an important factor influencing abundance of prey for red-cockaded woodpecker (Hanula and Franzreb 1998, entire). The density of pines has a negative relationship with arthropod abundance and biomass, likely due at least in part to the negative effect of pine density on ground cover, from which some of the prey comes (Hanula et al. 2000, entire). Arthropod abundance and biomass also increase with the age and size of pines (Hooper 1996, entire; Hanula et al. 2000, entire), which is another reason older pines are so critical to this species. Accordingly, suitable foraging habitat generally consists of mature pines with an open canopy, low densities of small pines, a sparse hardwood or pine midstory, few or no overstory hardwoods, and abundant native bunchgrass and forb groundcovers. Frequent fire likely increases foraging habitat quality by reducing hardwoods and by increasing the abundance and perhaps nutrient value of prey (James et al. 1997, entire; Hanula et al. 2000, entire; Provencher et al. 2002, entire). Thus, frequent growing season fire may be critical in providing red-cockaded woodpeckers with abundant prey.

For the red-cockaded woodpecker to maintain viability, its populations or some portion thereof must be resilient. The SSA assessed resiliency at the population level, primarily by evaluating the current population size as the number of active clusters and secondarily by the associated past growth rate. Ultimately, a resilient population of red-cockaded woodpecker has a large number of active clusters and a positive growth trajectory. Red-cockaded woodpecker resiliency primarily depends upon a single factor: amount of managed suitable habitat.

Representation provides the ability of the species to adapt to physical (*e.g.,* climate conditions, habitat conditions or structure across large areas) and biological (*e.g.,* novel diseases, pathogens, predators) changes in its environment presently and into the future; it is a proxy measure for the evolutionary capacity or flexibility of the species. Representation is the range of variation found in a species, and this adaptive diversity is the source of species' adaptive capabilities. The red-cockaded woodpecker's adaptive diversity can be thought of as the amount and spatial distribution of genetic and phenotypic diversity. By maintaining these two sources of adaptive diversity across a species' range, the responsiveness and adaptability of a species over time is preserved (USFWS 2022, pp. 90–104). The SSA evaluated representation based on the extent and variability of habitat characteristics across the geographical range of the species and characterized representative units for the red-cockaded woodpecker using ecoregions. This analysis generally followed the approach to representation used in the species' 2003 recovery plan (USFWS 2003, pp. 148, 152–155).

For the red-cockaded woodpecker to maintain viability, the species also needs to exhibit some degree of redundancy. Measured by the number of populations, their resiliency, and their distribution, redundancy increases the probability that the species has a margin of safety to withstand, or can bounce back from, catastrophic events. The SSA reported redundancy for red-cockaded woodpeckers as the total number and resilience of population segments and their distribution within and among representative units.

In summary, a species needs a suitable combination of all three characteristics (resilience, representation, and redundancy) for long-term viability.

*Summary of Stressors*

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

The primary risk factor (*i.e.,* stressor) affecting the status of the red-cockaded woodpecker remains the lack of suitable habitat (Factor A). Wildfire, pine beetles, ice storms, tornadoes, hurricanes, and other naturally occurring disturbances that destroy pines used for cavities and foraging are stressors for the red-cockaded woodpecker (Factor E), especially given the high number of very small

woodpecker populations (Factor E) (USFWS 2022, pp. 40–41, 83–85, 105, 121–129). The number and severity of major hurricanes (Bender et al. 2010, entire; Knutson et al. 2010, entire; Walsh et al. 2014, pp. 41–42) is expected to increase in response to global climate change, and this increase could also disproportionately affect the smaller, less resilient woodpecker populations (Factor E). With rare exception, the vast majority of red-cockaded woodpecker populations remain dependent on artificial cavities due to the absence of sufficient old pines for natural cavity excavation and habitat treatments to establish and maintain the open, pine-savanna conditions favored by the species (Factor E). These populations will decline without active and continuous management to provide artificial cavities and to sustain and restore forest conditions to provide suitable habitat for natural cavities and foraging similar to the historical conditions (Conner et al. 2001, pp. 220–239, 270–299; Rudolph et al. 2004, entire).

Although published after the completion of the SSA report, a recent publication indicated potential effects of warming temperatures, resulting from climate change, on breeding phenology of red-cockaded woodpeckers. A description of this preliminary research has been incorporated below.

Habitat Loss and Degradation

The primary remaining threats to the red-cockaded woodpecker's viability have the same fundamental cause: lack of suitable habitat. Historically, the significant impacts to red-cockaded woodpecker habitat occurred as a result of clearcutting, incompatible forest management, and conversion to urban and agricultural land uses. Both the longleaf pine and other open pine ecosystems were eliminated from much of their original range because of early (1700s) European settlement, widespread commercial timber harvesting, and the naval stores (turpentine) industry (1800s). Early to mid-1900 commercial tree farming, urbanization, and agriculture contributed to further declines. Much of the remaining habitat is very different from the vast, historical pine forests in which the red-cockaded woodpecker evolved. The second growth longleaf pine forests of today, rather than being dominated by centuries-old trees as the original forests were, are just reaching the age (90–100 years) required to meet all the needs of the red-cockaded woodpecker. Furthermore, in many cases, the absence of fire has caused the original open savannas to degrade into dense pine/hardwood forest. Much of today's forest is young and dense, and dominated by loblolly pine, with a substantial hardwood component and little or no herbaceous groundcover (Noel et al. 1998, entire; Frost 2006, pp. 37–38).

The impacts from this clearcutting and incompatible forest management have been significantly curtailed and replaced by beneficial conservation management that sustains and increases populations; however, stressors caused by adverse historical practices still linger, including insufficient numbers of cavities, low numbers of suitable old pines, habitat fragmentation, degraded foraging habitat, and small populations. These lingering impacts can negatively affect the ability of populations to grow, even when populations are actively managed for growth, as the carrying capacity of suitable forest areas across much of the range can be quite low. However, restoration activities such as prescribed fire and strategic placement of recruitment clusters can reduce gaps between populations and increase habitat and population size toward current carrying capacity. These activities are occurring across the range of the red-cockaded woodpecker on properties actively managed for red-cockaded woodpecker conservation.

Currently, stressors to the species resulting from exposure to habitat modification or destruction are lower, especially when compared to historical levels. Periodically, military training on DoD installations requires clearing of red-cockaded woodpecker habitat for construction of ranges, expansion of cantonments, and related infrastructure, but these installations have management plans to sustain and increase red-cockaded woodpecker populations. In addition, silvicultural management on Federal, State, and private lands also occasionally results in temporary impacts to habitat; for example, red-cockaded woodpecker habitat may be unavoidably, but temporarily, adversely affected in old, even-aged loblolly pine stands that require regeneration prior to stand senescence to sustain a matrix of future suitable habitat for a net long-term benefit. Similarly, red-cockaded woodpecker habitat may be temporarily destroyed in areas where offsite loblolly, slash, or other pines are removed and replaced by the more fire-tolerant native longleaf pine. However, the net result of these activities is a long-term benefit, as the goal is to restore these areas to habitat preferred by woodpeckers.

Climate Change

In 2019, DeMay and Walters published preliminary investigations that examined the ''effects of climate on breeding phenology and productivity in 19 populations across the range of the red-cockaded woodpecker'' (DeMay and Walters 2019, p. 1). They found that birds at higher latitudes appear to be adjusting the timing of breeding in response to warming temperatures; they are nesting earlier and have resultingly higher productivity. However, they found that birds in the southwestern portion of the range have been exhibiting declining productivity, even in populations with high-quality habitat and ongoing active management (*e.g.,* Eglin Air Force Base); the authors hypothesized this decline in productivity could be due to ''a possible shift in acceptable climate conditions for the species'' or an inability of these populations to make appropriate adjustments to the timing of reproduction in the face of a changing climate.

While the SSA report did not incorporate the findings of DeMay and Walters (2019), it did acknowledge that southwestern populations have lower productivity (USFWS 2022, p. 26) and referenced earlier research to similarly suggest that climate change has the potential to influence productivity through anticipated changes in temperature and precipitation patterns (USFWS 2022, p. 92; Schiegg et al. 2002, entire).Even with the lower productivity in the southwestern populations, it should be noted that the current species distribution covers 13 different ecoregions, all with unique climatic profiles, suggesting that the species has an increased ability to adapt.

Natural Disturbances

Wildfire, pine beetles, ice storms, tornadoes, and hurricanes are naturally occurring disturbances that destroy pines used for cavities. The loss of pines can result in subsequent reductions to population size unless management actions are taken to reduce or ameliorate adverse impacts. These management actions include providing artificial cavities, reducing hazardous fuels, and restoring forests to suitable habitat following these events. These disturbances can also destroy or degrade foraging habitat and cause direct mortality of woodpeckers. Small populations are the most vulnerable to these disturbances as there are fewer individuals to recover from the disturbance, potentially resulting in poorer survival or reproduction for the population. See the SSA report for more information about these natural disturbances (USFWS 2022, pp. 121–129).

Habitat destruction caused by hurricanes is the most acute and potentially catastrophic disturbance because hurricanes can impact entire populations. As noted in the SSA report, of the 124 current demographic populations, about 63 populations in the East Gulf Coastal Plain, West Gulf Coastal Plain, the lower portion of the Upper West Gulf Coastal Plain, and Florida Peninsula ecoregions are vulnerable to potential catastrophic impacts of hurricanes, particularly major hurricanes. Fifty-six of these 63 populations (89 percent) are identified as low or very low resiliency in the SSA report, which makes them significantly vulnerable to adverse impacts from exposure to hurricanes. In addition, the frequency of intense Atlantic basin hurricanes, particularly major Category 4 and 5 storms, may be expected to increase in response to global climate change during the 21st century (Bender et al. 2010, entire; Knutson et al. 2010, entire; Walsh et al. 2014, pp. 41–42, Vecchi et al. 2021, entire). That being said, we are unable to precisely predict the location and frequency of future storms affected by climate change relative to particular red-cockaded woodpecker populations, which is why we are unable to identify specific populations as being at risk from hurricanes. While larger populations (greater than 400 active clusters) are the most likely to withstand a strike by a major hurricane (*e.g.,* Hooper et al. 1990, entire; Hooper and McAdie 1995, entire; Watson et al. 1995, entire), smaller populations are more vulnerable to adverse effects from them, including extirpation, as well as to the effects of recurring storms that subsequently deplete cavity trees and foraging habitat, causing reductions in population size. However, these smaller populations may be able to withstand and persist after hurricanes if biologists and land managers implement prompt, effective post-storm recovery actions, such as installing artificial cavities, reducing hazardous fuels, and restoring forests to suitable habitat. Such actions have been occurring after storm events for managed populations, such as the quick response after Hurricane Michael in October 2018.

*Summary of Conservation Management*

As noted above, the red-cockaded woodpecker is a conservation-reliant species and responds well to active management. The vast majority of properties on public lands harboring red-cockaded woodpeckers have implemented management programs to sustain or increase populations consistent with population size objectives in the 2003 recovery plan or other plans (*e.g.,* INRMP, USFS management plans, National Wildlife Refuge (NWR) management plans). Plans are specific to each property or management unit but generally contain the same core features (*e.g.,* cavity management, translocation, prescribed burning). The most comprehensive plans call for intensive cavity management with the installation of artificial cavities to offset cavity loss in existing territories, maintenance of sufficient suitable cavities to avoid loss of active territories, and creation of new territories with recruitment clusters and artificial cavities in restored or suitable habitat to increase population size. The development of techniques to construct artificial cavities (Copeyon 1990, entire; Allen 1991, entire) offsets the lack of natural cavities and provides managers a new tool to greatly increase cavity availability. Fortunately, red-cockaded woodpeckers readily adapt to these artificial cavities, with thousands installed since the early 1990s. These cavity management activities are necessary until mature forests are restored with abundant old pines 65 and more years of age for natural cavity excavation.

Managers also reduce fragmentation by restoring and increasing habitat with strategic placement of recruitment clusters to reduce gaps within and between populations. Furthermore, red-cockaded woodpecker subadults from large or stable donor populations are translocated to augment growth of small, vulnerable populations. Of the current 124 demographic populations, 108 are small (fewer than 99 active clusters) with inherently very low or low resiliency. These are the most vulnerable to future extirpation due to stochastic demographic and environmental factors and inbreeding depression. Inbreeding depression in small, fragmented populations of up to 50 to 100 active clusters without adequate immigration can further increase the probability of decline and future extirpation; for these populations, red-cockaded woodpecker translocation programs reduce risks of adverse inbreeding impacts. As noted in the SSA report (see *Current Condition,* below), while resiliency is moderate for 10 of the current populations with 100 to 249 active clusters, and 6 populations exhibit high or very high resiliency, potential adaptive genetic variation is still expected to decline in all red-cockaded woodpecker populations (Bruggeman 2010, p. 22, appendix B, pp. 39–42; Bruggeman et al. 2010, entire; Bruggeman and Jones 2014, pp. 29–33). Effective management programs to sustain even the smallest populations are critical to reduce the risks of inbreeding, establish genetic connectivity among fragmented populations, and maintain ecological diversity and life-history demographic variation as patterns of representation within and across broad ecoregions.

Additionally, managers are implementing compatible silviculture methods to sustain, restore, and increase habitat with an increased use of effectively prescribed fire. Finally, managers are implementing monitoring programs looking at both habitat and populations to provide feedback for effective management. The future persistence of the species will require these management actions to continue. In order to facilitate this, we have structured our final 4(d) rule to encourage the continuation of such management. However, while many of the landowners and managers within the range of the species have committed to continuing to implement their conservation programs into the future, we do not have certain commitments that all current management will continue.

In the SSA report, we identified 124 current demographic populations with a total of 7,794 active clusters. Seventy-one of the 124 currently delineated red-cockaded woodpecker populations occur on lands solely owned and managed by Federal agencies, with 4,033 current active clusters. Seven additional populations with 2,026 active clusters occur on lands that are under mixed Federal and State ownership but are predominately managed by Federal agencies. Thirty-one populations are on lands managed solely by State agencies, with 557 active clusters. Thus, 88 percent of delineated populations with 6,616 active clusters (85 percent of all 7,794 active clusters in 124 populations) are on lands managed entirely by Federal and State agencies with statutes to require management plans addressing the conservation of natural resources. Two populations occur in a matrix of public and private lands, mostly Federal and State properties, with 816 active clusters. One population with 20 active clusters is managed by a State agency and private landowner.

There are additional active clusters of red-cockaded woodpeckers on nongovernmental lands enrolled in SHAs, but as noted above, we did not have adequate data to spatially delineate all demographic populations on these lands. Of the 933 active clusters managed by landowners with existing SHAs in 8 States (Alabama, Florida, Georgia, Louisiana, North Carolina,

South Carolina, Texas, and Virginia), demographic populations with respective population sizes have not been delineated for approximately 558 active clusters.

Below is a summary of the types of management plans that include elements directed at red-cockaded woodpecker management and conservation. Note that the numbers of populations below do not necessarily add up to the 124 current demographic populations identified in the SSA report, because some populations cross property boundaries and are managed by more than one landowner.

Department of Defense

Within the range of the red-cockaded woodpecker, the DoD manages habitat for 14 populations, 5 of which are in the moderate to very high resiliency categories, and 9 are in the low to very low resiliency categories. The Sikes Act requires DoD installations to conserve and protect the natural resources within their boundaries. INRMPs are planning documents that outline how each military installation with significant natural resources will manage those resources, while ensuring no net loss in the capability of an installation to support its military testing and training mission. Within the range of the red-cockaded woodpecker, all DoD installations have current INRMPs that address protection and recovery of the species, both through broader landscape-scale ecosystem stewardship and more specific management activities targeted directly at red-cockaded woodpecker conservation. These activities include providing artificial cavities to sustain active clusters, installing recruitment clusters to increase population size, sustaining and increasing habitat through compatible forest management and prescribed fire, and increasing the number and distribution of old pines for natural cavity excavation. Each installation has a red-cockaded woodpecker property or population size objective with provisions for monitoring. For most installations, a schedule is available for reducing certain military training restrictions in active clusters in response to increasing populations and attaining population size thresholds.

U.S. Forest Service

The USFS manages habitat for 49 red-cockaded woodpecker populations on 17 National Forests and the Savannah River Site Unit (owned by the Department of Energy but managed by the USFS). Of these populations, 10 have moderate to very high resiliency and 39 identified as having low or very low resiliency. Under the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), National Forests are required to develop plans that provide for multiple use and sustained yield of forest products and services, which includes timber, outdoor recreation, range, watershed, fish and wildlife, and wilderness resources. These plans, called ''land and resource management plans'' (LRMPs) and their amendments, have been developed for every National Forest in the current range of the red-cockaded woodpecker. The LRMPs for National Forests in three States (Louisiana, North Carolina, and Texas) predate the Service's 2003 recovery plan. Nevertheless, all National Forests (even those with outdated LRMPs) have implemented management strategies to protect and manage red-cockaded woodpecker habitat and increase populations.

Current LRMPs approved prior to the 2003 recovery plan were developed in coordination with the Forest Service's 1995 regional plan for managing the red-cockaded woodpecker on southern National Forests (USFS 1995, entire). The 1995 regional plan includes most of the new and integrated management methods (Rudolph et al. 2004, entire) to sustain and increase populations as incorporated in the recovery plan. These include installing artificial cavities, increasing population size with recruitment clusters, and restoring suitable habitat with forest management treatments and prescribed fire. Some of the more recent LRMPs, such as for National Forests in Mississippi, are more broadly programmatic, but incorporate the 2003 recovery plan by reference for appropriate conservation methods and objectives.

U.S. Fish and Wildlife Service

The National Wildlife Refuge (NWR) System manages 14 NWRs with red-cockaded woodpeckers, with 10 NWRs supporting rangewide species recovery. In the SSA report, we considered 3 of 19 populations found on NWRs to be moderate to very high resiliency while 16 have low to very low resiliency. Under the NWR System Improvement Act of 1997 (Pub. L. 105–57), NWRs prepare comprehensive conservation plans (CCPs), which provide a blueprint for how to manage for the purposes of each refuge; address the biological integrity, diversity, and environmental health of a refuge; and facilitate compatible wildlife-dependent recreation. NWRs have assigned population objectives from the 2003 recovery plan through their CCPs or modified in their habitat management plans. Specific tasks in these plans include installation of artificial cavities; translocation; establishing recruitment clusters; population monitoring; prescribed fire; and silvicultural treatments, such as mid-story removal, thinning of younger stands, and, where necessary, increasing stand age diversity with regeneration of pine stands.

National Park Service

Within the Big Cypress National Preserve (Preserve) in Florida, the National Park Service (NPS) manages two red-cockaded woodpecker populations, one with low and the other with very low resilience. The NPS's plans do not include specific provisions for red-cockaded woodpecker management; however, at the Preserve, the NPS conducts prescribed fire to maintain and improve the south Florida slash pine forest communities that support the species. The NPS also allows FFWCC biologists to conduct red-cockaded woodpecker surveys, monitor, periodically install a limited number of artificial cavities, and conduct translocations on occasion. From surveys and monitoring by the FFWCC, 75 percent of all cavity trees within the Preserve consist of natural cavities, which is an unusually high number relative to other populations, reflecting the predominately old condition of the Big Cypress south Florida slash pine forests (Spickler 2019, pers. comm.).

State Lands

The States of Arkansas, Florida, Georgia, Louisiana, North Carolina, Oklahoma, South Carolina, Texas, and Virginia have red-cockaded woodpecker populations on State-owned lands. All or parts of 40 currently delineated populations occur on State lands. Seven populations on or partially on State lands have moderate to very high resiliency, while 32 populations have low to very low resiliency. These properties range from State Forest Service or Forest Commission holdings to Department of Wildlife, Department of Natural Resources, and State Park Service properties. The mission, and therefore the extent and type of management, of each unit varies. For example, some State lands are managed generally to provide ecosystem benefits, such as managing pine-dominated forests with prescribed fire. However, other State properties implement proactive conservation management specifically for the red-cockaded woodpecker. For example, the FFWCC manages all of its properties under the umbrella of the Florida Red-cockaded Woodpecker Management Plan, with

other specific plans for the agency's WMAs.

Other Lands

Eight States have a Service-approved programmatic SHA with a section 10(a)(1)(A) enhancement of survival permit under the Act to enroll non-Federal landowners that voluntarily provide beneficial management. Of 459 enrolled non-Federal landowners, one is for a State property and all others are private nongovernmental lands. All or parts of 12 currently delineated demographic populations are covered under a current SHA. Again, we are aware of additional active clusters covered under SHAs, but we lack the data to delineate them as demographic populations. SHAs, now known as CBAs, are partnerships between landowners and the Service involving voluntary agreements under which the property owners receive formal regulatory assurances from the Service regarding their management responsibilities in return for contributions to benefit the listed species.

For the red-cockaded woodpecker, this includes voluntary commitments by landowners to maintain and enhance red-cockaded woodpecker habitat to support baseline active clusters, which is the number of clusters at the time of enrollment, and additional above-baseline active clusters that increase in response to beneficial management. Beneficial management includes the maintenance and enhancement of existing cavity trees and foraging habitat through activities such as prescribed fire, mid-story thinning, seasonal limitations for timber harvesting, and management of pine stands to provide suitable foraging habitat and cavity trees. Because above-baseline active clusters and habitat covered under these plans can be returned to ''baseline'' conditions, any population growth on lands covered by existing SHAs or future CBAs may not be permanent. In addition, enrolled landowners can terminate their agreement at any time. However, fewer than 5 of the 459 enrolled landowners have ever used their permit authorities to return the number of active clusters to baseline conditions, and only 12 landowners have terminated their agreement. There currently are 241 active above-baseline clusters in the program.

In summary, the red-cockaded woodpecker is a conservation-reliant species, but one that responds very well to active management. The majority of red-cockaded woodpecker populations are managed under plans that address population enhancement and habitat management to sustain or increase populations, and to meet the 2003 recovery plan objectives for primary core, secondary core, and essential support populations. We expect these property owners will continue to implement their respective management plans while the species is listed as threatened, as the red-cockaded woodpecker will remain protected under the Act and the 2003 recovery plan is still applicable.

*Current Condition*

Resiliency

In the SSA report, we identified 124 demographic populations across the range of the red-cockaded woodpecker for which sufficient data were available to complete the SSA analysis for the recent past to current condition. We acknowledge there are other small occurrences of red-cockaded woodpeckers, particularly on private lands; however, spatial data for these other occurrences were incomplete, so for purposes of the SSA analysis, and subsequently throughout this final rule, we focused only on the 124 demographic populations that could be spatially delineated. The SSA categorizes two important parameters related to current population resiliency: current population size and associated population growth rate. Population resilience size categories are defined as follows: very low (fewer than 30 active clusters); low (30 to 99 active clusters); moderate (100 to 249 active clusters); high (250 to 499 active clusters); and very high (greater than or equal to 500 active clusters).

Population resilience size-classes were derived from spatially explicit individual-based models and simulations for this species (Letcher et al. 1998, entire; Walters et al. 2002, entire), the performance of which have been reasonably validated with reference to actual populations (Schiegg et al. 2005, entire; Walters et al. 2011, entire). We also considered subsequent modifications of these models and simulations that incorporated adverse effects of inbreeding depression on population persistence and growth (Daniels et al. 2000, entire; Schiegg et al. 2006, entire). These models were developed from extensive biological data and specifically designed to incorporate the dynamics of the red-cockaded woodpecker's cooperative breeding system that are not accurately represented in other types of population models (Zieglar and Walters 2014, entire). These models simulated populations of different initial sizes under natural conditions without any limiting habitat and cavity conditions that could impair population growth.

We consider these results as indicators of inherent resilience because effects of conservation management actions to sustain and increase populations were not simulated. These beneficial management practices would include installation of recruitment clusters with artificial cavities to induce new red-cockaded woodpecker groups and translocation to augment the size and growth of small populations. The vast majority of the 124 current populations have been, and currently are, subject to specific conservation management actions for this species, including recruitment clusters. Thus, the inherent resilience size-classes derived from population models and simulations have been further qualified by actual growth rates as indicators of effects of beneficial management for this conservation-reliant species.

Populations with very low resiliency (fewer than 30 active clusters) are the most vulnerable to future extirpation following stochastic events, with declining growth and extirpation likely in 50 years. Populations with low resiliency (30 to 99 active clusters) are more persistent, but remain vulnerable to declining growth, inbreeding depression, and extirpation. Inbreeding depression reduces red-cockaded woodpecker egg hatching rates and survival of fledglings (Daniels and Walters 2000a, entire). Inbreeding in red-cockaded woodpeckers is a consequence of breeding among close relatives in response to naturally short dispersal distances of related birds among nearby breeding territories, exacerbated by small populations and fragmentation among populations that reduce immigration rates of unrelated individuals (Daniels and Walters 2000a, entire; 2000b, entire; Daniels et al. 2000, entire; Schiegg et al. 2002, entire; 2006, entire).

The consequences of inbreeding depression further reduce population growth rates and increase the probabilities of extirpation in populations in sizes up to about 100 active clusters (Daniels et al. 2000, entire; Schiegg et al. 2006, entire). The largest populations with low resiliency may have long-term average growth rates ($\lambda$ or lambda) near 1.0 (a $\lambda$ of 1.00 is considered stable, less than 1.00 is declining, and greater than 1.00 is increasing), but with slow rates of decline and a high risk of inevitable future extirpation.

The moderate resiliency category (100 to 249 active clusters) is a large transitional class. Smaller populations without inbreeding likely will

experience a slow decline, but without extirpation, in 25 to 50 years because the populations in at least some territories will survive, although as much smaller and more vulnerable populations. The largest populations in the moderate resiliency category may be relatively stable or nearly so. Populations with a high resiliency (250 to 499 active clusters) on average should be stable except perhaps for the very smallest, which may have average growth rates slightly less than 1.00.

In high resiliency populations, adverse demographic effects of inbreeding depression are not expected. Populations in the very high resiliency class (greater than or equal to 500 active clusters) are stable and the most resilient, with average growth rates of 1.0 or slightly greater. Based on the most recent data, 3 red-cockaded woodpecker populations fall within the very high resilience category (totaling 2,143 clusters); 3 are in high resilience populations (1,364 total clusters); 10 are in moderate resilience populations (1,555 total clusters); 37 are in low resilience populations (1,923 total clusters); and 71 are in very low resilience populations (809 total clusters). In short, of the estimated 7,794 active clusters distributed among 124 populations across the range of the species, 5,062, or 65 percent, are in 16 moderate to very high resiliency populations.

The second resiliency parameter measured in the SSA was growth rate of the populations. For the SSA, there was only sufficient GIS data to delineate past demographic populations with population size data to compute past-to-current growth rates for 98 of the 124 populations. Of these 98 populations, the Service determined that 13 (13.3 percent) were declining ($\lambda < 1.00$), 19 (19.4 percent) were stable ($\lambda = 1.00$–1.02). and 66 (67.3 percent) were increasing ($\lambda < 1.02$). Combining growth rates with population sizes of these 98 populations, growth rates have been stable to increasing for all of those moderate, high, and very high resiliency populations where growth rate could be measured.

Of the 86 very low and low resiliency populations where growth rate could be measured, 73 populations demonstrated stable and positive growth rates, with several populations showing very high growth rates. This is indicative of the positive effects of red-cockaded woodpecker conservation management programs on these locations and the ability of such management to offset inherently low or very low population resilience. Growth rates are decreasing in only 13 (15 percent) of the low and very low resiliency populations where growth rate could be measured.

Current population conditions in the SSA report were derived from the number and location of active clusters primarily in 2016 and 2017. These conditions did not take into account Hurricane Michael, which came ashore near Mexico Beach, Florida, on October 10, 2018, as a Category 4 storm. More than 1,500 cavity trees were blown down or damaged in populations in the Apalachicola National Forest, Silver Lake WMA, Jones Ecological Research Center, and Tate's Hell State Forest (Dunlap 2018, entire; McDearman 2018, entire). These represented three demographic populations: Apalachicola National Forest-St. Marks NWR-Tate's Hell State Forest, Jones Ecological Research Center, and Silver Lake WMA. The effects of Hurricane Michael did not change current conditions for these populations in terms of their resilience size-classes as described in the SSA report, and as summarized here.

After Hurricane Michael, 870 clusters were rapidly assessed in Apalachicola National Forest where 1,410 cavity trees were damaged or blown down, followed by the installation of 682 artificial cavities (Dunlap 2018, entire). In 2018, prior to this hurricane, the Apalachicola National Forest population survey estimate was 833 active clusters (Casto 2018, pers. comm.). After the hurricane, the 2019 survey estimate was 857 active clusters (Casto 2019, pers. comm). At Silver Lake WMA, 154 cavity trees were damaged or lost; however, within 2 weeks of the storm more than 90 artificial cavities were installed (Burnham 2019a, p. 9). The pre-storm population was 36 active clusters and 32 PBGs, with a post-storm decline to 33 active clusters and 28 PBGs (Burnham 2019b, p. 6). About 24 percent of all cavity trees at the Jones Ecological Research Center were damaged or destroyed (Rutledge 2019, p. 13). The pre-storm Jones Center population was 38 active clusters with 34 PBGs (Henshaw 2019, p. 4). Post-storm, after installation of artificial cavities, there were 40 active clusters with 31 PBGs (Henshaw 2019, p. 4). At Tate's Hell State Forest, about 23 of 527 cavity trees among 61 active clusters and 51 PBGs were blown down (Alix 2018, pers. comm.). After post-storm management, the Tate's Hell State Forest currently consists of 64 active clusters and 54 PBGs (Alix 2020, pers. comm.).

The total increase of active clusters from all of the properties demonstrates that with prompt, active management, the vulnerability of these populations to stochastic events can potentially be reduced. Additional intermediate and long-term habitat restoration treatments at these properties are still required to reduce hazardous fuels from large and small woody debris, restore habitat, and implement reforestation or regeneration in the most severely damaged pine stands. Overall, we do not anticipate that Hurricane Michael will affect long-term viability of these populations. However, we will continue to evaluate the success of the emergency, intermediate, and long-term response efforts.

In summary, although most of red-cockaded woodpecker populations for which we have data are still small and remain vulnerable to stochastic events and possibly inbreeding depression, the vast majority of populations are showing stable or increasing growth rates, and the majority of birds and clusters occur in a few large, resilient populations. Of the 98 populations for which trend data are available, only 13 percent are declining. In addition, over 65 percent of red-cockaded woodpecker clusters are currently in moderate to very high resiliency populations.

Representation

We evaluated representation based on the extent and variability of habitat characteristics across the species' geographical range. For the red-cockaded woodpecker, the SSA report characterizes representative units using ecoregions, which align with the recovery units identified in the 2003 recovery plan (USFWS 2003, pp. 145–161). These ecoregions are broad areas defined by physiography, topography, climate, and major historical and current forest types and thus serve as surrogates for the variability of habitat characteristics across the species' range, such as ecology, life history, geography, and genetics. There are currently 13 ecoregions containing at least one red-cockaded woodpecker population: (1) Cumberland Ridge and Valley; (2) Florida Peninsula (South/Central Florida); (3) East Gulf Coastal Plain; (4) Mid-Atlantic Coastal Plain; (5) Ouachita Mountains; (6) Piedmont; (7) South Atlantic Coastal Plain; (8) Sandhills; (9) Upper East Gulf Coastal Plain; (10) Upper West Gulf Coastal Plain; (11) West Gulf Coastal Plain; (12) Gulf Coast Prairie and Marshes; and (13) Mississippi River Alluvial Plain. In the SSA report, figures 20 and 24 provide maps illustrating the ecoregions (USFWS 2022, pp. 93, 111), and figure 25 includes the historical county records for the range of the species (USFWS 2022, p. 118).

The historical range of the red-cockaded woodpecker included the entire distribution of longleaf pine

ecosystems, but the species also inhabited open shortleaf, loblolly, slash pine, and Virginia pine forests, especially in the Ozark-Ouachita Highlands and the southern tip of the Appalachian Highlands with occasional occurrences noted for New Jersey, Pennsylvania, Maryland, and Ohio (Costa and Walker 1995, pp. 86–87). Red-cockaded woodpeckers no longer occur in six ecoregions (Ozarks, Central Mixed-Grass Prairies, Cross Timbers and Southern Mixed-Grass Prairies, Northern Atlantic Coast, Central Appalachian Forest, and Southern Blue Ridge). The 2003 recovery plan did not consider recovery in these areas to be essential to the conservation of the species.

In the 13 ecoregions containing the species, red-cockaded woodpeckers occupy a wide variety of pine-dominated ecological settings scattered across a broad geographic range. Considerable geographic variation in habitat types exists, illustrating the species' ability to adapt to a wide range of ecological conditions within the constraints of mature or old growth, southern pine ecosystems. However, of these 13 ecoregions, only 4 currently have populations that are considered to have high or very high resiliency (East Gulf Coastal Plain, South Atlantic Coastal Plain, Sandhills, and Mid-Atlantic Coastal Plain), and 6 have populations that are low or very low resiliency (Florida Peninsula, Ouachita Mountains, Cumberland Ridge and Valley, Piedmont, Gulf Coast Prairie and Marshes, and Mississippi River Alluvial Plain). Of those six, the latter four have only one or two populations each (a total of six populations), meaning these ecoregions, and the ecology, life history, geography, and genetics they represent, are particularly vulnerable to stochastic events. However, five of the six populations in these four ecoregions all demonstrate stable or increasing growth rates (growth rate for the sixth, Mitchell Lake in the Piedmont Ecoregion, could not be measured), primarily because they are being actively managed.

With regards to the genetic component of the ecoregions, a genetic analysis of material prior to 1970 in eight ecoregions indicates the species appears to have been a single genetic unit or population without significant genetic structure or differentiation (Miller et al. 2019, entire). The best available range-wide genetic data indicate a loss of genetic variation after 1970 with development of significant contemporary genetic structure among ecoregions. This structuring is most likely in response to fragmentation of this historically more widespread and abundant species, reduced dispersal between populations and regions, and genetic drift (Stangel et al. 1992, entire; Haig et al. 1994, p. 590; Haig et al. 1996, p. 730; Miller et al. 2019, entire). However, the similarity of genetic parameters between the 1992–1995 and 2010–2014 periods indicates that a further significant loss of genetic diversity with an increase in differentiation among ecoregions may have been ameliorated by conservation management that began in the 1990s to rapidly increase populations and translocate individuals from large populations to augment small populations (Miller et al. 2019, entire). Mitochondrial DNA haplotype diversity has declined significantly since the pre-1970s, but not to the extent of a loss of any phylogenetically distinct lineages that may represent evolutionarily significant units (Miller et al. 2019, pp. 9–10).

In summary, the species no longer persists in six ecoregions where it was historically present. However, it is still currently represented in the 13 remaining ecoregions, and this level of representation has not decreased further since the 2003 recovery plan revision, which did not consider the extirpated ecoregions necessary for recovery. Nevertheless, while populations persist in the 13 ecoregions, many of the ecoregions contain only populations that have low or very low resiliency, and 4 ecoregions only have 1 or 2 populations, which are all low or very low resiliency, making them vulnerable to stochastic events.

Redundancy

In the SSA report, redundancy for red-cockaded woodpeckers is characterized by the number of resilient populations and their distribution within each ecoregion. Of the 124 current populations, there are 3 populations that have very high resiliency, 3 with high, 10 with moderate, 37 with low, and 71 with very low resiliency. As noted above, 4 of 13 ecoregions currently harbor high or very high resiliency populations: East Gulf Coastal Plain (2 populations), Mid-Atlantic Coastal Plain (1 population), Sandhills (2 populations), and South Atlantic Coastal Plain (1 population). In terms of redundancy, only two ecoregions, East Gulf Coastal Plain and Sandhills, have more than one population classified as having high or very high resiliency, and only these two ecoregions also have more than two populations classified as having moderate to very high resiliency. Redundancy of smaller populations is higher with a greater number of populations in the moderate, low, and very low resiliency categories within and across ecoregions. Four ecoregions (South Atlantic Coastal Plain, Mid-Atlantic Coastal Plain, West Gulf Coastal Plain, and Upper East Gulf Coastal Plain) have two populations exhibiting moderate to high resiliency, and thus some level of redundancy in terms of resilient populations. Most of the populations in these regions have moderate resiliency. The greatest number of current populations reside in the Mid-Atlantic Coastal Plain (24) and Florida Peninsula (22), although most of these are in the very low and low resiliency class. However, even for the more resilient populations, habitat fragmentation has resulted in wide gaps between forested areas, meaning there is little connectivity between populations.

Across the range of the red-cockaded woodpecker, the populations with the most resiliency (high or very high) tend to be in the eastern half of the range and in coastal or near coastal ecoregions rather than interior. Florida Peninsula and the western ecoregions currently have populations in the moderate to very low resiliency categories. This concentration of the more resilient populations in coastal and near coastal areas could affect the species' ability to withstand catastrophic events such as hurricanes. Particularly for these populations, post-storm management actions are critical, as they can mitigate cavity loss and reduce hazardous fire fuels.

In summary, a species needs a suitable combination of all three characteristics (resiliency, representation, and redundancy) for long-term viability. Based on our analysis of the three factors, the red-cockaded woodpecker demonstrates some degree of stability or improvement in all three factors. The species' viability is reduced over historical levels, but habitat conditions and population numbers are improving. In terms of resiliency, most of the populations are still quite small, but the vast majority are stable or even growing. The species has not lost any representative populations since the 2003 revised recovery plan, and while a few ecoregions still contain only one or two populations, most of these populations are stable or growing. Finally, there is a fair degree of redundancy within ecosystems across the range of the species, although, again, most of these populations are still quite small and are isolated from each other. The improving viability of the red-cockaded woodpecker has been largely due to intensive, extensive management, including actions immediately after

large storm events to offset cavity loss and reduce hazardous fuels. Without this intervention, many populations, especially the low and very low resilience populations, likely would have been extirpated.

*Future Conditions*

Our analysis of stressors and risk factors, as well as the past, current, and future influences on what the red-cockaded woodpecker needs for long-term viability, revealed that the primary predictor of future viability of the species is the continuation of active management (including cavity management, midstory treatment such as prescribed fire, and translocation efforts).

We assessed future red-cockaded woodpecker population growth, population size (active clusters), and resiliency by first modeling past trends and variation in population size of demographically delineated populations as affected by factors including management treatments (*e.g.,* number of artificial cavities, recruitment clusters, birds received by translocations, and frequency of prescribed fire and midstory hardwood control), dominant pine species, the density of active clusters, and parameters to account for unexplained sources of variation to population size by this procedure (USFWS 2022, chapter 6 and appendix 2). We obtained historical information for 87 demographically delineated populations and were also able to extrapolate missing data for certain populations by imputation with an expectation-maximization algorithm (USFWS 2022, appendix 1). Populations were separately modeled as small (6 to 29 clusters), medium (30 to 75 clusters), and large (more than 75 clusters) classes. Populations with fewer than six active clusters were not modeled because of high variation in growth rates.

For past growth rate of small populations, the most important variables were the number of new recruitment clusters, number of new artificial cavities in previously existing clusters (cavity management), midstory treatments by prescribed fire or mechanical methods, number of red-cockaded woodpeckers translocated into the population, and dominant pine type. Translocation had the greatest positive effect on growth of any management technique. For medium populations, recruitment clusters and midstory treatments by prescribed fire were significant management covariates. The best model for large populations included recruitment clusters, cavity management, and spatial configuration of active clusters. In all cases, effects of recruitment clusters, cavity management, midstory treatment, and translocation were positive.

We then used the best assessed future growth and conditions for each red-cockaded woodpecker population to assess viability under four future 25-year management scenarios: Low management, medium management, high management, and the ''manager's expectation.'' In the manager's expectation scenario, we elicited estimates for red-cockaded woodpecker conservation management treatments (*e.g.,* number of artificial cavities, number of recruitment clusters, midstory treatments, prescribed fire frequency, translocation, etc.) from property biologists, foresters, and managers.

For the low management scenario, values for each management covariate (*e.g.,* cavity management, prescribed fire treatments, number of recruitment clusters, midstory hardwood treatment, translocation) were set to zero. However, this scenario does not reflect no management, but rather, the absence of management techniques specific to red-cockaded woodpeckers and instead a reliance on ecosystem management. Thus, some baseline habitat management, which would indirectly provide some nesting and foraging habitat, would be expected under the low management scenario. However, because most of the past populations for which we had sufficient data have been actively managed more aggressively than this scenario, we were unable to accurately model this type of minimal baseline habitat management. Therefore, future simulated population growth in the low management scenario is probably overestimated. Management covariate parameters for the medium management scenario assume the average of the past parameters employed to conserve red-cockaded woodpeckers over the past 20 years will continue into the future. For the high management scenario, management treatments for simulated populations reflect the parameter values in the 90th percentile of all past population treatments, as if populations were more intensely and extensively managed. The high management scenario thus represents projections of what might potentially be achieved should the species be systematically managed more intensively across its range than it has been in the past. The manager's expectation scenario was based on what the experts, described above, thought was the most likely annual future number of recruitment clusters, artificial cavities, prescribed fire treatments, and other management parameters at 5-year intervals for a 25-year period.

We chose to project 25 years into the future because the combination of species' response to natural factors and management and the ability of managers to accurately predict future management treatments becomes highly uncertain at longer intervals. This is the timeframe in which the 95 percent confidence intervals around the future scenario modeling have reasonable bounds of uncertainty. This timeframe, given the species' life history, is also sufficient to identify any effects of stressors or conservation measures on the red-cockaded woodpecker's viability at both population and species levels. Finally, 25 years represents four to five generations of red-cockaded woodpecker, which would be sufficient time for population-level impacts from stressors and management to be detected. Additionally, the red-cockaded woodpecker is a conservation-reliant species that depends on open, mature southern pine forests that are developed and maintained by fire. These forest conditions do not currently occur without management due to the history of fire-exclusion, incompatible forest management, and other land uses. Planning and successfully implementing management and treatments for each active cluster and population requires extensive resources that are difficult for managers to accurately predict for longer than 25 years. In addition to a population's response to management, there is natural variation in nest success, number of fledglings, survival of young-of-year and adults, and cooperative breeding dynamics with replacement of adult breeders by other birds dispersing from other territories. In turn, this affects annual variation in population size (active clusters) and patterns of population growth or decline. Simulations of future population conditions under different management scenarios included effects of some management treatments, though not all, as model parameters. However, effects of these management treatment parameters did not account for all sources of annual variation affecting population size that still occurred in the model and simulations. Because of the variation in future simulated population size at 25 years (USFWS 2022, appendix 2), future estimates of population size after 25 years are more uncertain.

Table 1 summarizes the model outputs for the four scenarios at the end of the 25-year simulation period. Data from 106 of the 124 current populations were available for future simulations. Of those 106 populations, initial

populations with fewer than 6 active clusters were not simulated unless they demographically merged with other populations to create new, larger populations during the 25-year period. In addition, the total number of simulated future populations at year 25 are not equal among management scenarios because of the different number of initial populations that demographically merge to establish new populations. In other words, a lower number of populations at the end than the start for each scenario does not mean that all those populations were extirpated, rather some of the populations increased and merged to create new, larger populations. Therefore, the initial starting number of populations, and predicted number of populations at the end of the simulation period, varied. We also compare the results of current and future population resiliency classes as percentages in this final rule rather than absolute numbers because of this variation. Furthermore, although the initial starting numbers varied for each of the scenarios for the reasons discussed above, we present the current condition of the 124 demographic populations as the starting place for each of these scenarios. The current condition (Past-to-Current in table 1) for these populations are: 57.3 percent have very low resiliency, 29.8 percent have low, 8.1 percent have moderate, 2.4 percent have high, and 2.4 percent have very high. For more details on the model, please see the SSA report (USFWS 2022, pp. 132–138, appendix 1, appendix 2).

TABLE 1—RESILIENCE SUMMARY BASED ON CURRENT CONDITION AND POPULATION SIMULATIONS UNDER FOUR FUTURE MANAGEMENT SCENARIOS

| Model series/scenario | Population resilience category percentages | | | | |
|---|---|---|---|---|---|
| | Very low | Low | Moderate | High | Very high |
| Past-to-Current | 57.3 | 29.8 | 8.1 | 2.4 | 2.4 |
| Future Low | 61.7 | 14.8 | 11.1 | 6.2 | 6.2 |
| Future Medium | 25.0 | 45.2 | 15.5 | 8.3 | 6.0 |
| Future High | 22.2 | 39.5 | 21.0 | 11.1 | 6.2 |
| Future Manager's | 28.6 | 42.9 | 14.3 | 8.3 | 5.9 |

Low Management Scenario

At the end of the 25-year simulation period, the predicted resiliency for the resulting 81 simulated demographic populations is: 6.2 percent of populations (5) very high; 6.2 percent (5) high; 11.1 percent (9) moderate; 14.8 percent (12) low; and 61.7 percent (50) very low. The low management scenario projects a modest increase in the percentage of current populations of moderate to very high resiliency from about 13 percent (16) to about 24 percent (19) of the 81 simulated populations compared to current conditions, but the majority of the populations that currently have low resiliency decline sufficiently to transition into the very low resiliency category. The projected outcome of this scenario clearly demonstrates the dependence of red-cockaded woodpecker population resiliency on intensive, species-specific management.

Medium Management Scenario

At the end of the 25-year simulation period, the predicted resiliency for the resulting 84 simulated demographic populations is: 6.0 percent of populations (5) very high; 8.3 percent (7) high; 15.5 percent (13) moderate; 45.2 percent (38) low; and 25.0 percent (21) very low. The medium management scenario projected a more substantial increase in the percentage of populations of moderate to very high resiliency from about 13 percent (16) to about 30 percent (25) of the populations. At the other end, the percentage of low and very low resiliency populations decreased.

High Management Scenario

At the end of the 25-year simulation period, the predicted resiliency for the resulting 81 demographic populations are as follows: 6.2 percent of populations (5) very high; 11.1 percent (9) high; 21.0 percent (17) moderate; 39.5 percent (32) low; and 22.2 percent (18) very low. The high management scenario projected an even more substantial increase in the percentage of populations of moderate to very high resiliency, increasing to about 38 percent (31) of the populations. However, the land base available for conservation has a substantial effect on the growth of these populations under this scenario. For example, none of the populations with low or very low resiliency in this scenario has the carrying capacity on their respective managed properties to transition to a higher resiliency category, regardless of the intensive management reflected in this scenario. Thus, there are 50 red-cockaded woodpecker populations that, in the absence of acquisition of additional habitat for population expansion, will always remain small regardless of the management efforts.

Manager's Expectation Scenario

At the end of the 25-year simulation period, the predicted resiliency for the resulting 84 demographic populations is: 5.9 percent of the populations (5) very high; 8.3 percent (7) high; 14.3 percent (12) moderate; 42.9 percent (36) low; and 28.6 percent (24) very low. The results are very similar to the medium management scenario.

Future Representation and Redundancy of the Species

Under all management scenarios, five populations in four ecosystems are predicted to have very high resiliency (East Gulf Coastal Plain (2), Sandhills (1), Mid-Atlantic Coastal Plain (1), and South Atlantic Coastal Plain (1)). Under the Manager's Expectation and medium management scenarios, seven populations in five ecosystems are considered to have high resiliency (East Gulf Coastal Plain (2), South Atlantic Coastal Plain (1), Sandhills (2), Upper West Gulf Coastal Plain (1), and West Gulf Coastal Plain (1)). Also, compared to current conditions, the greater number of future high and very high resiliency populations are more widely distributed among ecoregions and include the western geographic range; however, over the whole range of the woodpecker, the occurrence of high and very high resiliency populations is most concentrated in the East Gulf Coastal Plain and Sandhills ecoregions.

Only two ecoregions (Cumberland Ridge and Valley and Gulf Coast Prairie and Marshes) have no simulated populations of moderate to very high resiliency in the manager's expectation, medium management, and high management scenarios, compared to six ecoregions (Florida Peninsula, Ouachita Mountains, Cumberland Ridge and

Valley, Piedmont, Gulf Coast Prairie and Marshes, and Mississippi River Alluvial Plain) that currently do not have moderate to very high resiliency populations. The one current population in the Mississippi River Alluvial Plain ecoregion was not simulated in the future. In the low management scenario, four ecoregions (Cumberland Ridge and Valley, Gulf Coast Prairie and Marshes, Ouachita Mountains, and Piedmont) that currently only have low or very low resiliency populations are not projected to gain any moderate to very high resiliency populations at 25 years.

Summary of Future Condition

The total number of simulated populations at 25 years varied slightly among the management scenarios because of a different number of initial populations that demographically merged during simulations to establish new and larger populations. Results of the manager's expectation and medium management scenarios were most similar, while the low management and high management scenarios represented more extreme future resiliency conditions. These simulations, particularly for the low management and high management scenarios, illustrate the extent to which the red-cockaded woodpecker is a conservation-reliant species that responds positively to management, and how successful management can sustain small populations with low or very low resiliency.

In all scenarios, most populations at year 25 were still in the very low, low, and moderate resiliency categories. However, the majority of populations were projected to be stable or increasing in all but the low management scenario, highlighting how successful management can sustain even small populations. The low management scenario illustrates that without adequate species-level management, in contrast to ecosystem management alone, very little increase in the number of moderate to very high resiliency populations can be expected and small populations of low or very low resiliency are unlikely to persist. The high management scenario represents the limit of what can be accomplished given the current land base and carrying capacity to support populations. However, management at current levels, as represented by the medium management scenario, further increases the number of moderate to very high resiliency populations and projects that small populations can be preserved. In addition, at current (or greater) levels of future management, redundancy and representation are expected to improve significantly in response to increasing populations.

See the SSA report (USFWS 2022, entire) for a more detailed discussion of our evaluation of the biological status of the red-cockaded woodpecker and the influences that may affect its continued existence. Our conclusions in the SSA report, which form the basis for the determination below, are based upon the best available scientific and commercial data.

**Determination of Red-Cockaded Woodpecker Status**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an endangered species as a species ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

*Status Throughout All of Its Range*

Red-cockaded woodpeckers were once considered a common bird across the southeastern United States. At the time of listing in 1970, the species was severely threatened by lack of adequate habitat due to historical logging, incompatible forest management, and conversion of forests to urban and agricultural uses. Fire-maintained old growth pine savannas, on which the species depends, were extremely rare. What little habitat remained was mostly degraded due to fire suppression and silvicultural practices that hindered the development of older, larger trees needed by the species for cavity development and foraging. Even after listing, the species continued to decline. However, new restoration techniques, such as artificial cavities, along with changes in silvicultural practices and wider use of prescribed fire to recreate open pine parkland structure, has led to stabilization of the species' viability and resulted in an increase in the number and distribution of populations. The majority of populations for which we were able to determine trends are stable or increasing ($\lambda = 1.0$ or greater), and only 13 percent are declining. Specifically, of the 86 very low and low resiliency populations where growth rate could be measured, 73 populations demonstrated stable and positive growth rates, with several populations showing very high growth rates. This is indicative of the positive effects of red-cockaded woodpecker conservation management programs on these locations and the ability of such management to offset inherently low or very low population resilience. Additionally, there are currently at least 124 populations across 13 ecoregions.

As discussed under *Future Conditions* above, in the SSA report, future population conditions under different management scenarios were simulated and modeled to 25 years into the future, and we determined that we can rely on the timeframe presented in the scenarios and predict how future stressors and management will affect the red-cockaded woodpecker.

When we modeled future scenarios, the majority of populations were projected to be stable or increasing in all but the low management scenario, highlighting how successful management can sustain even small populations. Future management at current and recent past levels, as represented by the medium management scenario, further increases the number of moderate to very high resiliency populations and projects that small populations can be preserved. In addition, at current (or greater) levels of management, redundancy and representation are expected to significantly improve because most populations are expected to increase in size across the ecoregions.

The red-cockaded woodpecker continues to face a variety of stressors due to inadequate habitat across its range, but these are now mostly legacy stressors resulting from historical forest conversion and fire suppression practices rather than current habitat loss. These legacy stressors include insufficient numbers of cavities and suitable, abundant old pines for natural cavity excavation; habitat fragmentation and its effects on genetic variation, dispersal, and connectivity to support demographic populations; lack of suitable foraging habitat for population growth and expansion; and small populations. The species also continues to face stress from natural events, especially hurricanes, the frequency and

intensity of which may continue to increase in the future.

Active conservation management over many decades has allowed the species' populations to expand, even in the face of this historically limited habitat and natural disturbances. However, red-cockaded woodpeckers rely on, and will continue to rely almost completely on, active management by property managers and biologists to install artificial cavities and manage clusters, restore additional habitat and strategically place recruitment clusters to improve connectivity, control the hardwood midstory through prescribed fire and silvicultural treatments, and translocate individuals to augment small populations and minimize loss of genetic variation. In addition, emergency response after severe storms and other natural disasters will continue to be necessary to prevent cluster abandonment and minimize wildfire fuel loading. However, both the emergency response and routine management are well-understood and are currently being implemented across the range of the woodpecker, and much of the red-cockaded woodpecker's currently occupied habitat is now protected under various management plans. As a conservation-reliant species, securing management commitments for the foreseeable future would ensure that red-cockaded woodpecker populations grow or are maintained. This conclusion is reinforced by the future scenario simulations, which indicate that management efforts equal to or greater than current levels will further increase the number of moderate to very high resiliency populations and preserve small populations.

After evaluating the threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find that, while the legacy stressors identified above continue to negatively affect the red-cockaded woodpecker, new restoration techniques and changes in silvicultural practices have led to stabilization of the red-cockaded woodpecker's viability and even resulted in a substantial increase in the number and distribution of populations such that the species is not currently in danger of extinction. Sixty-five percent of all current red-cockaded woodpecker clusters are within moderate, high, or very highly resilient populations, and populations are spread across multiple ecoregions, providing for redundancy and representation. However, the species remains highly dependent on continued conservation management and the majority of populations contain small numbers of clusters, which could be especially vulnerable to hurricanes or other natural disturbances in the foreseeable future without prompt management response.

We expect current conservation management to continue into the foreseeable future given that many of the landowners and managers within the range of the species have committed to continuing to implement their conservation programs and that we have structured our final 4(d) rule to facilitate the continuation of such management. However, absent the protections of the Act, we do not have commitments that all current management will continue and that it will adapt as necessary to effectively address emerging stressors (*e.g.,* intensifying hurricanes). The absence of commitments to implement effective conservation efforts into the future for this conservation reliant species increases the risk of extinction in the foreseeable future. Thus, after assessing the best available information, we conclude that the red-cockaded woodpecker is not in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

*Status Throughout a Significant Portion of Its Range*

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the provision of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (hereafter ''Final Policy''; 79 FR 37578; July 1, 2014) that provided that if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for red-cockaded woodpecker, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify portions of the range where the species may be endangered.

We evaluated the range of the red-cockaded woodpecker to determine if the species is in danger of extinction now in any portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the species' range that may meet the definition of an endangered species. For red-cockaded woodpecker, we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in other portions such that the species is in danger of extinction now in that portion.

The statutory difference between an endangered species and a threatened species is the timeframe in which the species becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so within the foreseeable future. Thus, we reviewed the best scientific and commercial data available regarding the time horizon for the threats that are driving the red-cockaded woodpecker to warrant listing as a threatened species throughout all of its range.

We then considered whether these threats or their effects are occurring in any portion of the species' range such that the species is in danger of extinction now in that portion of its range. We examined the following threats: natural disasters such as hurricanes and vulnerability due to small population sizes and fragmentation, including cumulative effects. Other identified stressors, such as inadequate habitat, are uniform throughout the red-cockaded woodpecker's range. Although hurricanes may impact populations across the red-cockaded woodpecker's range, return intervals are shorter and impacts are more pronounced in near-coastal populations compared to inland populations (USFWS 2022, pp. 121–

124). Furthermore, while small populations occur throughout the species' range, we found a portion of the range that may have a different extinction risk due to a concentration of threats from the combination of both hurricanes and small population sizes in the Florida Peninsula, West Gulf Coastal Plain, and the southernmost near-coastal extension of the Upper West Gulf Coastal Plain ecoregions. This means these populations when combined together may constitute a portion of the species' range where the species could have a different status.

Despite the vulnerability of these areas to hurricanes, this stressor is not currently accelerating extinction risk in this portion of the range due to effective conservation management. Populations can withstand and persist after hurricanes if biologists and land managers implement prompt, effective post-storm recovery actions, such as installing artificial cavities, reducing hazardous fuels, and restoring forests to suitable habitat. Such actions have been occurring after storm events for managed populations, such as the quick response after Hurricane Michael in October 2018. Both this emergency response and routine management are well-understood and are currently being implemented across the range of the woodpecker. In addition, much of the red-cockaded woodpecker's currently occupied habitat is now protected under various management plans. As such, despite the regular occurrence of hurricanes within red-cockaded woodpecker habitat, especially in the coastal areas in the Florida Peninsula, West Gulf Coastal Plain, and the southernmost near-coastal extension of the Upper West Gulf Coastal Plain ecoregions, 89 percent of the populations for which we have trend data demonstrate stable to increasing growth rates in this portion of the range, illustrating the effectiveness of currently ongoing active management in preventing broad impacts from hurricanes and other stressors (USFWS 2022, p. 112). Catastrophic risk from natural events is being effectively managed (*e.g.,* through prompt post-storm response) such that the species is not currently in danger of extinction in this portion of the range.

However, we also noted in the proposed rule and in this final rule that the frequency of major hurricanes (Bender et al. 2010, entire; Knutson et al. 2010, entire; Walsh et al. 2014, pp. 41–42) may increase in the future in response to global climate change, and this increase could disproportionately affect the smaller, less resilient woodpecker populations. Immediate management response after natural disasters is key to preventing cluster abandonment in all populations and is critical to keeping smaller populations from being extirpated altogether. As a conservation-reliant species, securing management commitments for the foreseeable future, including commitments for effective post-storm response, would ensure that red-cockaded woodpecker populations grow or are maintained. However, given potential increased negative impacts from hurricanes in the future and due to the lack of certainty that effective post-storm response will continue in the foreseeable future, we find that red-cockaded woodpeckers are likely to become endangered within the foreseeable future throughout all of their range. This risk may be particularly high in the foreseeable future in the Florida Peninsula, West Gulf Coastal Plain, and the southernmost near-coastal extension of the Upper West Gulf Coastal Plain ecoregions. However, although some threats to the red-cockaded woodpecker are concentrated in the Florida Peninsula, West Gulf Coastal Plain, and the southernmost near-coastal extension of the Upper West Gulf Coastal Plain ecoregions, the timing of the effects of the threats and the species' anticipated responses in that portion is the same as that for the entire range for the foreseeable future. As a result, the red-cockaded woodpecker is not in danger of extinction now in this portion of its range.

We also considered whether the portion of the species' range that contains low or very low resiliency populations could constitute a portion that provides a basis for determining that the species is in danger of extinction in a significant portion of its range. However, based on our analysis, we did not find that this portion of the species' range, or any combination of areas that lack moderate, high, or very high resiliency populations, met the definition of an endangered species. Managers are currently applying active management to these small populations. As a result of this active management, the vast majority of these low or very low resiliency populations have stable or increasing growth rates, evidencing the effectiveness of this active management in supporting the persistence of these small populations. Of the 108 demographic populations in low or very low resiliency classes, 86 have data on growth rates; 86 percent of these populations have growth rates greater than or equal to one (USFWS 2022, pp. 108–110). Under this current paradigm, these small populations are not currently in danger of extinction due to the active management (*e.g.,* translocation, habitat management, artificial cavity installation) that supports their stability and growth. However, as we discuss above, given potential increased negative impacts from other stressors (*e.g.,* hurricanes) in the foreseeable future and due to the lack of certainty that all active woodpecker management will continue at current rates in the foreseeable future, we find that the red-cockaded woodpecker meets the definition of threatened as the species is likely to become endangered within the foreseeable future throughout all of its range. These smaller populations will likely be particularly sensitive to these potential changes in stressors and management in the future. Therefore, although within the Florida Peninsula, West Gulf Coastal Plain, and the southernmost near-coastal extension of the Upper West Gulf Coastal Plain ecoregions, the red-cockaded woodpecker may be more vulnerable to future changes in threats and conservation, the best scientific and commercial data available do not indicate that the species' responses to the threats are such that the red-cockaded woodpecker is in danger of extinction now within the Florida Peninsula, West Gulf Coastal Plain, and the southernmost near-coastal extension of the Upper West Gulf Coastal Plain ecoregions. Therefore, we determine that the species is not in danger of extinction now in any portion of its range, but that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy, including the definition of ''significant'' that those court decisions held were invalid.

*Determination of Status*

Our review of the best scientific and commercial data available indicates that the red-cockaded woodpecker meets the definition of a threatened species. Therefore, we are downlisting the red-cockaded woodpecker as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

**Available Conservation Measures**

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems

upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. With this downlisting of the red-cockaded woodpecker, conservation measures continue to be provided including recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. As discussed above, the 2003 recovery plan provides guidelines for installing artificial cavities, management of cavity trees and clusters, translocation, silviculture, prescribed fire under the management guidelines, and guidelines for managing foraging habitat on private lands under the private land guidelines. In addition, section 7(a)(1) and 7(a)(2) responsibilities of Federal agencies remain.

Section 7 of the Act is titled Interagency Cooperation and mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the federal action is likely to result in jeopardy or adverse modification.

Examples of discretionary actions for the red-cockaded woodpecker that may be subject to consultation procedures under section 7 are land management or other landscape-altering activities on Federal lands administered by the DoD, USFS, USFWS, NWR, Federal Highway Administration, and U.S. Department of Energy as well actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on Section 7 consultation and conference requirements.

Please contact us if you are interested in participating in recovery efforts for the red-cockaded woodpecker. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery implementation purposes (see **FOR FURTHER INFORMATION CONTACT**).

It is the policy of the Services, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9 of the Act. To the extent possible, activities that will be considered likely to result in violation will also be identified in as specific a manner as possible. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of the species. Although most of the prohibitions in section 9 of the Act apply to endangered species, sections 9(a)(1)(G) and 9(a)(2)(C) of the Act prohibit the violation of any regulation under section 4(d) pertaining to any threatened species of fish or wildlife, or threatened species of plant, respectively. Section 4(d) of the Act directs the Secretary to promulgate protective regulations that are necessary and advisable for the conservation of threatened species. As a result, we interpret our policy to mean that, when we list a species as a threatened species, to the extent possible, we identify activities that will or will not be considered likely to result in violation of the protective regulations under section 4(d) for that species.

At this time, we are unable to identify specific activities that will or will not be considered likely to result in violation of section 9 of the Act beyond what is already clear from the descriptions of prohibitions and exceptions established by protective regulation under section 4(d) of the Act.

Questions regarding whether specific activities would constitute violation of section 9 of the Act should be directed to the Georgia Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Protective Regulations Under Section 4(d) of the Act**

*Background*

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened species. Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. With these two sentences in section 4(d), Congress delegated broad authority to the Secretary to determine what protections would be necessary and advisable to provide for the conservation of threatened species, and even broader authority to put in place any of the section 9 prohibitions, for a given species.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section 4(d) that included limited prohibitions against takings (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 WL 2344927 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or

[she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The provisions of this species' protective regulations under section 4(d) of the Act are one of many tools that we will use to promote the conservation of the red-cockaded woodpecker. Nothing in 4(d) rules change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the red-cockaded woodpecker.

As mentioned previously in Available Conservation Measures, Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. These requirements are the same for a threatened species regardless of what is included in a 4(d) rule.

Section 7 consultation is required for Federal actions that ''may affect'' a listed species regardless of whether take caused by the activity is prohibited or excepted by a 4(d) rule (''blanket rule'' or species-specific 4(d) rule). A 4(d) rule does not change the process and criteria for informal or formal consultations and does not alter the analytical process used for biological opinions or concurrence letters. For example, as with an endangered species, if a Federal agency determines that an action is ''not likely to adversely affect'' a threatened species, this will require our written concurrence (50 CFR 402.13(c). Similarly, if a Federal agency determines that an action is ''likely to adversely affect'' a threatened species, the action will require formal consultation and the formulation of a biological opinion (50 CFR 402.14(a)). Because consultation obligations and processes are unaffected by 4(d) rules, we may consider developing tools to streamline future intra-Service and inter-Agency consultations for actions that result in forms of take that are not prohibited by the 4(d) rule (but that still require consultation). These tools may include consultation guidance, Information for Planning and Consultation effects determination keys, template language for biological opinions, or programmatic consultations.

The red-cockaded woodpecker requires cavity trees, nesting habitat, and foraging habitat (USFWS 2022, pp. 83–87). Red-cockaded woodpeckers rely on cavities for nesting and roosting (USFWS 2022, p. 33). Old pines are required as cavity trees because cavity chambers must be completely within the heartwood to prevent pine resin in the sapwood from entering the chamber and because heartwood diameter is a function of tree age (Jackson and Jackson 1986, pp. 319–320; Clark 1993, pp. 621–626; USFWS 2022, p. 32). In addition, old pines have a higher incidence of the heartwood decay that greatly facilitates cavity excavation (USFWS 2022, p. 32). As we explain in the 2003 recovery plan, given that the species requires these cavities to complete its life cycle, the number of suitable cavities available can limit population size (USFWS 2003, p. 20). Thus, the recovery plan states, ''to prevent loss of occupied territories, existing cavity trees should be protected, so that a sufficient number of suitable ones are maintained at all times'' (USFWS 2003, p. 20).

Red-cockaded woodpeckers also require open pine woodlands and savannas with large old pines for nesting and roosting (*i.e.,* nesting habitat) (USFWS 2022, p. 32). Cavity trees, with rare exception, occur in open stands with little or no hardwood midstory and few or no overstory hardwoods (USFWS 2022, p. 32). Suitable foraging habitat generally consists of mature pines with an open canopy, low densities of small pines, a sparse hardwood or pine midstory, few or no overstory hardwoods, and abundant native bunchgrass and forb groundcovers (USFWS 2022, p. 41).

Additionally, the red-cockaded woodpecker is a conservation-reliant species ''highly dependent on active conservation management with prescribed fire, beneficial and compatible silvicultural methods to regulate forest composition and structure, the provision of artificial cavities where natural cavities are insufficient, translocation to sustain and increase small vulnerable populations, and effective monitoring to identify limiting biological and habitat factors for management'' (USFWS 2022, p. 131). We emphasize this conservation reliance in the proposed rule (85 FR 63474, October 8, 2020) and indicate that the future persistence of the species will require these management actions to continue. As such, in addition to providing prohibitions necessary to protect individuals, the section 4(d) rule provides exceptions that will maintain and restore these essential nesting and foraging resources for the species (*i.e.,* cavity trees, nesting habitat, and foraging habitat), which will advance the species' recovery and conservation.

Specifically, the exceptions in the section 4(d) rule encourage beneficial habitat management on Federal lands, compatible prescribed burns and use of herbicides on eligible private and other non-Federal lands, and the provision of artificial cavities throughout the species' range. These activities provide considerable benefit to the species and its habitat by maintaining or increasing the quantity and quality of cavity trees, nesting habitat, and foraging habitat. Additionally, this section 4(d) rule retains the exception for take that results from activities authorized by a permit under the Act, which includes permits we have issued under the SHA program or will issue under the CBA program. Together, these prohibitions and exceptions will maintain and restore essential nesting and foraging resources for the species, improving the availability of suitable habitat, and will promote continued recovery.

Additionally, one of the primary purposes of the Act is to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved (16 U.S.C. 1531(b)); crafting a section 4(d) rule for red-cockaded woodpecker that encourages habitat management that benefits the species will also support conservation of the native pine-grass ecosystems upon which the species depends.

The provisions of this section 4(d) rule will promote conservation of the red-cockaded woodpecker by prohibiting take that can directly or indirectly impact population demographics. They also promote conservation of the species by providing more flexibility for incidental take that may result from activities that maintain and restore requisite habitat features.

Moreover, we acknowledge and commend the accomplishments of our Federal partners, State agencies, nongovernmental organizations, and private landowners in providing conservation for the red-cockaded woodpecker for the past four decades. This intensive management has facilitated population growth since the time of listing, thereby allowing us to downlist the species from endangered to threatened. Private and other non-Federal landowners' SHAs and HCPs, DoD's INRMPs, USFS LRMPs, and the NWR System's CCPs currently provide specific measures for the active management and conservation of the species throughout its range, which have aided in the recovery of the species and its habitat. Overall, the majority of red-cockaded woodpecker populations

are managed under plans that address population enhancement and habitat management to sustain or increase populations and to meet the 2003 recovery plan objectives for primary core, secondary core, and essential support populations (USFWS 2003, pp. 156–159). Our section 4(d) rule does not invalidate or replace these successful programs. In fact, the section 4(d) rule continues to encourage participation in the CBA program, previously known as the SHA program, and provides incentives for public land managers and applicable State land management agencies to continue providing specific management for the benefit of the species and its habitat.

The provisions of this section 4(d) rule are only one of the many tools we can use to promote conservation of the red-cockaded woodpecker. For example, private and other non-Federal landowners may still pursue regulatory flexibility through existing mechanisms that currently promote the species' conservation, such as CBAs or HCPs. These mechanisms will continue to provide considerable assurances for landowners.

Similarly, this section 4(d) rule does not change an eligible private or other non-Federal landowner's ability to enroll in conservation programs such as those available through the NRCS or the Partners for Fish and Wildlife Program. These Federal programs provide technical and financial assistance to eligible private and other non-Federal landowners to support habitat management for the benefit of wildlife and other natural resources in the open-pine systems of the southeastern United States, as well as other habitat types throughout the country. Nationwide, these programs help conserve or restore hundreds of thousands of acres of wildlife habitat every year. As a result of the consultations these Federal programs conduct with us, enrolled private and other non-Federal landowners already receive allowances for incidental take associated with beneficial conservation practices, without having to embark on a complex permitting process; the reclassification of the red-cockaded woodpecker and the section 4(d) rule do not alter these programs. We encourage eligible private and other non-Federal landowners to continue participating in these valuable conservation programs.

Finally, this section 4(d) rule does not alter or invalidate the 2003 recovery plan. Recovery plans are not regulatory documents, but rather they provide a strategy to guide the conservation and recovery of the red-cockaded woodpecker.

The only portion of this document that has regulatory effect is the text presented below under Regulation Promulgation (*i.e.,* the text we add as paragraph (h) of § 17.41 of title 50 of the Code of Federal Regulations (50 CFR 17.41(h)); the explanatory text above and in ''Provisions of the 4(d) Rule'' below merely clarifies the intent of these regulations.

**Provisions of the 4(d) Rule**

*Prohibitions*

Exercising the Secretary's authority under section 4(d) of the Act, we have developed a rule that is designed to address the red-cockaded woodpecker's conservation needs. As discussed previously in Summary of Biological Status and Threats, we have concluded that the red-cockaded woodpecker is likely to become in danger of extinction within the foreseeable future primarily due to lack of suitable roosting, nesting, and foraging habitat resulting from the legacy effects of historical logging, incompatible forest management, and conversion of forests to urban and agricultural uses. Section 4(d) requires the Secretary to issue such regulations as she deems necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(1) of the Act prescribes for endangered species. We are not required to make a ''necessary and advisable'' determination when we apply or do not apply specific section 9 prohibitions to a threatened species (*In re: Polar Bear Endangered Species Act Listing and 4(d) Rule Litigation,* 818 F. Supp. 2d 214, 228 (D.D.C. 2011) (citing *Sweet Home Chapter of Cmtys. for a Great Or.* v. *Babbitt,* 1 F.3d 1, 8 (D.C. Cir. 1993), *rev'd on other grounds,* 515 U.S. 687 (1995))). Nevertheless, even though we are not required to make such a determination, we have chosen to be as transparent as possible and explain below why we find that, if finalized, the protections, prohibitions, and exceptions in this rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the red-cockaded woodpecker.

The protective regulations for red-cockaded woodpecker incorporate prohibitions from section 9(a)(1) to address the threats to the species. The prohibitions of section 9(a)(1) of the Act, and implementing regulations codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following acts with regard to any endangered wildlife: (1) import into, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect) within the United States, within the territorial sea of the United States, or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. This protective regulation includes all of these prohibitions because the red-cockaded woodpecker is at risk of extinction in the foreseeable future and putting these prohibitions in place will help to prevent negative effects from other ongoing or future threats.

In particular, this 4(d) rule will provide for the conservation of the red-cockaded woodpecker by prohibiting the following activities, unless they fall within specific exceptions or are otherwise authorized or permitted: importing or exporting red-cockaded woodpeckers; take of red-cockaded woodpeckers; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping red-cockaded woodpeckers in interstate or foreign commerce in the course of commercial activity; and selling red-cockaded woodpeckers or offering red-cockaded woodpeckers for sale in interstate or foreign commerce.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating take will help decrease synergistic, negative effects from other ongoing or future threats. Therefore, we are prohibiting take of the red-cockaded woodpecker, except for take resulting from those actions and activities specifically excepted by the 4(d) rule.

As discussed in the SSA report for the species, effective monitoring, research, and translocation are important elements of the active management that promotes red-cockaded woodpecker conservation and recovery. However, in this section 4(d) rule, we prohibit all forms of take, which include capturing, handling, and similar activities. Such

activities include, but are not limited to, translocation, banding, collecting tissue samples, and research involving capturing and handling red-cockaded woodpeckers. While these activities are essential to conservation and recovery of the species, there are proper techniques to capturing and handling birds that require training and experience. Improper capture, banding, or handling can cause injury or even result in death of red-cockaded woodpeckers. Therefore, to ensure that these activities continue to be conducted correctly by properly trained personnel, the section 4(d) rule continues to prohibit take associated with translocation, banding, research, and other activities that involve capture or handling of red-cockaded woodpeckers; however, take that results from these activities could still be allowed under a section 10(a)(1)(A) permit.

*Exceptions*

Exceptions to the prohibition on take include all of the general exceptions to the prohibition against take of endangered wildlife as set forth in 50 CFR 17.21 and additional exceptions, as described below.

Despite these prohibitions regarding threatened species, we may under certain circumstances issue permits to carry out one or more otherwise-prohibited activities, including those described above. The regulations that govern permits for threatened wildlife state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. These include permits issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act (50 CFR 17.32). The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

Furthermore, we encourage landowners to continue to enroll in the CBA program, previously known as the SHA program. Exactly like the regulatory regime that applies while the species is listed as endangered, any new permits issued under the authority of the CBA program will provide landowners with additional management flexibility and exemption from some of the take prohibitions in this rule. As discussed in greater detail above, CBAs are partnerships between landowners and us or between the State and us involving voluntary agreements under which the landowners receive formal regulatory assurances from us regarding their management responsibilities in return for contributions to benefit the listed species. This section 4(d) rule does not alter this valuable program, or the permits associated with it.

In addition, to further the conservation of the species, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, a State conservation agency, or a federally recognized Tribe, who is designated by their agency or Tribe for such purposes, may, when acting in the course of their official duties, take threatened wildlife without a permit if such action is necessary to: (i) Aid a sick, injured, or orphaned specimen; or (ii) dispose of a dead specimen; or (iii) salvage a dead specimen that may be useful for scientific study; or (iv) remove specimens that constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in an appropriate area.

Next, we incorporate the exception to take prohibitions for threatened species found in 50 CFR 17.31(b), which authorizes employees or agents of the Service or State conservation agencies operating under a cooperative agreement with us in accordance with section 6(c) of the Act to take red-cockaded woodpeckers in order to carry out conservation programs for the species. We recognize the special and unique relationship that we have with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. States solely own and manage lands occupied by at least 31 demographic populations and oversee State-wide SHAs, now known as CBAs, that have enrolled 459 non-Federal landowners covering approximately 2.5 million acres (85 FR 63474, October 8, 2020).

In this regard, section 6 of the Act provides that we must cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve red-cockaded woodpecker that may result in otherwise prohibited take without additional authorization.

This exception is very similar to an exception that currently applies while the woodpecker is listed as endangered (the exception under 50 CFR 17.21(c)(5)). While the exception in 50 CFR 17.31(b) is similar to the exception that currently applies while the species is listed as endangered (50 CFR 17.21(c)(5)), it does not provide the same limitations on take associated with carrying out conservation programs in States' cooperative agreements. State agencies may also enroll in the Conservation Benefit program, previously known as the Safe Harbor program, to receive permits that allow for certain types of take, if they are not otherwise covered by a cooperative agreement or otherwise prohibited.

The 4(d) rule will also provide for the conservation of the species by allowing exceptions that incentivize conservation actions or that, while they may have some minimal level of take of the red-cockaded woodpecker, are not expected to rise to the level that would have a negative impact (*i.e.,* would have only de minimis impacts) on the species' conservation. These exceptions will promote the maintenance and restoration of the habitat resources (cavity trees, nesting habitat, and foraging habitat) crucial to red-cockaded woodpecker recovery and conservation and not be subject to penalties and enforcement in accordance with section 11 of the Act.

As discussed above, active management targeted at maintaining and restoring red-cockaded woodpecker populations and habitat is essential to the continued recovery of the species. The analyses in the SSA report illustrate that it could take ''many decades . . . to attain a desired future ecosystem condition in which red-cockaded woodpeckers are no longer dependent on artificial cavities and related special treatments. Without adequate species-level management, in contrast to ecosystem management alone, very little increase in the number of moderately to very highly resilient populations can be expected, and small populations of low or very low resilience are unlikely to persist'' (USFWS 2022, p. 14). The species-specific exceptions in this section 4(d) rule aim to facilitate

management that will protect and enhance red-cockaded woodpecker populations.

For several reasons, conservation of red-cockaded woodpeckers as a species depends primarily on the conservation of populations on Federal properties (*e.g.,* National Forests, NWRs, DoD installations). First, the vast majority of red-cockaded woodpeckers in existence today are on Federal lands (USFWS 2022, pp. 108–110; see table 7 in USFWS 2003, p. 137). Second, Federal properties contain most of the land that can reasonably be viewed as potential habitat for red-cockaded woodpeckers (USFWS 1985, p. 133). Third, existing Federal statutes, especially the Act, require that Federal agencies conserve listed species and maintain biodiversity within their lands. Section 2(c)(1) of the Act declares that it is the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species (16 U.S.C. 1531(c)(1)); the Act defines conservation as the use of all methods and procedures necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary (16 U.S.C. 1532(3)). Private and other non-Federal landowners, in contrast, can contribute substantially to conservation, but such contributions above complying with the statutory prohibitions (*e.g.,* direct harm) are voluntary. For those private and other non-Federal landowners that wish to increase the size of their population, we strongly encourage them to aim to achieve the recovery standard in the 2003 recovery plan or join the Conservation Benefit program, previously known as the Safe Harbor program (USFWS 2003, pp. 188–189).

Therefore, the species-specific exceptions in this section 4(d) rule address eligible private and other non-Federal lands differently from Federal lands for three reasons. First, these entities have differing recovery responsibilities. Second, because of section 7 consultation obligations, we will potentially be involved with Federal agencies' habitat management activities and any conservation activities that are authorized, funded, or carried out through Federal conservation programs on eligible private and other non-Federal lands. Third, there are other flexible programs that permit take that are already available to some State conservation agencies and other eligible private and non-Federal landowners (*e.g.,* permits issued from existing SHAs, future CBAs, and HCPs and assistance provided by various conservation programs, such as those administered by NRCS and the Partners for Fish and Wildlife Program).

First, we include an exception to the take prohibitions to allow incidental take on DoD installations that occurs as a result of implementing red-cockaded woodpecker habitat management and military training activities detailed in Service-approved INRMPs. In this rule, we define habitat management activities as activities intended to maintain or improve the quality and/or quantity of red-cockaded woodpecker habitat, including, but not limited to, prescribed burning; using herbicides and equipment to reduce midstory encroachment, thin overstocked pine stands, promote an open canopy pine system, and promote herbaceous groundcover; converting loblolly, slash, or other planted pines to more fire-tolerant native pines such as longleaf pine; planting and seeding native, site-appropriate pines and groundcover species; and regenerating areas of older pine forest, or any overrepresented age class, to increase and maintain sustainable current and future habitat.

Within the range of the species, most DoD Army, Air Force, and Marine Corps installations have red-cockaded woodpecker management plans and guidelines incorporated into their Service-approved INRMPs to minimize the adverse effects of the military training activities outlined in the INRMPs and to achieve red-cockaded woodpecker recovery objectives. These plans and guidelines all contain an ESMC for red-cockaded woodpecker conservation, which includes population size objectives, management actions to achieve conservation goals, monitoring and reporting, and specific training activities that are allowed or restricted within clusters and near cavity trees. Under the Sikes Act (16 U.S.C. 670 *et seq.*), we are required to review and approve INRMPs, when they are revised, at least every 5 years, and participate in annual reviews. In addition to this review and approval under the Sikes Act, we conduct section 7 consultation under the Act on INRMPs and ESMCs to ensure DoD installations' activities are not likely to jeopardize the continued existence of any listed species, including red-cockaded woodpeckers. Even with this exception in the section 4(d) rule, DoD installations will still need to comply with the Sikes Act requirement to obtain our approval of INRMPs and will still need to fulfill their section 7 obligations under the Act, including consulting, tracking and reporting amounts of incidental take that occur as a result of activities outlined in the INRMP (see ''Implications for Implementation,'' below, for more detail on section 7 processes under section 4(d) rules).

In addition to excepting incidental take that results from red-cockaded woodpecker habitat management activities in INRMPs, this section 4(d) rule will except incidental take associated with routine military training activities that are included in a Service-approved INRMP. The military training activities that DoD installations include in their INRMPs have been specifically designed to minimize incidental take of listed species, including red-cockaded woodpeckers. The DoD uses long-established guidelines (*e.g.,* Management Guidelines for the Red-Cockaded Woodpecker on Army Installations (U.S. Army 1996, entire)) to inform minimization measures that reduce incidental take associated with military training. Moreover, the DoD conducts section 7 consultation with us on the content of their INRMPs to ensure these military training activities will not jeopardize the species. Any incidental take resulting from new proposed training or construction activities that are not incorporated into a Service-approved INRMP are not excepted under this rule but could be exempted through an incidental take statement associated with a biological opinion resulting from a separate section 7 consultation under the Act. In other words, if a military installation's activities do not fall within the exceptions in this section 4(d) rule (*i.e.,* they are not incorporated in a Service-approved INRMP) or are not otherwise covered in an existing section 7 biological opinion, incidental take that results from those activities could still be exempted from the prohibitions in this section 4(d) rule via a new biological opinion's incidental take statement as long as the activities will not jeopardize the continued existence of the species.

To further ensure the DoD continues to monitor their red-cockaded woodpecker populations and habitats, the provisions in the section 4(d) rule will require each installation to share an annual property report regarding their red-cockaded woodpecker populations. This annual property report could include the property's recovery goal; the number of active, inactive, and recruitment clusters; information on habitat quality; and the number of artificial cavities the property installed. All military installations with red-cockaded woodpecker populations currently provide such a report to us, and we expect this to continue while the species is listed as threatened. This monitoring could inform adaptive

management during annual INRMP reviews.

As a result of existing conservation programs under Service-approved INRMPs, red-cockaded woodpecker populations have increased on all DoD installations. Of note, Fort Liberty, Fort Stewart, Eglin Air Force Base, Fort Moore, and Camp Blanding all have achieved or surpassed their 2003 recovery plan population size objectives and are expected to continue to manage towards larger populations (USFWS 2003, pp. xiii–xx, 212–213). Active and beneficial red-cockaded woodpecker management to increase population sizes on DoD installations has been an essential component of sustaining the species, and such management can balance the effects of military training.

Given the close, formal involvement we have in reviewing and approving INRMPs under the Sikes Act, the species-specific beneficial management practices that DoD installations must incorporate into the ESMCs of these plans, the monitoring that the DoD installations must conduct, and the section 7 consultation that will still occur for these plans to ensure conservation activities do not jeopardize the species, we find that the management resulting from INRMPs will continue to advance the conservation of the species, even if incidental take occurs. Therefore, this section 4(d) rule excepts incidental take resulting from red-cockaded woodpecker habitat management and military training activities on DoD installations carried out in accordance with a Service-approved INRMP.

Second, we include an exception to take prohibitions to allow incidental take that results from habitat management activities intended to restore or maintain red-cockaded woodpecker habitat on Federal land management agency properties; as noted earlier, we define ''habitat management activities'' for the purposes of the section 4(d) rule (see Regulation Promulgation, below). We provide this exception separately from the aforementioned exception for DoD properties to account for the fact that the Sikes Act requires a different level of our involvement in the development of INRMPs and provides different standards for content in INRMPs than other Federal natural resource management planning processes.

In order to benefit from this exception, Federal land management agencies must detail these planned habitat management activities in a Federal habitat management plan that includes a red-cockaded woodpecker management component, which addresses factors including, but not limited to, the red-cockaded woodpecker population size objective and the habitat management necessary to sustain, restore, or increase foraging habitat, nesting habitat, and cavity trees to attain population size objective. Suitable management plans may be stand-alone documents or may be step-down plans with red-cockaded woodpecker-specific management components that implement more general plans (*e.g.,* the habitat management plans that implement the NWR System's CCPs and red-cockaded woodpecker-specific amendments to LRMPs). In addition to describing these habitat management activities in a Federal habitat management plan, Federal land management agencies must also incorporate appropriate conservation measures to minimize or avoid adverse effects of these habitat management activities on red-cockaded woodpecker foraging habitat, on clusters, and on the species' roosting and nesting behavior to the maximum extent practicable; Federal agencies may identify these avoidance and minimization measures in these habitat management plans or in other documentation associated with the section 7 consultation process. The inclusion of ''clusters'' in this provision ensures Federal land managers are adequately protecting nesting habitat and cavity trees, in addition to foraging habitat, while executing their planned beneficial habitat management activities. We expect the red-cockaded woodpecker components of these Federal management plans to allow for adaptive management and frequent reevaluation of appropriate conservation activities and minimization measures.

Moreover, to further ensure Federal land management agencies continue to monitor their red-cockaded woodpecker populations and habitats, the provisions in the section 4(d) rule require each Federal property to share an annual property report with us regarding their red-cockaded woodpecker populations. This annual property report could include the property's recovery goal; the number of active, inactive, and recruitment clusters; information on habitat quality; and the number of artificial cavities the property installed. All Federal properties with red-cockaded woodpecker populations currently provide such a report to us, and we expect this practice to continue while the species is listed as threatened. The reporting Federal agencies provide as part of section 7 consultations will also qualify as this annual property report.

As a result of this provision in the section 4(d) rule, we will, under certain conditions, except incidental take associated with habitat management activities on Federal lands that have short-term adverse effects to red-cockaded woodpeckers but that are intended to provide for improved habitat quality and quantity in the long term, with coinciding increases in numbers of red-cockaded woodpeckers, if these activities are detailed in a management plan that can adequately address site-specific considerations. Current and future red-cockaded woodpecker habitat conditions that require such restoration can vary significantly among sites and properties, to the extent that it would be ineffective to prescribe a universal condition by which this exception will apply. Therefore, in this section 4(d) rule, we state that incidental take associated with these activities will be excepted as long as the activities are intended to restore and maintain red-cockaded woodpecker habitat and are detailed in a Federal agency habitat management plan. These management plans can strategically and accurately assess the site-specific conditions. According to the section 4(d) rule, Federal agencies must also incorporate appropriate conservation measures to minimize the adverse effects of these activities on red-cockaded woodpecker foraging habitat, on clusters, and on the species' roosting and nesting behavior. Because Federal agencies will still need to complete section 7 consultation, as appropriate, on these habitat management plans or projects, we will have the opportunity to review these restoration projects and provide input on how to minimize impacts to the species.

Again, we encourage comprehensive, proactive management that results in red-cockaded woodpecker population growth and stability since, according to the 2003 recovery plan, ''development and maintenance of viable recovery populations is dependent on restoration and maintenance of appropriate habitat'' (USFWS 2003, p. 32). Continued conservation activities and beneficial land management are necessary to address the threats of habitat degradation and fragmentation, and it is the intent of this rule to encourage these activities.

Most Federal properties within the range of the red-cockaded woodpecker already have management plans that detail habitat management activities specifically intended to restore or maintain red-cockaded woodpecker habitat; this exception will not require these agencies to rewrite these management plans or to reinitiate

section 7 consultation on these plans or on relevant projects. Moreover, because this section 4(d) rule does not remove or alter the obligation of Federal agencies to complete section 7 consultation on their management plans, we will have the opportunity to review any major changes to these site-specific plans to ensure the Federal agency's habitat management activities are not likely to jeopardize the continued existence of any listed species, including the red-cockaded woodpecker. As part of this section 7 process, we will produce an incidental take statement for the estimated amount of take reasonably likely to occur as a result of the management plan's activities, even though that take is excepted under the section 4(d) rule. Additionally, Federal agencies will still track all incidental take, even if it is excepted under this provision. If they exceed the amount of take in this incidental take statement as a result of carrying out the activities in their management plan, they will need to reinitiate consultation (see ''Implications for Implementation,'' below, for more detail on section 7 processes under section 4(d) rules).

This provision does not except take resulting from habitat management or other activities that provide no benefit to red-cockaded woodpecker recovery, even if these activities are also described in the Federal management plan; however, incidental take from such activities could still be exempted through an incidental take statement associated with a biological opinion resulting from section 7 consultation under the Act. In other words, if a Federal land management agency's activities cannot comply with the exceptions in this section 4(d) rule, incidental take that results from those activities could still be exempted from the prohibitions in this section 4(d) rule via a project-specific section 7 consultation as long as the activities will not jeopardize the continued existence of the species. Finally, because the prohibitions in this section 4(d) rule match those that currently apply under an endangered status, if Federal agencies are currently conducting management activities without resulting in take of red-cockaded woodpeckers, this rule will not affect their ability to continue conducting those activities, independent of this exception.

In short, if incidental take of red-cockaded woodpeckers occurs as a result of Federal land management agencies carrying out habitat management activities, as defined in the rule, this take is not prohibited as long as: (1) the habitat management activities were implemented specifically to restore or maintain red-cockaded woodpecker habitat; (2) the Federal land management agency details these habitat management activities in a habitat management plan; (3) the Federal land management agency incorporates appropriate conservation measures to minimize or avoid adverse effects of these habitat management activities on red-cockaded woodpecker foraging habitat, on clusters, and on the species' roosting and nesting behavior to the maximum extent practicable; and (4) the Federal land management agency provides annual reporting to us.

Third, we include an exception to encourage private and other non-Federal landowners who are not enrolled in the existing SHA or future CBA program to carry out specific compatible forest management activities (namely, prescribed burns and application of herbicides), given the importance of these forest management tools for red-cockaded woodpecker recovery (USFWS 2022, p. 131). This provision does not change the measures in any existing SHAs or HCPs. While Federal lands bear additional responsibility when it comes to achieving the recovery goals for red-cockaded woodpeckers, private and other non-Federal lands still play an important role in the conservation of the species. They provide for connectivity between populations, which boosts resiliency, and support additional red-cockaded woodpecker clusters to enhance redundancy and representation of the species. This section 4(d) rule will continue to encourage voluntary red-cockaded woodpecker conservation on private and other non-Federal lands through the CBA program.

The exception further supports compatible forest management on private and other non-Federal lands, while continuing to maintain existing populations and is especially relevant for landowners that do not currently participate in the SHA, now known as the CBA, program. This provision provides an exception to take prohibitions for incidental take caused by application of prescribed burns or herbicides on private and other non-Federal lands to create or maintain habitat (*i.e.,* open pine ecosystems) or sustain and grow red-cockaded woodpecker populations, provided that the landowner, or their representative: (1) follows applicable BMPs for prescribed burns and applicable Federal and State laws; (2) applies herbicides in a manner consistent with applicable BMPs and applicable Federal and State laws; and (3) applies prescribed burns and herbicides in a manner that minimizes or avoids adverse effects to known active clusters and red-cockaded woodpecker roosting and nesting behavior to the maximum extent practicable.

The first condition on this provision requires landowners to follow applicable BMPs for prescribed burns. States and counties within the range of red-cockaded woodpecker provide guidance documents with these BMPs to ensure practitioners safely apply prescribed burns in a way that minimizes impacts to communities, riparian ecosystems, forest roads, and vegetation (*e.g.,* North Carolina Forestry BMP Manual; Recommended Forestry BMPs for Louisiana).

The second condition on this provision requires landowners to follow applicable Federal and State laws in addition to the BMPs when applying herbicide. Some management plans specify additional criteria for the use of herbicides in habitat management that would benefit red-cockaded woodpeckers or their habitat.

The third condition on this provision calls for private and other non-Federal landowners to incorporate reasonable preventative measures, to the maximum extent practicable, to reduce any direct adverse effects of these activities where red-cockaded woodpeckers are already known to roost or nest, increasing the net benefit that prescribed burns and herbicide application can provide to red-cockaded woodpecker habitat and clusters. However, it does not require these private and other non-Federal landowners to survey for new clusters prior to carrying out a burn or using herbicides, nor does it require them to follow particular preventative measures we prescribe, although the methods we outline for cavity tree protection in our 2003 recovery plan can provide a helpful resource to landowners when identifying practical ways to minimize adverse effects (USFWS 2003, pp. 201–205). Thus, this measure asks that landowners responsibly apply prescribed burns and herbicides, without being unreasonably prohibitive on landowners' compatible or beneficial activities.

This provision also is relevant only in situations where take might occur as a result of a prescribed burn or the application of herbicides. For example, if a landowner does not currently have any red-cockaded woodpecker cavity trees, clusters, or foraging woodpeckers on their land, then it is not possible for these activities to result in incidental take. Thus, this landowner can proceed with prescribed burns or the use of herbicides without the possibility of violating the take prohibitions in the section 4(d) rule because such activities

do not result in take. It is only when a prescribed burn or the use of herbicides could result in incidental take of red-cockaded woodpeckers that private and other non-Federal landowners may wish to take advantage of this exception by following BMPs and conducting activities in a manner that minimizes or avoids adverse effects to known active clusters and red-cockaded woodpecker roosting and nesting behavior to the maximum extent practicable. Under this section 4(d) rule, if a private or other non-Federal landowner follows these BMPs and incorporates reasonable preventative measures while conducting prescribed burns and applying herbicides, while incidental take is unlikely, if it were to occur, the landowner would not be liable for such take. This provision only provides an exception to the take prohibitions for incidental take associated with prescribed burns or the use of herbicides when the use of these management practices are associated with maintaining any known red-cockaded woodpecker populations on their land; in other words, if a private or other non-Federal landowner wishes to pursue a prescribed burn that could impair red-cockaded woodpecker population dynamics in the long term, this exception does not cover any incidental take that results from that burn, even if the landowner follows relevant BMPs.

Finally, if landowners are already enrolled in the Safe Harbor program, this exception does not provide any additional flexibility; the permits associated with SHAs authorize take associated with prescribed burns, herbicide use, and other activities as long as landowners follow the stipulations in their SHA and do not decrease the number of red-cockaded woodpecker clusters below their baseline.

Our intent for this provision is to provide a simple means by which to encourage private and other non-Federal landowners to pursue certain types of voluntary forest management activities (*i.e.,* prescribed burns and herbicide application) in a way that reduces impacts to the species but also removes any potential barriers to the implementation of this beneficial forest management, such as fear of prosecution for take. Collaboration with partners in the forestry industry and their voluntary conservation and restoration of red-cockaded woodpecker habitat has helped advance red-cockaded woodpecker recovery to the point of downlisting; this provision continues to encourage this compatible or beneficial management. We also continue to encourage eligible private and other non-Federal landowners to participate in existing conservation programs that promote forest management benefiting red-cockaded woodpeckers and provides take allowances for participating landowners through other means (*e.g.,* permits issued from existing SHAs, future CBAs, and HCPs; assistance provided by various conservation programs, such as those administered by NRCS and the Partners for Fish and Wildlife Program; and the associated section 7 consultations these Federal programs conduct with us that provide allowances for incidental take associated with beneficial conservation practices).

Finally, the section 4(d) rule provides an exception to take prohibitions for incidental take that occurs as a result of the installation of artificial cavities as long as individuals conducting the installation have completed training, have achieved a certain level of proficiency as detailed below, and are following appropriate guidelines. As described above, maintaining an adequate number of suitable cavities in each woodpecker cluster is fundamental to the conservation of the species. Loss of natural cavity trees was a major factor in the species' decline, and availability of natural cavity trees currently limits many populations. Until a sufficient number of large, old pines becomes widely available, installation and maintenance of artificial cavities is an essential management tool to sustain populations and bring about population increases, and we continue to encourage the installation of artificial cavities. However, we also acknowledge that there are proper techniques to install cavity inserts or drill cavities, and these techniques require training and experience. Improperly installed artificial cavities can cause injury or even result in death of red-cockaded woodpeckers attempting to roost or nest in them. Currently, because the species is listed as endangered, individuals must seek a section 10(a)(1)(A) permit to install artificial cavity inserts or drilled cavities.

However, we recognize that many of our partners have training and extensive experience in installing artificial cavities. Moreover, given the essential nature of artificial cavity installation for the continued conservation of the species, we want to remove any potential hurdles to the efficient and effective provisioning and maintenance of artificial cavities. Therefore, we provide an exception to take prohibitions in this rule for the installation, maintenance, and replacement of artificial cavity inserts and drilled cavities on public and private lands. However, this exception applies only if the individual conducting the installation has either held a valid Service permit for that purpose and has continued to install, maintain, and replace cavities since the expiration of their permit or has completed a period of apprenticeship under the direction of a person that has been involved in cavity installation for at least 3 years (the trainer).

In order to complete their training, under the direct supervision of the trainer, the apprentice must install at least 10 drilled cavities, if they plan to install drilled cavities, or 10 inserts, if they plan to install inserts, and learn the proper maintenance and inspection procedures for cavities. After the apprentice has completed their training, the trainer must provide a letter to the apprentice and to our regional red-cockaded woodpecker recovery coordinator; the letter will outline the training the apprentice received and will serve as a record of the apprentice's training. Please note that a provision pertaining to restrictor plates, which was included in the proposed rule at proposed § 17.41(h)(2)(iii) (February 3, 2022, 87 FR 6118), has been removed from this final rule as the result of advancements, such as the use of PVC (polyvinyl chloride) inserts, in preserving cavity integrity.

Additionally, the individual conducting the installation must follow appropriate guidelines for the installation and use of artificial cavity inserts and drilled cavities, including: (1) Monitoring the cavity resource; (2) installing and maintaining the recommended number of suitable cavities in each cluster; (3) using the appropriate type of artificial cavity insert and method of artificial cavity installation; (4) installing artificial cavities as close to existing cavity trees as possible, preferably within 71 meters (200 feet) when adding to an existing cluster; (5) selecting a tree that is of appropriate age or diameter when installing a cavity insert; (6) selecting the appropriate location for artificial cavity installation on the tree; and (7) protecting red-cockaded woodpeckers from sap leakage by ensuring that no artificial cavity has resin leaking into the chamber or entrance tunnel.

The 2003 recovery plan can provide some additional detail on how an installer can ensure they successfully follow these guidelines (USFWS 2003, pp. 175–178). If an installer does not comply with the qualification requirements (*i.e.,* they have not held a valid Service permit or they have not completed the necessary training) or

with the installation guidelines in the section 4(d) rule and incidental take occurs as a result of artificial cavity installation, the installer will still be liable for this take. However, if an installer is qualified and follows the installation guidelines, while incidental take is highly unlikely, if it were to occur, the installer will not be liable for such take under this rule. We included this exception in our section 4(d) rule as a result of public comments on the October 8, 2020, proposal that supported its incorporation.

*Implications for Implementation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

The trigger for consultation is whether a Federal action may affect a listed species or its critical habitat, not whether the action will result in prohibited take; species-specific section 4(d) rules, regardless of the take they prohibit or allow, cannot change this requirement to consult. Consultation is still required to satisfy the requirements of section 7(a)(2) of the Act to ensure that the activity will not jeopardize the species or result in adverse modification of critical habitat.

Thus, if a Federal agency determines that their action is not likely to adversely affect a listed species or its critical habitat, they must still receive our written concurrence, even if this activity is excepted under a section 4(d) rule. If a Federal agency determines that their action is likely to adversely affect a listed species or its critical habitat, even if it results only in take that is excepted under a section 4(d) rule, they must still pursue formal consultation with us and we must formulate a biological opinion that includes an incidental take statement. Even if a section 4(d) rule includes specific exceptions to take prohibitions, we must still describe or enumerate the amount or extent of this incidental take that is reasonably certain to occur (*i.e.,* in an incidental take statement), and the Federal action agency must monitor and report any such take that occurs. If an action agency's activities exceed the amount of incidental take enumerated in the incidental take statement, those activities will trigger reinitiation of the consultation, even if this excessive take is still excepted under the section 4(d) rule (see *Center for Biological Diversity* v. *Salazar,* 695 F.3d 893 (2012)). This system allows the agency to keep track of any take to stay abreast of the status of the species. The Federal action agency may also trigger reinitiation of consultation if they do not implement the action as described in the biological opinion or as directed in the section 4(d) rule.

Even though section 4(d) rules do not remove or alter Federal agencies' section 7 consultation obligations, we will consider methods by which we might be able to streamline section 7 consultation on activities that may result in take that is excepted under this section 4(d) rule. This information and determination can be used to inform and serve as part of the basis of our analysis of whether an action is likely to jeopardize the continued existence of the species, making consultation more straightforward and predictable. For example, because of the nature of activities that will be consistent with this section 4(d) rule, and as the section 4(d) rule includes an explanation for why such activities provide for the conservation of the species, we could draft an analysis of the effects of these habitat management activities on the species for inclusion in all section 7 analyses that consider effects on the red-cockaded woodpecker. This analysis could be incorporated into any Service biological opinion (or action agency biological assessment), thereby creating efficiencies in the development of these documents and providing consistency for consultation on activities that are covered by the section 4(d) rule.

Finally, if Federal agencies have already completed section 7 consultation on particular projects, activities, or management plans and the biological opinion remains valid, they do not need to reinitiate consultation when the section 4(d) rule takes effect, if their Federal action (*e.g.,* management plan) has not changed. However, given the provisions in this section 4(d) rule, Federal agencies may find that reinitiating consultation, although not required, could grant additional flexibilities for their ongoing actions and activities.

**Required Determinations**

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations and species-specific protective regulations promulgated concurrently with a decision to list or reclassify a species as threatened. The courts have upheld this position (*e.g., Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995) (critical habitat); *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service.,* 2005 WL 2000928 (N.D. Cal. Aug. 19, 2005) (concurrent 4(d) rule)).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951, May 4, 1994), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), the President's memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation; 87 FR 74479, December 5, 2022), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally-recognized Tribes and Alaska Native Corporations on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We did not receive any comments from Tribes on the proposed rulemaking, nor have we received any requests for government-to-government consultation. As such, we have fulfilled our relevant responsibilities.

**References Cited**

A complete list of references cited in this rulemaking is available on the

internet at *https://www.regulations.gov* and upon request from the Georgia Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### Authors

The primary authors of this final rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Georgia, Louisiana, and South Carolina Ecological Services Field Offices.

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

### Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11, in paragraph (h), in the List of Endangered and Threatened Wildlife by revising the entry for ''Woodpecker, red-cockaded'' under **BIRDS** to read as set forth below:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Common name | Scientific name | Where listed | Status | Listing citations and applicable rules |
|---|---|---|---|---|
| * | * | * | * | * |
| BIRDS | | | | |
| * | * | * | * | * |
| Woodpecker, red-cockaded. | *Dryobates borealis* | Wherever found | T | 35 FR 16047, 10/13/1970; 89 FR [INSERT FIRST PAGE OF THE **FEDERAL REGISTER** DOCUMENT], 10/25/2024; 50 CFR 17.41(h).[4d] |
| * | * | * | * | * |

■ 3. Amend § 17.41 by adding paragraph (h) to read as follows:

**§ 17.41 Species-specific rules—birds.**

* * * * *

(h) Red-cockaded woodpecker (*Dryobates borealis*). (1) *Definitions.* For the purposes of this paragraph (h), we define the following terms:

(i) *Habitat management activities* are activities intended to maintain or improve the quality and/or quantity of red-cockaded woodpecker habitat, including, but not limited to, prescribed burning; using herbicides and equipment to reduce midstory encroachment, thin overstocked pine stands, promote an open canopy pine system, and promote herbaceous groundcover; converting planted pines to more fire-tolerant, site-appropriate native pines found within the associated native pine, fire-dependent ecosystem; planting and seeding native, site-appropriate pines and groundcover species; and regenerating areas of older pine forest to increase and maintain sustainable current and future habitat for red-cockaded woodpeckers.

(ii) *Cavity tree* means any tree containing one or more active or inactive natural or artificial cavities.

(A) An *active cavity* is a completed natural or artificial cavity or cavity start exhibiting fresh pine resin associated with red-cockaded woodpeckers' cavity maintenance, cavity construction, or resin well excavation.

(B) An *inactive cavity* is a cavity that is not presently being used by red-cockaded woodpeckers.

(C) A *cavity start* is a void formed in the bole of the tree during the initial stages of cavity excavation and can be active or inactive.

(iii) *Cluster* means the aggregation of cavity trees within an area previously or currently used and defended by a single red-cockaded woodpecker group. A cluster may be active or inactive. A cluster encompasses the minimum convex polygon containing all of a group's cavity trees and the 61-meter (200-foot) buffer surrounding that polygon. The minimum cluster area size is 4.05 hectares (10 acres), as some clusters may contain only one cavity tree.

(A) An *active cluster* is defined as a cluster in which one or more of the cavity trees exhibit fresh resin as a result of red-cockaded woodpecker activity or in which one or more red-cockaded woodpeckers are observed.

(B) An *inactive cluster* is defined as a cluster that is not currently supporting any red-cockaded woodpeckers and shows no evidence of red-cockaded woodpecker activity.

(C) A *group* is a red-cockaded woodpecker social unit, consisting of a breeding pair with one or more helpers, a breeding pair without helpers, or a solitary male.

(iv) *Foraging habitat* is habitat that generally consists of mature pines with an open canopy, low densities of small pines, a sparse hardwood and/or pine midstory, few or no overstory hardwoods, and abundant native bunchgrass and forb groundcovers.

(2) *Prohibitions.* The following prohibitions in this paragraph (h)(2) that apply to endangered wildlife also apply to the red-cockaded woodpecker. Except as provided under paragraphs (h)(3) and (4) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(3) *General exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit issued under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife, and § 17.21(c)(6) and (7) for endangered migratory birds.

(iii) Take, as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken red-cockaded woodpeckers, as set forth at § 17.21(d)(2) for endangered wildlife and § 17.21(d)(3) and (4) for endangered migratory birds.

(4) *Exceptions from prohibitions for specific types of incidental take.* The following activities that cause take that is incidental to an otherwise lawful activity are not in violation of the prohibitions:

(i) *Department of Defense (DoD) installations.* Red-cockaded woodpecker habitat management and military training activities on DoD installations carried out in accordance with a Service-approved integrated natural resources management plan, provided that the DoD installation reports annually to the Service regarding their red-cockaded woodpecker populations.

(ii) *Federal land management agency properties.* Habitat management activities intended to restore or maintain red-cockaded woodpecker habitat on Federal land management agency properties, provided that:

(A) The Federal land management agency details these habitat management activities in a Federal habitat management plan;

(B) The Federal habitat management activities incorporate appropriate conservation measures to minimize or avoid adverse effects of these habitat management activities on, but not limited to, red-cockaded woodpecker foraging habitat, on clusters, and on the species' roosting and nesting behavior to the maximum extent practicable; and

(C) The Federal land management agency reports annually to the Service regarding their red-cockaded woodpecker populations.

(iii) *Privately and other non-federally owned properties.* Application of prescribed burns or herbicides on private and other non-Federal lands to create or maintain habitat (*i.e.,* open pine ecosystems) or sustain and grow red-cockaded woodpecker populations, provided that the landowner or their representative:

(A) Follows applicable best management practices for prescribed burns and applicable Federal and State laws;

(B) Applies herbicides in a manner consistent with applicable best management practices and applicable Federal and State laws; and

(C) Applies prescribed burns and herbicides in a manner that minimizes or avoids adverse effects to known active clusters and red-cockaded woodpecker roosting and nesting behavior to the maximum extent practicable.

(iv) *Artificial cavities.* Installation, maintenance, and replacement of artificial cavity inserts and drilled cavities on public and private lands, provided that:

(A) The individual conducting the installation, maintenance, or replacement has either:

(*1*) Held a valid Service permit for that purpose, which expired after November 25, 2024, and has continued to install, maintain, and replace cavities since the expiration of their permit; or

(*2*) Completed the following training procedures for the type of artificial cavity they plan to install, maintain, or replace:

(*i*) The individual (''apprentice'') has completed a period of apprenticeship to learn proper installation, maintenance, and replacement procedures for artificial cavities under the direction of a person (''trainer'') who has been installing, maintaining, and replacing cavities for at least the past 3 years;

(*ii*) The apprentice has installed at least 10 drilled cavities or 10 inserts under direct supervision and to the satisfaction of the trainer; and

(*iii*) The apprentice has learned the proper maintenance and inspection procedures for cavities.

(B) If the individual conducting the installation is an apprentice, the apprentice's trainer provides a letter to the apprentice and to the Service red-cockaded woodpecker recovery coordinator that outlines the training the apprentice received, which will serve as a record of the apprentice's training.

(C) The individual conducting the installation follows appropriate guidelines for the installation and use of artificial cavity inserts and drilled cavities, including, but not limited to:

(*1*) Monitoring the cavity resource;

(*2*) Installing and maintaining the recommended number of suitable cavities in each cluster;

(*3*) Using the appropriate type of artificial cavity insert and method of artificial cavity installation;

(*4*) Installing artificial cavities as close to existing cavity trees as possible, preferably within 71 meters (200 feet), when adding to an existing cluster;

(*5*) Selecting a tree that is of appropriate age or diameter, when installing a cavity insert;

(*6*) Selecting the appropriate location for artificial cavity installation on the tree; and

(*7*) Protecting red-cockaded woodpeckers from sap leakage by ensuring that no artificial cavity has resin leaking into the chamber or entrance tunnel.

* * * * *

**Martha Williams,**

*Director, U.S. Fish and Wildlife Service.*

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Part III

## Department of Homeland Security

6 CFR Part 37
Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Waiver for Mobile Driver's Licenses; Final Rule

**DEPARTMENT OF HOMELAND SECURITY**

**6 CFR Part 37**

**[Docket No. TSA–2023–0002]**

**RIN 1652–AA76**

# Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Waiver for Mobile Driver's Licenses

**AGENCY:** Transportation Security Administration (TSA), Department of Homeland Security (DHS).

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security (DHS) is amending the REAL ID regulations to waive, on a temporary and State-by-State basis, the regulatory requirement that mobile or digital driver's licenses or identification cards (collectively ''mobile driver's licenses'' or ''mDLs'') must be compliant with REAL ID requirements to be accepted by Federal agencies for official purposes, as defined by the REAL ID Act, when full enforcement of the REAL ID Act and regulations begins on May 7, 2025.

**DATES:** *Effective date:* This rule is effective November 25, 2024.

*Incorporation by Reference:* The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of November 25, 2024. The incorporation by reference of certain other material listed in the rule was approved by the Director of the Federal Register as of January 14, 2016.

**FOR FURTHER INFORMATION CONTACT:**

*Technical questions:* George Petersen, Senior Program Manager, REAL ID Program, Enrollment Services and Vetting Programs, Transportation Security Administration; telephone: (571) 227–2215; email: *george.petersen@tsa.dhs.gov.*

*Legal questions:* Anurag Maheshwary, Attorney Advisor, Office of Chief Counsel, Transportation Security Administration; telephone: (571) 227–4812; email: *anurag.maheshwary@tsa.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## Availability of Rulemaking Document

You can find an electronic copy of this rulemaking using the internet by accessing the Government Publishing Office's web page at *https://www.govinfo.gov/app/collection/FR/* to view the daily published **Federal Register** edition or accessing the Office of the Federal Register's web page at *https://www.federalregister.gov.* Copies are also available by contacting the individual identified for ''Technical Questions'' in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

## Abbreviations and Terms Used in This Document

AAMVA—American Association of Motor Vehicle Administrators
CA/Browser Forum—Certification Authority Browser Forum
CISA—Cybersecurity and Infrastructure Security Agency
DHS—U.S. Department of Homeland Security
EDL—Enhanced driver's license and identification card
FIPS—Federal Information Processing Standards
HSM—Hardware security module
IBR—Incorporation by reference or Incorporate by reference
IEC—International Electrotechnical Commission
ISO—International Organization for Standardization
IT—Information technology
mDL—Mobile driver's license and mobile identification card
NIST—National Institute for Standards and Technology
NPRM—Notice of proposed rulemaking
OFR—Office of Federal Register
OMB—Office of Management and Budget
PUB—Publication
RFI—Request for information
SP—Special publication
TSA—Transportation Security Administration

## Table of Contents



## I. Executive Summary

### *A. Purpose of This Rulemaking*

This rule is part of an incremental, multi-phased rulemaking that will culminate in the promulgation of comprehensive requirements that enable States to issue mobile driver's licenses and mobile identification cards (collectively ''mDLs'') that comply with the REAL ID Act of 2005 (''REAL ID Act'' or ''Act'') and regulations [1] [hereinafter ''REAL ID-Compliant'']. In this first phase, the Transportation Security Administration (TSA) is making two changes to the current regulations in 6 CFR part 37, ''REAL ID Driver's Licenses and Identification Cards.'' First, TSA is adding definitions for, among others, mobile driver's licenses and mobile identification cards. These definitions provide a precise explanation of those terms as referenced in the REAL ID Act, which applies to only State-issued driver's licenses and State-issued identification cards.[2] Any other types of identification cards, such

[1] The REAL ID Act of 2005, Division B Title II of the FY05 Emergency Supplemental Appropriations Act, as amended, Public Law 109–13, 119 Stat. 302 (May 11, 2005) (codified at 49 U.S.C. 30301 note) [hereinafter ''REAL ID Act'']; 6 CFR part 37. Effective May 22, 2023, authority to administer the REAL ID program was delegated from the Secretary of Homeland Security to the Administrator of TSA pursuant to DHS Delegation No. 7060.2.1.

[2] *See* sec. 201 of the REAL ID Act (defining a ''driver's license'' to include ''driver's licenses stored or accessed via electronic means, such as mobile or digital driver's licenses, which have been issued in accordance with regulations prescribed by the Secretary''; mirroring definition for ''identification card'').

as those issued by a Federal agency, or commercial, educational, or non-profit entity, are beyond the scope of the REAL ID Act and regulations, and hence this rulemaking, because they do not meet the definition of driver's license or identification card as defined by the REAL ID Act. The definition of ''mDL'' as used in this rulemaking is limited strictly to the REAL ID Act and regulations and does not include ''mDLs'' as defined by other entities.

Second, TSA is establishing a temporary waiver process that permits Federal agencies to accept mDLs for official purposes,[3] as defined in the REAL ID Act and regulations, on an interim basis when full enforcement begins on May 7, 2025,[4] but only if TSA has issued a waiver to the State. To qualify for the waiver, this final rule requires States to (1) be in full compliance with all applicable REAL ID requirements as defined in subpart E of this part, and (2) submit an application demonstrating that they meet the requirements specified in this rule, which are drawn from 19 industry standards and government guidelines. The rulemaking incorporates by reference (IBRs) those standards and guidelines, which cover technical areas such as mDL communication, digital identity, encryption, cybersecurity, and network/information system security and privacy.

As noted above, this final rule is part of an incremental rulemaking that temporarily permits Federal agencies to accept mDLs for official purposes until TSA issues a subsequent rule that would set comprehensive requirements for mDLs. TSA believes it is premature to issue such requirements before the May 7, 2025 deadline due to the need for emerging industry standards and government guidelines [5] to be finalized.

The need for this rulemaking arises from TSA's desire to accommodate and foster the rapid pace of mDL innovation, while ensuring the intent of the REAL ID Act and regulations are met. Secure driver's licenses and identification cards are a vital component of our national security framework. In the REAL ID Act, Congress acted to implement the 9/11 Commission's recommendation that the Federal Government ''set standards for the issuance of sources of identification, such as driver's licenses.'' Under the REAL ID Act and regulations, a Federal agency may not accept for any official purpose a State-issued driver's license or identification card, either physical or an mDL, that does not meet specified requirements, as detailed in the REAL ID regulations (*see* Part II.A., below, for more discussion on these requirements).

This final rule will result in the development of mDLs with a higher level of security, privacy, and interoperability features necessary for Federal acceptance for official purposes. Because the current regulatory provisions do not include requirements that would enable States to issue REAL ID-compliant mDLs, several States are investing significant resources to develop mDLs based on varying and often proprietary standards, many of which may lack security and privacy safeguards commensurate with REAL ID requirements and the privacy needs of users. Without timely regulatory guidance concerning potential requirements for developing a REAL ID-compliant mDL, States risk investing in mDLs that are not aligned with emerging industry standards and government guidelines that may be IBR'd in a future rulemaking. States, therefore, may become locked-in to existing solutions and could face a substantial burden to redevelop products acceptable to Federal agencies under this future rulemaking.

This final rule addresses these concerns by enabling TSA to grant a temporary waiver to States whose mDLs TSA determines provide sufficient safeguards for security and privacy, pending finalization of emerging standards. Although this rule does not set standards for the issuance of REAL ID-compliant mDLs, it does establish minimum requirements that States must meet to be granted a waiver so that mDLs can be accepted by Federal agencies for official purposes. These minimum standards and requirements ensure that States' investments in mDLs provide minimum privacy and security safeguards consistent with information currently known to the TSA.

### *B. Summary of the Major Provisions*

As further discussed in Part II.A., below, mDLs cannot be accepted by Federal agencies for official purposes when REAL ID full enforcement begins on May 7, 2025, unless 6 CFR part 37 is amended to address mDLs. This final rule establishes a process for waiving, on a temporary and State-by-State basis, the current prohibition on Federal acceptance of mDLs for official purposes, and enables Federal agencies to accept mDLs on an interim basis while the industry matures to a point sufficient to enable TSA to develop more comprehensive mDL regulatory requirements.

The current regulations prohibit Federal agencies from accepting non-compliant driver's licenses and identification cards, including both physical cards and mDLs, when REAL ID enforcement begins on May 7, 2025. Any modification of this regulatory provision must occur through rulemaking (or legislation). Until and unless TSA promulgates comprehensive mDL regulations that enable States to issue REAL ID-compliant mDLs, mDLs cannot be developed to comply with REAL ID, and Federal agencies therefore cannot accept mDLs for official purposes after REAL ID enforcement begins on May 7, 2025. The rule allows the Federal government to accept mDLs on an interim basis, but only if TSA has issued a waiver to such State based on that State's compliance with all applicable REAL ID requirements as defined in subpart E of this part, and with the minimum privacy, safety, and interoperability requirements in this rulemaking. Please see Part II.A., below, for an explanation of the REAL ID requirement that both cards and issuing States must be REAL ID compliant.

### *C. Need for a Multi-Phased Rulemaking*

TSA recognizes both that regulations can influence long-term industry research and investment decisions, and that premature regulations can distort the choices of technologies, which could harm competition and innovation. As noted above, there are clear reasons for TSA to issue requirements for mDLs in the context of REAL ID. Simultaneously, however, TSA observes that this is a rapidly innovating market, with multiple industry and government standards and guidelines necessary to ensure mDL privacy and security still in development.[6] Accordingly, TSA has concluded that it is premature to promulgate comprehensive requirements for mDLs while key

[3] The REAL ID Act defines official purposes as including but not limited to accessing Federal facilities, boarding Federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary shall determine. *See* REAL ID Act. Notably, because the Secretary has not determined any other official purposes, the REAL ID Act and regulations do not apply to Federal acceptance of driver's licenses and identification cards for other purposes, such as applying for Federal benefits programs, submitting immigration documents, or other Federal programs.

[4] DHS, Final Rule, Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes, 88 FR 14473 (Mar. 9, 2023); DHS Press Release, DHS Announces Extension of REAL ID Full Enforcement Deadline (Dec. 5, 2022), *https://www.dhs.gov/news/2022/12/05/dhs-announces-extension-real-id-full-enforcement-deadline* (last visited July 17, 2024).

[5] *See* TSA, Notice of Proposed Rulemaking, Waiver for Mobile Driver's Licenses, 88 FR 60056, 60063–64 (Aug. 30, 2023) [hereinafter ''NPRM''].

[6] *See* NPRM, 88 FR at 60062–66.

standards are being finalized because of the risk of unintended consequences, such as chilling innovation and competition in the marketplace, and ''locking-in'' stakeholders to certain technologies. TSA is therefore establishing a temporary waiver process with clear standards and requirements to facilitate the acceptance of mDLs while the industry matures and moves to accepted standards.

TSA is proceeding with a multi-phased rulemaking approach. This ''Phase 1'' rule establishes a temporary waiver process that enables continuing Federal acceptance of mDLs for official purposes when REAL ID enforcement begins on May 7, 2025, and affords Federal agencies additional operational experience and data that would inform comprehensive regulations in the upcoming ''Phase 2'' rulemaking. The Phase 1 rule is intended to serve as a regulatory bridge until the emerging standards are finalized and a comprehensive Phase 2 rulemaking is effective.

TSA anticipates the future Phase 2 rulemaking would repeal the temporary waiver provisions established in Phase 1 and establish comprehensive requirements enabling States to issue mDLs that comply with REAL ID requirements. TSA envisions the Phase 2 rulemaking would draw heavily from pertinent parts of the emerging standards (pending review of those final, published documents) to set specific requirements for security, privacy, and interoperability. In addition, the Phase 2 rule would distinguish between existing regulatory requirements that apply only to mDLs versus physical cards. As one commenter[7] to a previously-issued Request for Information (RFI) urged (discussed in Part II.B., below), DHS is taking ''a slow and careful approach'' to regulation in order to fully understand the implications of mDLs.

This multi-phased rulemaking approach supports Executive Order (E.O.) 14058 of December 13, 2021 (Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government), by using ''technology to modernize Government and implement services that are simple to use, accessible, equitable, protective, transparent, and responsive for all people of the United States.''[8] As highlighted above and discussed in more detail below, allowing acceptance of mDLs issued by States that meet the waiver requirements enables the public to more immediately realize potential benefits of mDLs, including greater convenience, security, and privacy.

*D. Costs and Benefits*

TSA estimates the 10-year total cost of the rule to be $829.8 million undiscounted, $698.1 million discounted at 3 percent ($81.8 million annualized), and $563.9 million discounted at 7 percent ($80.3 million annualized). Affected entities include States, TSA, and relying parties (Federal agencies that voluntarily choose to accept mDLs for official purposes).

States incur costs to familiarize themselves with the requirements of the final rule, purchase access to an industry standard, submit an mDL waiver application, submit mDL waiver reapplications, and comply with waiver application requirements. TSA estimates that 40 States will seek an mDL waiver over the next 10 years at a 10-year State cost of $813.1 million undiscounted, $683.7 million discounted at 3 percent, and $552.0 million discounted at 7 percent.

TSA incurs costs associated with purchasing access to industry standards, reviewing mDL waiver applications and mDL waiver reapplications, acquiring, installing, and operating mDL readers, and training transportation security officers. TSA estimates the 10-year cost to TSA is $10.13 million undiscounted, $8.87 million discounted at 3 percent, and $7.56 million discounted at 7 percent.

Relying parties will incur costs to procure mDL readers should they voluntarily choose to accept mDLs for official purposes. TSA estimates the 10-year cost to relying parties is $6.57 million undiscounted, $5.48 million discounted at 3 percent, and $4.38 million discounted at 7 percent.

TSA also identifies other non-quantified costs that affected parties may incur. States may incur incremental costs to: monitor and study mDL technology as it evolves; resolve underlying issues that could lead to a suspension or termination of an mDL waiver; report serious threats to security, privacy, or data integrity; report material changes to mDL issuance processes; remove conflicts of interest with an independent auditor; and request reconsideration of a denied mDL waiver application. TSA may incur costs to: investigate circumstances that could lead to suspension or termination of a State's mDL waiver; provide notice to States, relying parties, and the public related to mDL waiver suspensions or terminations; develop an IT solution that maintains an up-to-date list of States with valid mDL waivers; develop materials related to process changes to adapt to mDL systems; and resolve requests for reconsideration of a denied mDL waiver application. An mDL user may incur costs with additional application requirements to obtain an mDL. States may also pass on mDL related costs to the public.[9] Relying parties may incur costs to resolve any security or privacy issue with the mDL reader; report serious threats to security, privacy, or data integrity; verify the list of States with valid mDL waivers; train personnel to verify mDLs; and update the public on identification policies.

The final rule provides benefits to affected parties which include, but are not limited to: promoting higher security, privacy, and interoperability safeguards; reducing uncertainty in the mDL technology environment by helping to foster a minimum level of security, privacy and interoperability; and allowing Federal agencies to continue to accept mDLs for official purposes when REAL ID enforcement begins. Also, mDLs themselves may provide additional security benefits by offering a more secure verification of an individual's identity and authentication of an individual's credential compared to usage of physical cards.

## II. Background

*A. REAL ID Act, Regulations, and Applicability to mDLs*

This rulemaking is authorized by the REAL ID Act of 2005 and REAL ID Modernization Act. The REAL ID Act authorizes the Secretary of Homeland Security, in consultation with the States and the Secretary of Transportation, to promulgate regulations to implement the requirements under the REAL Act.[10] The REAL ID Modernization Act amended the definitions of ''driver's license'' and ''identification card'' to specifically include mDLs that have been issued in accordance with regulations prescribed by the Secretary of Homeland Security.[11]

The REAL ID Act and implementing regulations, 6 CFR part 37, set minimum requirements for State-issued driver's licenses and identification cards accepted by Federal agencies for official purposes, including accessing Federal

[7] *See* comment from Electronic Privacy Information Center, *https://downloads.regulations.gov/DHS-2020-0028-0048/attachment_1.pdf* (last visited July 17, 2024); DHS, Request for Information, Mobile Driver's Licenses, 86 FR 20320 (Apr. 19, 2021).

[8] *See* 86 FR 71357 (Dec. 16, 2021).

[9] TSA does not possess data to quantify how States may implement a pass through or recoup costs associated with implementation of mDLs.

[10] Sec. 205 of the REAL ID Act.

[11] Sec. 1001 of the REAL ID Modernization Act, Title X of Division U of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 2304 [hereinafter ''REAL ID Modernization Act''].

facilities, boarding Federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary shall determine.[12] The Act defines ''driver's licenses'' and ''identification cards'' strictly as State-issued documents,[13] and the regulations further refine the definition of ''identification card'' as ''a document made or issued by or under the authority of a State Department of Motor Vehicles or State office with equivalent function.'' [14] The REAL ID Act and regulations do not apply to identification cards that are not made or issued under a State authority, such as cards issued by a Federal agency or any commercial, educational, or non-profit entity.

The regulations include a schedule describing when individuals must obtain a REAL ID-compliant driver's license or identification card intended for use for official purposes, known as ''card-based'' enforcement.[15] Card-based enforcement begins on May 7, 2025.[16] On this date, Federal agencies will be prohibited from accepting a State- or territory-issued driver's license or identification card for official purposes unless the card is compliant with the REAL ID Act and regulations.[17]

On December 21, 2020, Congress passed the REAL ID Modernization Act,[18] which amended the REAL ID Act to update the definitions of ''driver's license'' and ''identification card'' to specifically include mDLs that have been issued in accordance with regulations prescribed by the Secretary, among other updates.[19] Accordingly, mDLs must be REAL ID-compliant to be accepted by Federal agencies for official purposes when card-based enforcement begins on May 7, 2025. However, States cannot issue REAL ID-compliant mDLs until the regulations are updated to include requirements to ensure that mDLs meet equivalent levels of security currently imposed on REAL ID-compliant physical cards.

[12] REAL ID Act; 6 CFR part 37.

[13] Sec. 201 of the REAL ID Act.

[14] 6 CFR 37.3.

[15] *See* 6 CFR 37.5(b). The regulations also include a schedule for State-based compliance, known as ''State-based enforcement.'' *See* 6 CFR 37.51(a).

[16] *See* 6 CFR 37.5(b).

[17] *See* 6 CFR 37.5(b). Additionally, TSA is conducting a separate rulemaking that would allow Federal agencies to implement the card-based enforcement provisions of the REAL ID regulations under a phased approach beginning on the May 7, 2025 enforcement deadline. *See* NPRM, Phased Approach for Card-Based Enforcement, 89 FR 74137 (Sept. 12, 2024).

[18] REAL ID Modernization Act, 134 Stat. 2304.

[19] Sec. 1001 of the REAL ID Modernization Act, 134 Stat. 2304.

*B. Rulemaking History*

In April 2021, DHS issued an RFI announcing DHS's intent to commence future rulemaking to set the minimum technical requirements and security standards for mDLs to enable Federal agencies to accept mDLs for official purposes. The RFI requested comments and information to inform DHS's rulemaking.[20] In response, DHS received 63 comments [21] through a twice-extended comment period of 180 days, which closed on October 18, 2021.

In August 2023, TSA published a Notice of Proposed Rulemaking (NPRM) [22] drawing on comments to the RFI, which are summarized at 88 FR 60056, 60071–72. The NPRM comment period closed on October 16, 2023, and TSA received 31 comments. NPRM comments are discussed in detail in Part IV, below.

*C. mDL Overview*

1. mDLs Generally

An mDL is generally recognized as the digital representation of an individual's identity information contained on a State-issued physical driver's license or identification card.[23] An mDL may be stored on a diverse range of portable or mobile electronic devices, such as smartphones, smartwatches, and storage devices containing memory. Like a physical card, mDL data originates from identity information about an individual that is maintained in the database of a State driver's licensing agency. An mDL has potential benefits for all stakeholders. For Federal agencies, mDLs may provide security and efficiency enhancements compared to physical cards, because mDLs rely on digital security features that are immune to many vulnerabilities of physical security features. For individuals, mDLs may provide a more secure, convenient, privacy-enhancing, and ''touchless'' method of identity verification compared to physical IDs.

Unlike physical cards that employ physical security features to deter fraud and tampering, mDLs combat fraud through the use of digital security features that are not recognizable through human inspection, such as asymmetric cryptography/public key infrastructure (PKI). As discussed in the NPRM,[24] asymmetric cryptography generates a pair of encryption ''keys'' to encrypt and decrypt protected data. One key, a ''public key,'' is distributed publicly, while the other key, a ''private key,'' is held by the State driver's licensing agency (*e.g.,* a Department of Motor Vehicles). When the driver's licensing agency issues an mDL to an individual, the agency uses its private key to digitally ''sign'' the mDL data. A Federal agency accepting an mDL validates the integrity of the mDL data by obtaining the State driver's licensing agency's public key to verify the digital signature. Private keys and digital signatures are elements of data encryption that protect against unauthorized access, tampering, and fraud. Generally, mDL-based identity verification under REAL ID involves a triad of secure communications between a State driver's licensing agency, an mDL holder, and a Federal agency. Standardized communication interfaces are necessary to enable Federal agencies to exchange information with all U.S. States and territories that issue mDLs. Please see the NPRM for a more detailed discussion.[25]

In contrast to physical driver's licenses that are read and verified visually through human inspection of physical security features, an mDL is read and verified electronically using a device known simply as a ''reader. Any Federal agency that accepts mDLs for official purposes must use readers to validate an mDL holder's identity data from their mobile device and establish trust that the mDL is secure by using private-public key data encryption.[26] An mDL reader compliant with this requirement can take multiple forms, such as an app installed on a mobile device, or a dedicated device. Although reader development is evolving, some companies already offer reader apps for free, and TSA therefore expects readers will be offered in a wide range capabilities and associated price points.[27]

[20] 86 FR 20320 (Apr. 19, 2021).

[21] The 63 total comments included three duplicates and one confidential submission.

[22] 88 FR 60056.

[23] A technical description of mDLs as envisioned by the American Association of Motor Vehicle Administrators may be found at *https://www.aamva.org/Mobile-Drivers-License/* (last visited July 17, 2024).

[24] 88 FR at 60060.

[25] 88 FR at 60060–61.

[26] Non-Federal agencies and other entities who choose to accept mDLs for uses beyond the scope of REAL ID should also recognize the need for a reader to ensure the validity of the mDL. Any verifying entity can validate in the same manner as a Federal agency if they implement the standardized communication interface requirements specified in this final rule, which would require investment to develop the necessary IT infrastructure and related processes.

[27] Readers for mDLs have specific requirements and at this time are not interchangeable with readers for other types of Federal cards, such as the Transportation Worker Identification Credential (TWIC). Although TSA is evaluating some mDLs at select airport security checkpoints, cost estimates for readers used in the evaluations are not available because those readers are non-commercially

Continued

2. State mDL Issuance and TSA Testing

As noted above, mDL issuance is proliferating rapidly among States, with at least half of all States believed to be preparing for or issuing mDLs.[28] Although detailed mDL adoption statistics are unavailable, anecdotal information and media reports indicates that mDLs are rapidly gaining public acceptance. For example, Maryland commented that it has issued more than 200,000 mDLs to residents following a pilot in 2017 and more recent expansion in 2022 and 2023.[29] Iowa commented that in the 3 months since it began offering its mDL app, it has been downloaded by more than 7,000 users.[30]

TSA understands that States are issuing mDLs using widely varying technology solutions, raising concerns whether such technological diversity provides the safeguards and interoperability necessary for Federal acceptance. Since 2022, TSA has been collaborating with States and industry to test the use of mDLs issued by participating States at select TSA airport security checkpoints.[31] As of the date of this final rule, TSA is currently testing mDLs issued by 11 States (Arizona, California, Colorado, Georgia, Hawaii, Iowa, Louisiana, Maryland, New York, Ohio, Utah) at 27 airports.[32]

*D. Industry Standards and Government Guidelines for mDLs*

The nascence of mDLs and absence of standardized mDL-specific requirements provide an opportunity for industry and government to develop standards and guidelines to close this void. TSA is aware of multiple such documents, published and under development, from both Federal and non-government sources. As discussed in Part III.C.8, below, this final rule amends § 37.4 by IBR'g into part 37 19 standards and guidelines that form the basis of many of the requirements in this final rule. TSA understands that these standards and guidelines discussed are the most comprehensive and relevant references governing mDLs today. TSA also acknowledges that many additional standards and guidelines are in development and may provide additional standardized mechanisms for mDLs.[33]

## III. General Discussion of the Rulemaking

*A. Changes Between NPRM and Final Rule*

After carefully considering all comments received to the NPRM (see detailed discussion of comments and TSA's responses in Part IV, below), TSA finalizes the NPRM with several revisions in response to public comments. Table 1 summarizes the changes made in the final rule compared to the NPRM.

TABLE 1—SUMMARY OF CHANGES BETWEEN THE NPRM AND THE FINAL RULE

| Section | Final rule | Reason for the change |
|---|---|---|
| 37.3 | Adds definition for "Provisioning." | Technical change to add definition of a key term to improve clarity. |
| 37.4 | Revises points of contact for the public to contact TSA; provides additional means to access certain standards that are IBR'd in this rule. | Technical changes to improve access to IBR materials. |
| 37.4(c)(1) | Corrects title of "Cybersecurity Incident & Vulnerability Response Playbooks" to "Federal Government Cybersecurity Incident & Vulnerability Response Playbooks.". | Technical correction. |
| 37.4(g)(4) | Updates standard NIST FIPS PUB 197 to NIST FIPS PUB 197–upd1 to reflect revised version of standard. | Technical change to reflect revisions to standard to improve public access. Revisions include editorial improvements, but no technical changes to the algorithm specified in the earlier version. |
| 37.4(g)(7) | Corrects website address to the cited standard | Technical change to correct a typo. |
| 37.7(a) | Clarifies conditions under which TSA will issue a waiver | Clarification regarding impact of the waiver. |
| 37.7(b)(3) | Deleted | Deleted proposed language that would have made a State ineligible to apply for a waiver if the State issues mDLs to individuals with non-REAL ID compliant physical cards (in addition to issuing mDLs to other individuals that have compliant physical cards). |
| 37.8(c) | Adds paragraph (c) to require Federal agencies accepting mDLs to confirm, consistent with the deadlines set forth in § 37.5, that the mDL data element "DHS_compliance" is encoded "F," as required by §§ 37.10(a)(4)(ii) & (a)(1)(vii). | Clarifies that when REAL ID enforcement begins, Federal agencies may accept mDLs from States only if the underlying physical card is REAL ID compliant. |
| 37.8(d) | Renumbers § 37.8(c), as proposed in the NPRM, to § 37.8(d) in light of addition of new § 37.8(c). | Technical changes renumber provision from 37.8(c) to 37.8(d), update agency name and website address, and clarify the mechanics of reporting. |
| | Corrects website address from *dhs.gov* to *tsa.gov* | |
| | Adds requirement regarding protection of SSI | Provides that reports *may* contain sensitive security information (SSI)[34] and if so, would be subject to requirements of 49 CFR part 1520. |

available prototypes designed specifically for integration into TSA-specific IT infrastructure that few, if any, other Federal agencies use. In addition, mDL readers are evolving and entities who accept mDLs would participate voluntarily. Accordingly, associated reader costs are not quantified at this time but TSA intends to gain a greater understanding of any costs to procure reader equipment as the technology continues to evolve.

[28] *See, e.g.,* AAMVA, Driver and Vehicle Services Data Map, *https://www.aamva.org/jurisdiction-data-maps#anchorformdlmap* (last visited July 17, 2024); PYMNTS, *States Embrace Mobile Driver's Licenses to Fight Fraud Amid Privacy Scrutiny* (Apr. 9, 2024), *https://www.pymnts.com/identity/2024/states-embrace-mobile-drivers-licenses-to-fight-fraud-amid-privacy-scrutiny/* (last visited July 17, 2024); Government Technology, *Digital IDs Are Here, but Where Are They Used and Accepted?* (Mar. 12, 2024), *https://www.govtech.com/biz/data/digital-ids-are-here-but-where-are-they-used-and-accepted* (last visited July 17, 2024).

[29] Comment by Maryland MVA, *https://www.regulations.gov/comment/TSA-2023-0002-0032* (last visited July 17, 2024).

[30] Comment by Iowa Department of Transportation, *https://www.regulations.gov/comment/TSA-2023-0002-0023* (last visited July 17, 2024).

[31] *See* NPRM, 88 FR at 60066–67.

[32] *See* TSA, Facial Recognition and Digital Identity Solutions, *https://www.tsa.gov/digital-id* (last visited Aug. 9, 2024).

[33] *See* NPRM, 88 FR at 60063–66, for a discussion of these standards.

TABLE 1—SUMMARY OF CHANGES BETWEEN THE NPRM AND THE FINAL RULE—Continued

| Section | Final rule | Reason for the change |
|---|---|---|
| 37.9(a) | Corrects agency name from DHS to TSA<br>Corrects website address from *dhs.gov* to *tsa.gov* | Technical changes update agency name and website address. |
| 37.9(b) | Revises "days" to "calendar days."<br>Corrects website address from *dhs.gov* to *tsa.gov* | Clarifies that "days" means calendar days, not business days.<br>Technical change updates agency website address. |
| 37.9(c) | Revises "days" to "calendar days."<br>Corrects website address from *dhs.gov* to *tsa.gov* | Clarifies that "days" means calendar days, not business days.<br>Technical change updates agency website address. |
| 37.9(e)(2) | Revises "days" to "calendar days."<br>Corrects website address from *dhs.gov* to *tsa.gov*<br>Provides a means for States to contact TSA if the State is unclear whether certain modifications to its mDL issuance processes require reporting. | Clarifies that "days" means calendar days, not business days.<br>Technical change updates agency website address.<br>Provides a means for States to resolve potential questions regarding reporting requirements. |
| 37.9(e)(4)(ii) | Revises "days" to "calendar days." | Clarifies that "days" means calendar days, not business days. |
| 37.9(e)(5)(i) | Corrects agency name from DHS to TSA | Technical change updates agency name. |
| 37.9(e)(5)(ii) | Revises "days" to "calendar days." | Clarifies that "days" means calendar days, not business days. |
| 37.9(g) | Adds new paragraph (g), which provides that information submitted in response to requirements to apply for and maintain a waiver *may* contain SSI, and if so, would be subject to requirements of 49 CFR part 1520. | SSI protection. |
| 37.10(a)(1)(vii) | Replaces NPRM requirement that States must issue mDLs only to residents who have been issued physical cards that are valid, unexpired, and REAL ID-compliant with requirement that States must populate the "DHS_compliance" data field to correspond to the REAL ID-compliance status of the underlying physical driver's license or identification card, or as required by the AAMVA Guidelines. | Proposed language would have required States to issue mDLs only to individuals to whom that State previously issued a physical card that is valid, unexpired, and REAL ID-compliant. This would have denied States the discretion to issue mDLs to holders of non-compliant physical cards.<br>Revisions require States to issue mDLs in a manner that reflects the REAL ID compliance status of the underlying physical card. This is consistent with the intent of the NPRM, which was to enable Federal agencies to determine the REAL ID-compliance status of the underlying physical card, and accept only compliant cards when enforcement begins. |
| 37.10(a)(4) | Corrects version number of AAMVA Mobile Driver's License (mDL) Implementation Guidelines (Jan. 2023).<br>Updates NIST FIPS PUB 197 to NIST FIPS PUB 197–upd1 to reflect revised version of standard. | Technical change corrects version number of AAMVA Guidelines.<br>Changes reflect current version of NIST FIPS PUB 197 to ensure continuing public access. Revisions to the standard include editorial improvements, but no technical changes to the algorithm specified in the earlier version. |
| 37.10(b)(1) | Clarifies that "independent entity" includes State employees or contractors that are independent of the State's driver's licensing agency. | Provides States additional options to select auditors. Reduces burdens without impact on security or privacy. |
| 37.10(c) | Corrects website address from *dhs.gov* to *tsa.gov*<br>Clarifies that TSA will publish in the **Federal Register** a notice advising of the availability of updated TSA mDL Waiver Application Guidance, which itself will be published at *www.tsa.gov/mDL/*. | Technical changes update agency website address, and clarify means of notifying and publishing updates to TSA mDL Waiver Application Guidance. |
| Appendix A, Throughout | Corrections to titles of:<br>CISA Federal Government Cybersecurity Incident & Vulnerability Response Playbooks.<br>DHS National Cyber Incident Response Plan<br>NIST FIPS PUB 140–3<br>NIST Framework for Improving Critical Infrastructure Cybersecurity. | Technical corrections. |
| Appendix A, paragraph 1.1 | Adds section numbers to certain references<br>Deletes requirement to comply with NIST SP 800–53B | Technical changes clarify which parts of cited reference require compliance, and remove an unnecessary requirement. |
| Appendix A, paragraph 2.2 | Revises "privileged account or service" in NPRM to "trusted role.". | Technical change corrects terminology. |
| Appendix A, paragraph 2.13 | Adds section numbers to a certain reference | Technical change clarifies which parts of cited reference require compliance. |
| Appendix A, paragraph 5.13 | Reduces requirements for minimum number of personnel to generate issuing authority certificate authority (IACA) root certificate keys from a minimum of three to two persons, consisting of at least one ceremony administrator and one qualified witness. | Provides States greater freedom to select products. Does not impact security, privacy, or interoperability. |

TABLE 1—SUMMARY OF CHANGES BETWEEN THE NPRM AND THE FINAL RULE—Continued

| Section | Final rule | Reason for the change |
|---|---|---|
| Appendix A, paragraph 5.14 | Modifies requirements for minimum number of personnel to generate document signer keys. Final rule requires either at least one administrator and one qualified witness (other than a person involved in key generation), or at least 2 administrators using split knowledge processes. | Provides States greater freedom to select products. Does not impact security, privacy, or interoperability. |
| Appendix A, paragraph 6.3 .. | Revises ''days'' to ''calendar days ..... | Clarifies that ''days'' means calendar days, not business days. |
| Appendix A, paragraph 8.6 .. | Modifies cyber incident reporting requirements to incidents as defined in the TSA Cybersecurity Lexicon available at *www.tsa.gov* that may harm state certificate systems.<br>Corrects website address from *dhs.gov* to *tsa.gov* .....<br>Adds SSI protection requirements ..... | Clarifies types of incidents that must be reported, updates agency website address, and adds SSI protection. |

*B. Summary of Regulatory Provisions*

In addition to revising definitions applicable to the REAL ID Act to incorporate mDLs, this rule amends 6 CFR part 37 to enable TSA to grant a temporary waiver to States that TSA determines issue mDLs consistent with specified requirements concerning security, privacy, and interoperability. This rule enables Federal agencies, at their discretion, to accept for REAL ID official purposes, mDLs issued by a State that has been granted a waiver, provided that the underlying physical card upon which the mDL was based is REAL ID-compliant. The rule applies only to Federal agency acceptance of State-issued mDLs as defined in this final rule for REAL ID official purposes, but not other forms of digital identification, physical driver's licenses or physical identification cards, or non-REAL ID purposes. Any temporary waiver issued by TSA would be valid for a period of 3 years from the date of issuance.

To obtain a waiver, § 37.9(a) requires a State to submit an application, supporting data, and other documentation to establish that their mDLs meet the criteria specified in §§ 37.10(a) and (b) (discussed in Part III.C.4., below) concerning security, privacy, and interoperability. If TSA determines, upon evaluation of a State's application and supporting documents, that a State's mDL could be securely accepted under the terms of a waiver, TSA may issue such State a certificate of waiver. TSA intends to work with each State applying for a waiver on a case-by-case basis to ensure that its mDLs meet the minimum requirements necessary to obtain a waiver. This rulemaking establishes the full process for a State to apply for and maintain a waiver, including: instructions for submitting the application and responding to subsequent communications from TSA as necessary; specific information and documents that a State must provide with its application; requirements concerning timing, issuance of decisions, requests for reconsideration; and post-issuance reporting requirements and other terms, conditions, and limitations. To assist States that are considering applying for a waiver, TSA has developed guidelines, entitled, ''Mobile Driver's License Waiver Application Guidance'' (hereinafter ''TSA Waiver Guidance'' or ''the Guidance''), which provides non-binding recommendations of some ways that States can meet the application requirements set forth in this rulemaking.[35] This final rule makes several technical and administrative changes to the NPRM, as set forth in Table 1, above. These changes are as follows:

- Corrections to agency name, website address, points of contact for access and compliance with reporting requirements: *See* §§ 37.4, 37.8(d), 37.9(a)–(c), (e)(2) & (e)(5)(i), 37.10(c), and Appendix A, paragraph 8.6.
- Corrections to inadvertent omissions, typographical errors, paragraph numbering, title/version number of publications: *See* §§ 37.3, 37.4, 37.4(c)(1), 37.8(d), 37.4(g)(4) & (7), 37.10(a)(4), Appendix A, paragraphs 1.1, 2.13, 2.2, 8.4, 8.5, 8.8.
- Clarifying that ''days'' means ''calendar days'': *See* §§ 37.9(b), 37.9(c), 37.9(e)(2), (4)(i) & (5)(ii), and Appendix A, paragraph 6.3.

*C. Specific Provisions*

This section describes the final regulatory provisions in this rule, including the changes discussed above. Unless otherwise noted, these provisions were described in the NPRM.

1. Definitions

The final rule adds new definitions to subpart A, § 37.3, consistent with those proposed in the NPRM. In particular, new definitions for ''mobile driver's license'' and ''mobile identification card'' are necessary because the current regulations predated the emergence of mDL technology and, therefore, do not define these terms. Additionally, the definitions reflect changes made by the REAL ID Modernization Act, which amended the definitions of ''driver's license'' and ''identification card'' to specifically include ''mobile or digital driver's licenses'' and ''mobile or digital identification cards.'' The definitions in this rule provide a more precise definition of ''mobile driver's license'' and ''mobile identification card'' by clarifying that those forms of identification require a mobile electronic device to store the identification information, as well as an electronic device to read that information. The rule also adds a new definition of ''mDL'' that collectively refers to mobile versions of both State-issued driver's licenses and State-issued identification cards as defined in the REAL ID Act.

[34] SSI is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

[35] The specific measures and practices discussed in the TSA Waiver Application Guidance are neither mandatory nor necessarily the ''preferred solution'' for complying with the requirements in this final rule. Rather, they are examples of measures and practices that a State issuer of mDLs may choose to consider as part of its overall strategy to issue mDLs. States have the ability to choose and implement other measures to meet these requirements based on factors appropriate to that State, so long as DHS determines that the measures implemented provide the levels of security and data integrity necessary for Federal acceptance of mDLs for official purposes as defined in the REAL ID Act and 6 CFR part 37. As provided in § 37.10(c), TSA may periodically update the Guidance as necessary to recommend mitigations of evolving threats to security, privacy, or data integrity.

The final rule includes additional definitions to explain terms used in the waiver application criteria set forth in §§ 37.10(a)–(b) and Appendix A to subpart A of this part (Appendix A). Generally, this rule defines terms that lack a common understanding or that are common terms of art for information systems, and that require an explanation to enable stakeholders to comply with the rule. The definitions were informed by TSA's knowledge and experience, as well as a publication by the National Institute of Standards and Technology (NIST).[36] For example, the rule adds definitions for ''digital certificates'' and ''certificate systems,'' which are necessary elements of risk controls for the IT systems that States use to issue mDLs. In addition, this final rule adds a definition for ''certificate policy,'' which forms the governance framework for States' certificate systems. A State must develop, maintain, and execute a certificate policy to comply with the requirements set forth in Appendix A. In addition, ''Digital Signatures'' are mathematical algorithms that States use to validate the authenticity and integrity of a message. Each of these terms is fundamental to understanding the requirements set forth in this rule.

The final rule adds a definition for ''provisioning'' which was not proposed in the NPRM. *See* § 37.3. As defined by this final rule, ''provisioning'' means the process by which a State transmits and installs an mDL on an individual's mobile device. Although TSA did not receive any comments seeking clarity or requesting the addition of this or other definitions, TSA believes provisioning is a critical concept that requires a definition in order to facilitate stakeholder compliance.

2. TSA Issuance of Temporary Waiver and State Eligibility Criteria

The final rule adds to subpart A new § 37.7, entitled ''Temporary waiver for mDLs; State eligibility.'' This waiver framework temporarily allows Federal agencies to accept for official purposes mDLs (which today are all non-compliant) issued by States with a waiver, if the mDL is based on a REAL ID-compliant physical card, when REAL ID enforcement begins on May 7, 2025 (*see* § 37.8, discussed in Part III.C.3., below). However, the waiver framework does not apply to any other requirements in 6 CFR part 37 or physical cards. Section 37.7(a) authorizes TSA to issue a temporary certificate of waiver to States that meet the waiver application criteria set forth in §§ 37.10(a) and (b). TSA's determination of whether a State satisfies these requirements will be based on TSA's evaluation of the information provided by the State in its application (*see* Part III.C.4., below), as well as other information available to TSA. Federal agencies are not required to accept mDLs, and retain discretion to determine their own policies regarding identity verification.

Although NPRM § 37.7(a) stated that a waiver would exempt a State's mDLs from meeting the card-based compliance requirement of § 37.5(b), the final rule deletes this clause because a waiver impacts Federal agency *acceptance,* not State *issuance,* of non-compliant mDLs. Stated differently, a waiver allows Federal agencies to accept non-compliant mDLs issued by States to whom TSA has granted a waiver. As discussed above in this preamble, the waiver application criteria set forth temporary security requirements commensurate with REAL ID standards for physical cards, ensuring that mDLs meeting the criteria are suitable for Federal acceptance. However, States cannot issue REAL ID-compliant mDLs until TSA sets forth such requirements in the subsequent Phase 2 rulemaking.

Section 37.7(b) sets forth criteria that a State must meet to be eligible for consideration of a waiver. These criteria require that the issuing State: (1) is in full compliance with all applicable REAL ID requirements as defined in subpart E of this part, and (2) has submitted an application, under §§ 37.10(a) and (b) demonstrating that the State issues mDLs that provide security, privacy, and interoperability necessary for Federal acceptance.[37] The NPRM proposed paragraph (b)(3) of this section, which provided an additional waiver eligibility criterion that a State must issue mDLs only to individuals who have been issued REAL ID-compliant physical cards. However, the final rule does not adopt this proposal given TSA's evaluation of public comments (see Part IV.A.) that this provision would have made a State ineligible for a waiver if the State issued mDLs to both individuals with REAL ID-compliant physical cards and individuals with non-compliant physical cards. The final rule similarly amends § 37.10(a)(1)(vii), as proposed by the NPRM, to remove a provision that would have required States to issue an mDL only to a resident who has been issued a valid, unexpired, and REAL ID-compliant physical card that underlies the mDL. *See* Part III.C.4, below.

3. Requirements for Federal Agencies that Accept mDLs

The final rule adds to subpart A new § 37.8, entitled ''Requirements for Federal agencies accepting mDLs issued by States with temporary waiver.'' This section requires that any Federal agency that elects to accept mDLs for REAL ID official purposes must meet four requirements in new § 37.8. First, under § 37.8(a), a Federal agency must confirm that the State holds a valid certificate of waiver. Agencies would make this confirmation by verifying that the State's name appears in a list of States to whom TSA has granted a waiver. TSA will publish this list on the REAL ID website at *www.tsa.gov/real-id/mDL* (as provided in § 37.9(b)(1)).

Second, § 37.8(b) requires Federal agencies to use an mDL reader to retrieve mDL data from an individual's mobile device and validate that the data is authentic and unchanged following the processes required by industry standard ISO/IEC 18013–5:2021(E).[38]

Third, under § 37.8(c), Federal agencies may accept, consistent with the deadlines set forth in § 37.5, only those mDLs that are issued based on an underlying physical card that is REAL ID compliant. Agencies would make this determination by confirming that mDL data element ''DHS_compliance'' has a value of ''F''. As discussed in Part III.C.8.a., below, the data field ''DHS_compliance'' (defined in the American Association of Motor Vehicle Administrators *Mobile Driver's License (mDL) Implementation Guidelines Version 1.2* (Jan. 2023) (AAMVA Guidelines)) enables an mDL to convey the REAL ID compliance status of the underlying physical card. TSA notes that § 37.8(c) is a new provision that was not included in the NPRM. TSA intended, in proposed §§ 37.7(b)(3) and 37.10(a)(1)(vii) of the NPRM, that Federal agencies would accept only mDLs issued by States to whom TSA has issued a waiver, and that are based on an underlying physical card that is REAL ID-compliant. Final rule § 37.8(c), together with revisions to § 37.10(a)(1)(vii) (see discussion in Part III.C.4., below), achieves that intent.

Finally, under § 37.8(d), if a Federal agency discovers that acceptance of a State's mDL is likely to cause imminent or serious threats to security, privacy, or data integrity, the agency must report the threats to TSA at *www.tsa.gov/real-id/mDL* within 72 hours of such

[36] *See* NIST, Computer Security Resource Center, *https://csrc.nist.gov/glossary* (last visited July 17, 2024).

[37] Sections 37.7(b)(1) & (2).

[38] *See* NPRM, 88 FR at 60063–64, for a discussion of this standard.

discovery. Examples of reportable threats include cyber incidents and other events that cause serious harm to a State's mDL issuance system. Reports *may* contain SSI, and if so, would be subject to requirements of 49 CFR part 1520. Although the NPRM did not propose the SSI protection provision, TSA evaluated comments to the NPRM (*see* Part IV.W., below) seeking clarification on SSI protection for other information (State waiver applications) and determined that SSI protection is warranted for Federal agency reports under this § 37.8(d), which has been added in this final rule. TSA will consider whether such information warrants suspension of that State's waiver under § 37.9(e)(4)(i)(B) (*see* discussion in Part III.C.6., below). If TSA elects not to issue a suspension, Federal agencies would continue to exercise their own discretion regarding continuing acceptance of mDLs.

4. Requirements for States Seeking To Apply for a Waiver

The final rule adds to subpart A new § 37.9, which sets forth a process for a State to request a temporary certificate of waiver established in new § 37.7. As provided in § 37.9(a), a State seeking a waiver must file a complete application as set forth in §§ 37.10(a) and (b), following instructions available at *www.tsa.gov/real-id/mDL.* Sections 37.10(a) and (b) set forth all information, documents, and data that a State must include in its application for a waiver. If TSA determines that the means that a State implements to comply with the requirements in §§ 37.10(a) and (b) provide the requisite levels of security, privacy, and data integrity for Federal acceptance of mDLs for official purposes, TSA would grant such State a waiver. This rule does not, however, prescribe specific means (other than the requirements specified in Appendix A, which is discussed further in Part III.C.4.iv, below) that a State must implement. Instead, States would retain broad discretion to choose and implement measures to meet these requirements based on factors appropriate to that State.

(i) Application Requirements

As set forth in §§ 37.10(a)(1) through (4), a State is required to establish in its application how it issues mDLs under the specified criteria for security, privacy, and interoperability suitable for acceptance by Federal agencies, as follows:

• Paragraph (a)(1) sets forth requirements for mDL provisioning. Specific requirements include:

○ Encryption of mDL data and an mDL holder's Personally Identifiable Information,

○ Escalated review of repeated failed provisioning attempts,

○ Authentication of the mDL applicant's mobile device,

○ Mobile device identification keys,

○ User identity verification controls,

○ Applicant presentation controls,

○ Encoding of the ''DHS_compliance'' data field. States must populate this data field to correspond to the REAL ID compliance status of the underlying physical driver's license or identification card that a State has issued to an mDL holder. Specifically, ''DHS_compliance'' should be populated with ''F'' if the underlying card is REAL ID compliant, or as required by American Association of Motor Vehicle Administrator (AAMVA) Mobile Driver's License (mDL) Implementation Guidelines v. 1.2, Section 3.2 (IBR'd; see § 37.4), or ''N'' if the underlying card is not REAL ID-compliant. Although § 37.10(a)(1)(vii) of the NPRM proposed requiring that States issue an mDL only to a resident who has been issued a valid, unexpired, and REAL ID-compliant physical card that underlies the mDL, the final rule does not adopt this provision, based on TSA's evaluation of public comments (see Part IV.A.), that this provision would have made a State ineligible to apply for a waiver if the State issued mDLs to both individuals with REAL ID-compliant physical cards and individuals with non-compliant physical cards,

○ Data record requirements, and

○ Records retention specifications.

• Paragraph (a)(2) specifies requirements for managing state certificate systems, which are set forth in Appendix A.

• Paragraph (a)(3) requires a State to demonstrate how it protects personally identifiable information of individuals during the mDL provisioning process.

• Paragraph (a)(4) requires a State to explain the means it uses to:

○ Issue mDLs that are interoperable with requirements set forth in standard ISO/IEC 18013–5:2021(E),

○ Comply with the ''AAMVA mDL data element set'' as defined in the AAMVA Guidelines v. 1.2, Section 3.2,[39] and

○ Use only those algorithms for encryption,[40] secure hash function,[41] and digital signatures that are specified in ISO/IEC 18013–5:2021(E), and in NIST FIPS PUB 180–4, 186–5, 197–upd1, 198–1, and 202.

(ii) Audit Requirements

Section 37.10(b) requires a State to submit an audit report prepared by an independent auditor verifying the accuracy of the information provided by the State in response to § 37.10(a), as follows:

• Paragraph (1) sets forth specific experience, qualifications, and accreditations that an auditor must meet.

• Paragraph (2) requires a State to provide information demonstrating the absence of a potential conflict of interest of the auditing entity.

The term ''independent'' does not exclude an entity that is employed or contracted by a State, so long as that entity is independent of (*i.e.,* not an employee or contractor) the State's driver's licensing agency. TSA provides this clarification at the request of commenters (see Part IV.U., below).

(iii) Waiver Application Guidance

As set forth in § 37.10(c), TSA has published Mobile Driver's License Waiver Application Guidance on the REAL ID website at *www.tsa.gov/real-id/mDL* to assist States in completing their applications. The Guidance provides TSA's recommendations for some ways that States can meet the requirements in § 37.10(a)(1). The Guidance does *not* establish legally enforceable requirements for States applying for a waiver. Instead, the Guidance provides non-binding examples of measures and practices that States may choose to consider as part of their overall strategy to issue mDLs. States continue to exercise discretion to select processes not included in the Guidance. Given the rapidly-evolving cyber threat landscape, however, TSA may periodically update the Guidance to provide additional information regarding newly published standards or other sources, or recommend mitigations of newly discovered risks to

[39] *See* NPRM, 88 FR at 60062–65, for a discussion of these standards.

[40] Encryption refers to the process of cryptographically transforming data into a form in a manner that conceals the data's original meaning to prevent it from being read. Decryption is the process of restoring encrypted data to its original state. IETF RFC 4949, internet Security Glossary, Version 2, Aug. 2007, *https://datatracker.ietf.org/doc/html/rfc4949* (last visited July 17, 2024).

[41] A function that processes an input value creating a fixed-length output value using a method that is not reversible (*i.e.,* given the output value of a function it is computationally impractical to find the function's corresponding input value).

the mDL ecosystem. TSA will publish a notice in the **Federal Register** advising that updated Guidance is available, and TSA will publish the updated Guidance on the REAL ID website at *www.tsa.gov/real-id/mDL* and provide a copy to all States that have applied for or been issued a certificate of waiver. Updates to the Guidance will not impact issued waivers or pending applications. Although the NPRM proposed that TSA would publish updated Guidance in the **Federal Register**, in addition to TSA's website, the final rule modifies this requirement to provide that the agency will publish in the **Federal Register** only a notice of availability of updated guidance, but the Guidance itself will be published on TSA's website. This change will enable TSA to more expediently provide updated guidance to the public.

(iv) Appendix A: Requirements for State mDL Issuance Systems

Appendix A sets forth fundamental requirements to ensure the security and integrity of State mDL issuance processes. More specifically, these requirements concern the creation, issuance, use, revocation, and destruction of the State's certificate systems and cryptographic keys. Appendix A consists of requirements in eight categories: (1) Certificate Authority Certificate Life Cycle Policy, (2) Certificate Authority Access Management, (3) Facility, Management, and Operational Controls, (4) Personnel Security Controls, (5) Technical Security Controls, (6) Threat Detection, (7) Logging, and (8) Incident Response and Recovery Plan. Adherence to these requirements, described below, ensures that States issue mDLs in a standardized manner with security and integrity to establish the trust necessary for Federal acceptance for official purposes.

- Certificate Authority Certificate Life Cycle Policy requirements (Appendix A, paragraph 1) ensure that a State issuing an mDL creates and manages a formal process which follows standardized management and protections of digital certificates. These requirements must be implemented in full compliance with the references cited in Appendix A: CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates; CA/Browser Forum Network and Certificate System Security Requirements; ISO/IEC 18013–5:2021(E), Annex B; NIST Framework for Improving Critical Infrastructure Cybersecurity; NIST SP 800–53 Rev. 5; and NIST SP 800–57.[42]

- Certificate Authority Access Management requirements (Appendix A, paragraph 2) set forth policies and processes for States concerning, for example, restricting access to mDL issuance systems, policies for multi-factor authentication, defining the scope and role of personnel, and certificate system architecture which separates and isolates certificate system functions to defined security zones. These requirements must be implemented in full compliance with the references cited in Appendix A: CA/Browser Forum Network and Certificate System Security Requirements; NIST Framework for Improving Critical Infrastructure Cybersecurity; NIST 800–53 Rev. 5; NIST SP 800–63–3; and NIST SP 800–63B.[43]

Although NPRM Appendix A, paragraph 1.1, proposed requiring States to comply with NIST SP 800–53B (among other references) as part of States' development of a policy to govern their certificate systems, the final rule does not adopt the proposal requiring compliance with NIST SP 800–53B. Document NIST SP 800–53B, ''Control Baselines for Information Systems and Organizations,'' defines minimum security and privacy risk controls for Federal Government agencies to protect information security systems. In addition, the publication provides guidance, but not requirements, for other entities that implement NIST SP 800–53 Rev. 5 in their own organizations. Although TSA did not receive any public comments on NIST SP 800–53B, after re-evaluating the usefulness of this document, TSA concludes that other provisions in the final rule prescribe the necessary security and privacy requirements for States issuing mDLs, and NIST SP 800–53B only serves as guidance without providing security or privacy enhancements. Accordingly, the inclusion of NIST SP 800–53B is unnecessary, and the final rule therefore declines to adopt the NPRM's proposal.

- Under the requirements concerning Facility, Management, and Operational Controls (Appendix A, paragraph 3), States must provide specified controls protecting facilities where certificate systems reside from unauthorized access, environmental damage, physical breaches, and risks from foreign ownership, control, or influence. These requirements must be implemented in full compliance with the references cited in Appendix A: NIST SP 800–53 Rev. 5.[44]

- Personnel security controls (Appendix A, paragraph 4) require States to establish policies to control insider threat risks to certificate systems and facilities. Such policies must establish screening criteria for personnel who access certificate systems, post-employment access termination, updates to personnel security policy, training, records retention schedules, among other policies. These requirements must be implemented in full compliance with the references cited in Appendix A: NIST SP 800–53 Rev. 5 and CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates.[45]

- Technical security controls (Appendix A, paragraph 5) specify requirements to protect certificate system networks. In addition, States are required to protect private cryptographic keys of issuing authority root certificates using dedicated hardware security modules (HSMs) of Level 3 or higher and document signer private cryptographic keys in hardware security modules of Level 2 and higher. Dedicated HSMs are used (1) solely for IACA root private key functions and no other functions within the State's certificate system, including document signer private key functions, and (2) exclusively to support a single State. States are not permitted to share with any other State an HSM that physically supports multiple States. Other controls are specified regarding certificate system architecture and cryptographic key generation processes. These requirements must be implemented in full compliance with the references cited in Appendix A: CA/Browser Forum Network and certificate system Security Requirements; CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates; NIST Framework for Improving Critical Infrastructure Cybersecurity; NIST SP 800–53 Rev. 5; NIST SP 800–57; and NIST FIPS PUB 140–3.[46]

- Under requirements for threat detection (Appendix A, paragraph 6), States must implement controls to monitor and log evolving threats to various mDL issuance infrastructure, including digital certificate, issuance, and support systems. These requirements must be implemented in

[42] *See* NPRM, 88 FR at 60062–65, for a discussion of these standards.

[43] *See* NPRM, 88 FR at 60062–65, for a discussion of these standards.

[44] *See* NPRM, 88 FR at 60065, for a discussion of this standard.

[45] *See* NPRM, 88 FR at 60062–63 & 60065, for a discussion of these standards.

[46] *See* NPRM, 88 FR at 60062–63 & 60065, for a discussion of these standards.

full compliance with the references cited in Appendix A: CA/Browser Forum Network and certificate system Security Requirements; NIST Framework for Improving Critical Infrastructure Cybersecurity; and NIST SP 800–53 Rev. 5.[47]

- Logging controls (Appendix A, paragraph 7) require States to record various events concerning certificate systems, including the management of cryptographic keys, and digital certificate lifecycle events. The controls set forth detailed requirements concerning specific types of events that must be logged, as well as timeframes for maintaining such logs. These requirements must be implemented in full compliance with the references cited in Appendix A: CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates; NIST Framework for Improving Critical Infrastructure Cybersecurity; and NIST SP 800–53 Rev. 5.[48]
- Incident Response and Recovery Plan (Appendix A, paragraph 8) requires States to implement policies to respond to and recover from security incidents. States must act on logged events, issue alerts to relevant personnel, respond to alerts within a specified time period, perform vulnerability scans, among other things. In particular, States must report to TSA at *www.tsa.gov/real-id/mDL* within 72 hours of discovering a reportable cybersecurity incident. In response to comments to the NPRM seeking clarity on the reporting requirements (*see* Part IV.V.5.c., below), the final rule adds a provision that reportable incidents are those defined in the TSA Cybersecurity Lexicon at *www.tsa.gov* that could compromise the integrity of a certificate system. These requirements must be implemented in full compliance with the references cited in Appendix A: CA/Browser Forum Network and Certificate System Security Requirements; CISA Federal Government Cybersecurity Incident & Vulnerability Response Playbooks; [49] DHS National Cyber Incident Response Plan; NIST SP 800–53 Rev. 5; and NIST Framework for Improving Critical Infrastructure Cybersecurity.[50] Information submitted in response to this section *may* contain SSI, and if so, would be subject to requirements of 49 CFR part 1520. Although the NPRM did not propose the SSI protection provision, TSA evaluated comments to the NPRM (see Part IV.W., below) seeking clarification on SSI protection for other information (State waiver applications) and determined that SSI protection is warranted for State reports under this Appendix paragraph 8, which has been added in this final rule.

5. Decisions on Applications for Waiver

Section 37.9(b) establishes a timeline and process for TSA to issue decisions on a waiver application. Under this paragraph, TSA endeavors to provide States a decision on initial applications within 60 calendar days, but not longer than 90 calendar days. TSA will provide three types of written notice via email: approved, insufficient, or denied.

If TSA approves a State's application for a waiver, TSA will issue a certificate of waiver to that State, and include the State in a list of mDLs approved for Federal use, published by TSA on the REAL ID website at *www.tsa.gov/real-id/mDL.*[51] A certificate of waiver will specify the date that the waiver becomes effective, the expiration date, and any other terms and conditions with which a State must comply, as provided under § 37.9(d). A State seeking to renew its certificate beyond the expiration date must reapply for a waiver, as provided in § 37.9(e)(6).

If TSA determines that an application is insufficient, did not respond to certain information required in §§ 37.10(a) or (b), or contains other deficiencies, TSA will provide an explanation of such deficiencies and allow the State an opportunity address the deficiencies within the timeframe specified in § 37.9(b)(2). TSA will permit States to submit multiple amended applications if necessary, with the intent of working with States individually to enable their mDLs to comply with the requirements of §§ 37.10(a) and (b).

As provided in § 37.9(b)(3), if TSA denies an application, TSA will provide the specific grounds for the basis of the denial and afford the State an opportunity to submit a new application or to seek reconsideration of a denied application. Under § 37.9(c)(1), States will have 90 calendar days to file a request for reconsideration, and TSA will provide its final determination within 60 calendar days. Instructions for seeking reconsideration are provided by TSA on the REAL ID website at *www.tsa.gov/real-id/mDL.* As provided in § 37.9(c)(2), an adverse decision upon reconsideration would be considered a final agency action. However, a State whose request for reconsideration has been denied may submit a new application for a waiver.

6. Limitations, Suspension, and Termination of Certificate of Waiver

Section 37.9(e) sets forth various terms regarding a certificate of waiver. Specifically, under paragraph (e)(1) of this section, a certificate of waiver is valid for a period of three years from the date of issuance. This period was selected to align with the frequency of States' recertification under § 37.55(b).

Paragraph (e)(2) requires that a State must report to TSA if, after it receives a waiver, it makes significant modifications to its mDL issuance processes that differ in a material way from information that the State provided in its application. If the State makes such modifications, it is required to report such changes, at *www.tsa.gov/real-id/mDL,* 60 calendar days before implementing the changes. This requirement is intended to apply to changes that may undermine the bases on which TSA granted a waiver. The reporting requirement is not intended to apply to routine, low-level changes, such as systems maintenance and software updates and patches. States that are uncertain about whether a change would trigger the reporting requirements should contact TSA as directed at *www.tsa.gov/real-id/mDL.* The final rule added this provision to contact TSA to provide greater certainty to States, following TSA's evaluation of public comments seeking clarification about the reporting requirements specified in the NPRM (see Part IV.S., below).

Paragraph (e)(3) requires a State that is issued a waiver to comply with all requirements specified in §§ 37.51(a) and 37.9(d)(3).

Paragraph (e)(4) sets forth processes for suspension of certificates of waiver. As provided in § 37.9(e)(4)(i)(A), TSA may suspend the validity of a certificate of waiver if TSA determines that a State:

- fails to comply with any terms and conditions (*see* § 37.9(d)(3)) specified in the certificate of waiver;
- fails to comply with reporting requirements (*see* § 37.9(e)(2)); or
- issues mDLs in a manner that is not consistent with the information the State provided in its application for a waiver under §§ 37.10(a) and (b).

Before suspending a waiver for these reasons, TSA will provide such State written notice via email that it intends to suspend its waiver, along with an explanation of the reasons, information on how the State may address the deficiencies, and a timeline for the State to respond and for TSA to reply to the

[47] *See* NPRM, 88 FR at 60062–63 & 60065, for a discussion of these standards.

[48] *See* NPRM, 88 FR at 60062–63 & 60065, for a discussion of these standards.

[49] The NPRM inadvertently omitted ''Federal Government'' from the title of this publication.

[50] *See* NPRM, 88 FR at 60062–63 & 60065, for a discussion of these standards.

[51] Section 37.9(b)(1).

State, as set forth in § 37.9(e)(4)(ii). TSA may withdraw the notice of suspension, request additional information, or issue a final suspension. If TSA issues a final suspension of a State's certificate of waiver, TSA will temporarily remove the name of that State from the list, published at *www.tsa.gov/real-id/mDL,* of mDLs approved for Federal acceptance for official purposes.[52] TSA intends to work with States to resolve the conditions that result in a final suspension, and resume validity of that State's waiver. A State receiving a final suspension may apply for a new certificate of waiver by submitting a new application following the procedures in § 37.9(a).

TSA additionally may suspend a State's waiver at any time upon discovery that Federal acceptance of a State's mDL is likely to cause imminent or serious threats to the security, privacy, or data integrity of any Federal agency, as set forth in § 37.9(e)(4)(i)(B). These are more exigent circumstances than those set forth in § 37.9(e)(4)(i)(A). Examples of such triggering events include cyber-attacks and other events that cause serious harm to a State's mDL issuance systems. If a State discovers a reportable cybersecurity incident, as defined in the TSA Cybersecurity Lexicon available at *www.tsa.gov,* that it believes could compromise the integrity of its mDL issuance systems, paragraph 8.6 of Appendix A requires States to provide written notice to TSA as directed at *www.tsa.gov/real-id/mDL,* of such incident within no more than 72 hours of discovery. If TSA determines such suspension is necessary, TSA will provide written notice via email to each State whose certificate of waiver is affected, as soon as practicable after discovery of the triggering event, providing an explanation for the suspension, as well as an estimated timeframe for resumption of the validity of the certificate of waiver.

Under § 37.9(e)(5)(i), TSA may terminate a certificate of waiver for serious or egregious violations. More specifically, TSA may terminate a waiver if TSA determines that a State:

- does not comply with REAL ID requirements in § 37.51(a);
- is committing an egregious violation of any terms and conditions (*see* § 37.9(d)(3)) specified in the certificate of waiver and is unwilling to cure such violation;
- is committing an egregious violation of reporting requirements (*see* § 37.9(e)(2)) and is unwilling to cure such violation; or
- provided false information in its waiver application.

As required in § 37.9(e)(5)(ii), before terminating a certificate of waiver, TSA will provide written notice via email of intent to terminate, including findings supporting the termination and an opportunity for the State to present information. As specified, a State would have 7 calendar days to respond to the notice, and TSA will respond via email within 30 calendar days. TSA may withdraw the notice of termination, request additional information, or issue a final termination. Under § 37.9(e)(5)(iii), if TSA issues a final termination of a State's certificate of waiver, TSA will remove the name of that State from the list of mDLs approved for Federal acceptance for official purposes. A State whose certificate of waiver has been terminated may apply for a new certificate of waiver by submitting a new application.

Section 37.9(g) provides that information provided by States in response to paragraphs (a), (b)(2), (c), (e)(2), (e)(4)(ii), and (e)(5)(ii) of this section, which concern requirements on States to apply for and maintain a waiver, *may* contain SSI and therefore must be handled and protected in accordance with 49 CFR part 1520. Although the NPRM did not propose § 37.9(g), the final rule adds this provision based on TSA's evaluation of comments to the NPRM (see Part IV.W., below) seeking clarification on SSI protection for information in State waiver applications. TSA determined that a provision concerning SSI protection is warranted not only for information in State waiver applications, but also for other information provided by States in response to §§ 37.9(b)(2), (c), (e)(2), (e)(4)(ii), and (e)(5)(ii), which has been added in this final rule.

7. Effect of Status of Waiver on REAL ID Compliance

Section 37.9(f) clarifies that the status of a State's issued certificate of waiver, including the status of a pending application for a waiver, has no bearing on TSA's determination of that State's compliance or non-compliance with any other section of this part. A certificate of waiver that TSA has issued to a State is not a determination that the State is in compliance with any other section in this part. Similarly, an application for a waiver that TSA has deemed insufficient or denied, or a certificate of waiver TSA has suspended or terminated, or that has expired, is not a determination that the State is not in compliance with any other section in this part.

8. Incorporation by Reference

Sections 37.8(b) and 37.10(a) and Appendix A of this final rule provide that States must comply with applicable sections of specified industry standards and government guidelines. The Office of Federal Register (OFR) has published regulations concerning IBR.[53] These regulations require that, for a final rule, agencies must discuss in the preamble to the rule the way in which materials that the agency IBRs are reasonably available to interested persons, and how interested parties can obtain the materials. Additionally, the preamble to the rule must summarize the material.[54]

The final rule amends subpart A, § 37.4, by revising the introductory paragraph and adding new IBR material specified below. TSA has worked to ensure that IBR materials are reasonably available to the class of persons affected. All materials may be obtained from their publisher, as discussed below, and certain materials as noted are available in the Federal Docket Management System at *https://www.regulations.gov,* docket number TSA–2023–0002. In addition, all but one of the IBR'd standards (ISO/IEC 18013–5:2021(E), discussed in Part II.D., below) are available to the public for free at the hyperlinks provided, and all are available for inspection on a read-only basis at TSA. Please contact TSA at Transportation Security Administration, Attn.: OS/ESVP/REAL ID Program, TSA Mail Stop 6051, 6595 Springfield Center Dr., Springfield, VA 20598–6051, (866) 289–9673, or visit *www.tsa.gov.* You may also contact the REAL ID Program Office at *REALID-mDLwaiver@tsa.dhs.gov* or visit *www.tsa.gov/REAL-ID/mDL.*[55]

The rule revises the introductory paragraph proposed in the NPRM to clarify availability of IBR materials. Specifically, the final rule replaces DHS with TSA as a location where IBR material is available for inspection, and provides additional points of contact at TSA. TSA also notes that certain material is available in the Federal Docket Management System at *https://regulations.gov,* docket number TSA–2023–0002. The final rule makes these revisions given TSA's evaluation of public comments concerning access to IBR materials (see Part IV.K., below).

The final rule IBRs the following material:

[52] Section 37.9(e)(4)(iii).

[53] 1 CFR part 51.

[54] 1 CFR 51.5(b).

[55] The National Archives and Records Administration (NARA) maintains the official Federal copy of the IBR'd standards, but does not provide or distribute copies. *See www.archives.gov/federal-register/cfr/ibr-locations.htm* (last visited Sept. 17, 2024).

a. American Association of Motor Vehicle Administrators

In September 2022, the American Association of Motor Vehicle Administrators (AAMVA) published *Mobile Driver's License (mDL) Implementation Guidelines Version 1.2* (Jan. 2023) (AAMVA Guidelines), American Association of Motor Vehicle Administrators, 4401 Wilson Boulevard, Suite 700, Arlington, VA 22203, available at *https://aamva.org/getmedia/b801da7b-5584-466c-8aeb-f230cef6dda5/mDL-Implementation-Guidelines-Version-1-2_final.pdf* (last visited July 17, 2024). The AAMVA Guidelines are available to the public for free at the link provided above. The AAMVA Guidelines adapt industry standard ISO/IEC 18013–5:2021(E) (discussed in Part II.D.4., below), for State driver's licensing agencies through the addition of more qualified recommendations, as the ISO/IEC standard has been developed for international purposes and may not meet all purposes and needs of States and the Federal Government. For example, Part 3.2 of the AAMVA Guidelines modify and expand the data elements specified in ISO/IEC 18013–5:2021(E), in order to enable the mDL to indicate the REAL ID compliance status of the underlying physical card, as well as to ensure interoperability necessary for Federal acceptance. AAMVA has added mDL data fields ''DHS_compliance'' and ''DHS_temporary_lawful_status.'' These data fields provide the digital version of the requirements for data fields for physical cards defined in 6 CFR 37.17(n) [56] and 6 CFR 37.21(e),[57] respectively. As discussed generally in Part III.C.4, below, §§ 37.10(a)(1) and (4) of this rule require a State to explain, as part of its application for a waiver, how the State issues mDLs that are compliant with specified requirements of the AAMVA Guidelines.

b. Certification Authority Browser Forum

The Certification Authority Browser Forum (CA/Browser Forum) is an organization of vendors of hardware and software used in the production and use of publicly trusted certificates. These certificates are used by forum members, non-member vendors, and governments to establish the security and trust mechanisms for public key infrastructure-enabled systems. The CA/Browser Forum has published two sets of requirements applicable for any implementers of PKI, including States that are seeking to deploy certificate systems that must be publicly trusted and used by third parties:

- *Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates* v. *1.8.6* (December 14, 2022), available at *https://cabforum.org/wp-content/uploads/CA-Browser-Forum-BR-1.8.6.pdf* (last visited July 17, 2024), establishes a set of fundamental controls for the management of publicly trusted certificate authorities, including the controls and processes required for the secure generation of digital signing keys; and
- *Network and Certificate System Security Requirements* v. *1.7* (April 5, 2021), available at *https://cabforum.org/wp-content/uploads/CA-Browser-Forum-Network-Security-Guidelines-v1.7.pdf* (last visited July 17, 2024), establishes a broad set of security controls needed to securely manage a publicly trusted certificate authority and key infrastructure management system.

CA/Browser Forum, 815 Eddy St, San Francisco, CA 94109, (415) 436–9333. To issue mDLs that can be trusted by Federal agencies, each issuing State must establish a certificate system, including a root certification authority that is under control of the issuing State. TSA believes the CA/Browser Forum requirements for publicly trusted certificates have been proven to be an effective model for securing online transactions. As discussed generally in Part III.C.4, below, Appendix A, paragraphs 1, 2, and 4–8, require compliance with specified requirements of the CA/Browser Forum Baseline Requirements and/or Network and Certificate System Security Requirements.

c. DHS and Cybersecurity and Infrastructure Security Agency

DHS protects the nation from multiple threats, including cybersecurity, aviation and border security, among others. The Cybersecurity and Infrastructure Security Agency (CISA), a component of DHS, is the operational lead for Federal cybersecurity and the national coordinator for critical infrastructure security and resilience. DHS and CISA have published two guidelines which are relevant to the operations of States' mDL issuance systems:

- *DHS, National Cyber Incident Response Plan* (Dec. 2016), available at *https://www.cisa.gov/uscert/sites/default/files/ncirp/National_Cyber_IncidentResponse_Plan.pdf* (last visited July 17, 2024), further standardizes the response process for cyber incidents including the preparation, detection and analysis, containment, eradication and recovery, and post-incident activities. Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528; (202) 282–8000; and
- *CISA, Federal Government Cybersecurity Incident & Vulnerability Response Playbooks* (Nov. 2021),[58] available at *https://www.cisa.gov/sites/default/files/publications/Federal_Government_Cybersecurity_Incident_and_Vulnerability_Response_Playbooks_508C.pdf* (last visited July 17, 2024), was developed consistent with the direction of Presidential Policy Directive 41 (PPD–41) to establish how the U.S. responds to and recovers from significant cyber incidents which pose a risk to critical infrastructure, including the identity issuance infrastructure operated by U.S. States issuing mDLs.

Cybersecurity and Infrastructure Security Agency, Mail Stop 0380, 245 Murray Lane, Washington, DC 20528–0380, (888) 282–0870. These guidelines, available for free at the links provided above and in the Federal Docket Management System at *https://www.regulations.gov,* docket number TSA–2023–0002, provide details on best practices for management of systems during a cybersecurity incident, providing recommendations on incident and vulnerability response. Management of cybersecurity incidents and vulnerabilities is critical to maintenance of a State's mDL issuance IT infrastructure. As discussed generally in Part III.C.4, below, Appendix A, paragraph 8, requires compliance with specified requirements of the DHS National Cyber Incident Response Plan and the CISA Federal Government Cybersecurity Incident & Vulnerability Response Playbooks.

d. International Organization for Standardization and International Electrotechnical Commission

International standards-setting organizations, the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC),[59] are jointly drafted

[56] Section 37.17(n) provides, ''The card shall bear a DHS-approved security marking on each driver's license or identification card that is issued reflecting the card's level of compliance as set forth in § 37.51 of this Rule.''

[57] Section 37.21(e) provides, ''Temporary or limited-term driver's licenses and identification cards must clearly indicate on the face of the license and in the machine readable zone that the license or card is a temporary or limited-term driver's license or identification card.''

[58] The NPRM inadvertently omitted ''Federal Government'' from the title of this publication.

[59] ISO is an independent, non-governmental international organization with a membership of 164 national standards bodies. ISO creates documents that provide requirements,

international standards specific to mDLs.[60] In September 2021, ISO and IEC published ISO/IEC 18013, Part 5, entitled, ''Personal identification—ISO-compliant driving licence.'' ISO/IEC 18013–5:2021(E), *Personal identification—ISO-compliant driving licence—Part 5: Mobile driving licence (mDL) application* (Sept. 2021), International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland, +41 22 749 01 11, *www.iso.org/contact-iso.html.* This standard is available for inspection at TSA as discussed above. In addition, TSA is working with the American National Standards Institute (ANSI), a private organization not affiliated with DHS, to add this standard to the ANSI IBR Standards Portal which provides free, read-only access.[61] TSA has participated in the development of these standards as a non-voting member of the United States national body member of the Joint Technical Committee.[62]

Standard ISO/IEC 18013–5:2021(E) standardizes communications interfaces between an mDL holder and an entity seeking to read an individual's mDL for identify verification purposes, and between a verifying entity and a State driver's licensing agency. This standard also sets full operational and communication requirements for both mDLs and mDL readers. Standard ISO/IEC 18013–5:2021(E) applies to ''attended'' mode verification, in which both the mDL holder and an officer or agent of a verifying entity are physically present together during the time of identity verification.[63] TSA believes ISO/IEC 18013–5:2021(E) is critical to enabling the interoperability, security, and privacy necessary for wide acceptance of mDLs by Federal agencies for official purposes. Specifically, § 37.8 of this rule requires Federal agencies to validate an mDL as required by standard ISO/IEC 18013–5:2021(E), and § 37.10(a)(4) requires a State to explain, as part of its application for a waiver, how the State issues mDLs that are interoperable with this standard to provide the security necessary for Federal acceptance.

e. National Institute for Standards and Technology

The National Institute of Standards and Technology (NIST), part of the U.S. Department of Commerce, promotes U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and quality of life. As part of this mission, NIST produces measurements and standards relied on by the U.S. agencies and industry.

i. Federal Information Processing Standards

NIST maintains the Federal Information Processing Standards (FIPS) which relate to the specific protocols and algorithms necessary to securely process data. This suite of standards includes:

- NIST FIPS PUB 140–3, *Security Requirements for Cryptographic Modules* (March 22, 2019), available at *https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.140-3.pdf* (last visited July 17, 2024), specifies the security requirements for cryptographic modules that are used to secure the keys which are used in digitally signing mDLs, and properly securing these keys is essential to creating a publicly trusted certificate authority for mDL issuance;
- NIST FIPS PUB 180–4, *Secure Hash Standard (SHS)* (August 4, 2015), available at *https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.180-4.pdf* (last visited July 17, 2024), specifies the secure hash standard, a cryptographic algorithm necessary to provide message and data element integrity while using the transaction modes specified in ISO/IEC 18013–5:2021(E) for mDL data transmission;
- NIST FIPS PUB 186–5, *Digital Signature Standard (DSS)* (February 3, 2023), available at *https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.186-5.pdf* (last visited July 17, 2024), specifies digital signature standards used in ISO/IEC 18013–5:2021(E) standard to provide data integrity for mDL data elements issued by states; and
- NIST FIPS PUB 197–upd1, *Advanced Encryption Standard (AES)* (May 9, 2023) available at *https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.197-upd1.pdf* (last visited July 17, 2024), specifies the Advanced Encryption Standard, which is a cryptographic algorithm used to securely encrypt data messages used in the transmission of mDL data in ISO/IEC 18013–5:2021(E).

Although the NPRM proposed to IBR the prior (2001) version, NIST FIPS PUB 197, the final rule IBRs the current (May 2023) updated version, NIST FIPS PUB 197–upd1, which NIST confirms makes editorial improvements, but no technical changes to the version specified in the NPRM.[64] TSA has reviewed the updates and confirms they are formatting and stylistic clarifications. Although the public had an opportunity to comment, no such comments were received. Given the absence of public comments, no substantive changes to the updated standard, and to ensure continuing public access to this standard, the final rule IBRs the updated version, NIST FIPS PUB 197–upd1, which is consistent with the NPRM's proposal to IBR the previous version. TSA concludes that the compliance impact on stakeholders of both versions of this standard is identical.

- NIST FIPS PUB 198–1, *The Keyed-Hash Message Authentication Code (HMAC)* (July 16, 2008) available at *https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.198-1.pdf* (last visited July 17, 2024), specifies the keyed hash message authentication code which is an essential cryptographic algorithm to create a properly interoperable mDL using ISO/IEC 18013–5:2021(E); and
- NIST FIPS PUB 202, *SHA–3 Standard: Permutation-Based Hash and Extendable-Output Functions* (August 4, 2015) available at *https://*

specifications, guidelines or characteristics that can be used consistently to ensure that materials, products, processes and services are fit for their purpose. The IEC publishes consensus-based international standards and manages conformity assessment systems for electric and electronic products, systems and services, collectively known as ''electrotechnology.'' ISO and IEC standards are voluntary and do not include contractual, legal or statutory obligations. ISO and IEC standards contain both mandatory requirements and optional recommendations, and those who choose to implement the standards must adopt the mandatory requirements.

[60] ISO defines an International Standard as ''provid[ing] rules, guidelines or characteristics for activities or for their results, aimed at achieving the optimum degree of order in a given context. It can take many forms. Apart from product standards, other examples include: test methods, codes of practice, guideline standards and management systems standards.'' *www.iso.org/deliverables-all.html* (last visited July 17, 2024).

[61] ANSI, IBR Standards Portal, *https://ibr.ansi.org/* (last visited July 17, 2024).

[62] A member of TSA serves as DHS's representative to the Working Group.

[63] Part 7 of Series ISO/IEC 18013, entitled ''mDL add-on function,'' is an upcoming technical specification that will standardize interfaces for ''unattended'' mode verification, in which the mDL holder and officer/agent of the verifying agency are not physically present together, and the identity verification is conducted remotely. Unattended identity verification is not currently considered a REAL ID use case. ISO defines a ''Technical Specification'' as ''address[ing] work still under technical development, or where it is believed that there will be a future, but not immediate, possibility of agreement on an International Standard. A Technical Specification is published for immediate use, but it also provides a means to obtain feedback. The aim is that it will eventually be transformed and republished as an International Standard.'' ISO, Deliverables, *www.iso.org/deliverables-all.html* (last visited July 17, 2024).

[64] *See https://csrc.nist.gov/News/2023/nist-updates-fips-197-advanced-encryption-standard* (last visited July 17, 2024); *https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.197-upd1.pdf* (last visited July 17, 2024) at 37; *https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.197.pdf* (last visited July 17, 2024) at 1.

*nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.202.pdf* (last visited July 17, 2024), specifies the secure hash algorithm 3, a cryptographic algorithm necessary to provide message and data element integrity in ISO/IEC 18013–5:2021(E) for mDL data transmission.

National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Gaithersburg, MD 20899. This suite of FIPS standards, available in the Federal Docket Management System at *https://www.regulations.gov,* docket number TSA–2023–0002, are critical to the transactions required for mDLs, and any Federal systems which interact with or are used to verify an mDL for REAL ID official purposes will be required to use the algorithms and protocols defined. As discussed generally in Part III.C.4, below, § 37.10(a)(4) requires compliance with specified requirements of NIST FIPS PUB 180–4, 186–5, 197–upd1, 198–1, and 202, and Appendix A, paragraph 5, requires compliance with FIPS PUB 140–3.

ii. Security and Privacy Controls for Information Systems and Organizations; Key Management

NIST has published several guidelines to protect the security and privacy of information systems:

- NIST SP 800–53 Rev. 5, *Security and Privacy Controls for Information Systems and Organizations* (September 2020), available at *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r5.pdf* (last visited July 17, 2024), specifies a broad set of security and privacy controls which states must use to manage the information systems involved in the issuance and management of mDLs;
- NIST SP 800–57 Part 1, Rev. 5, *Recommendation for Key Management: Part 1—General* (May 2020), available at *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-57pt1r5.pdf* (last visited July 17, 2024), provides general recommendations for states managing cryptographic keys that are used to securely issue mDLs;
- NIST SP 800–57 Part 2, Rev. 1, *Recommendation for Key Management: Part 2—Best Practices for Key Management Organizations* (May 2019), available at *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-57pt2r1.pdf* (last visited July 17, 2024), provides best practices states must follow while managing cryptographic keys; and
- NIST SP 800–57 Part 3, Rev. 1, *Recommendation for Key Management, Part 3: Application-Specific Key Management Guidance* (January 2015) available at *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-57Pt3r1.pdf* (last visited July 17, 2024), provides for application specific controls for the management of cryptographic keys.

National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Gaithersburg, MD 20899. All of these documents are available in the Federal Docket Management System at *https://www.regulations.gov,* docket number TSA–2023–0002.

All four of these standards relate to the administration of a certificate system including: access management; certificate life-cycle policies; operational controls for facilities and personnel; technical security controls; and vulnerability management such as threat detection, incident response, and recovery planning. Due to the sensitive nature of State certificate system processes and the potential for significant harm to security if confidentiality, integrity, or availability of the certificate systems is compromised, the minimum risk controls specified in Appendix A require compliance with the NIST SP 800–53 Rev. 5 ''high baseline'' as set forth in that document, as well as compliance with the specific risk controls described in Appendix A. In addition, and as discussed generally in Part III.C.4, below: Appendix A, paragraphs 1–8, require compliance with NIST SP 800–53 Rev. 5; paragraphs 1 and 5 require compliance with NIST SP 800–57 Part 1, Rev. 5; paragraph 1 requires compliance with NIST SP 800–57 Part 2 Rev. 1; and paragraph 1 requires compliance with NIST SP 800–57 Part 3, Rev. 1.

iii. Digital Identity Guidelines

NIST has published NIST SP 800–63–3, which covers technical requirements for Federal agencies implementing digital identity: NIST Special Publication 800–63–3, *Digital Identity Guidelines* (June 2017), National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Gaithersburg, MD 20899, available at *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63-3.pdf* (last visited July 17, 2024)and in the Federal Docket Management System at *https://www.regulations.gov,* docket number TSA–2023–0002.

The *Digital Identity Guidelines* define technical requirements in each of the areas of identity proofing, registration, user authentication, and related issues. Because TSA is not aware of a common industry standard for mDL provisioning that is appropriate for official REAL ID purposes today, TSA views the *Digital Identity Guidelines* as critical to informing waiver application requirements for States regarding provisioning. As discussed generally in Part III.C.4, below, under § 37.10(a)(2) of the final rule, which requires compliance with Appendix A, a State must explain, as part of its application for a waiver, how the State issues mDLs that are compliant with NIST SP 800–63–3 to provide the security for mDL IT infrastructure necessary for Federal acceptance.

NIST has also published Special Publication 800–63B, *Digital Identity Guidelines: Authentication and Lifecycle Management* (June 2017), National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Gaithersburg, MD 20899, available at *https://nvlpubsnist.gov/nistpubs/specialpublications/nist.sp.800-63b.pdf* (last visited July 17, 2024) and in the Federal Docket Management System at *https://www.regulations.gov,* docket number TSA–2023–0002. This document, which is a part of NIST SP 800–63–3, provides technical requirements for Federal agencies implementing digital identity services. The standard focuses on the authentication of subjects interacting with government systems over open networks, establishing that a given claimant is a subscriber who has been previously authenticated and establishes three authenticator assurance levels. As discussed generally in Part III.C.4, below, § 37.10(a)(2) of this rule requires compliance with Appendix A, which requires a State to explain, as part of its application for a waiver, how the State manages its mDL issuance infrastructure using authenticators at assurance levels provided in NIST SP 800–63B.

iv. Framework for Improving Critical Infrastructure Cybersecurity

NIST has published *Framework for Improving Critical Infrastructure Cybersecurity* v. *1.1* (April 16, 2018), National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Gaithersburg, MD 20899, available at *https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf* (last visited July 17, 2024). This document, available in the Federal Docket Management System at *https://www.regulations.gov,* docket number TSA–2023–0002, provides relevant information for cybersecurity for States issuing mDLs. As discussed generally in Part III.C.4, below, certain requirements from the NIST Framework for Improving

Critical Infrastructure Cybersecurity have been adopted in Appendix A, paragraphs 1, 2, and 5–8.

*D. Impacted Stakeholders*

This final rule applies to State driver's licensing agencies issuing mDLs that seek a temporary waiver from TSA for its mDLs. The waiver established by this rule enables Federal agencies to accept such mDLs for official purposes, defined in the REAL ID Act as accessing Federal facilities, entering nuclear power plants, boarding Federally regulated commercial aircraft, and any other purposes that the Secretary shall determine. Any Federal agency that chooses to accept mDLs for official purposes must procure a reader in order to receive an individual's identity data.

This final rule does not apply to:

- States that do not seek a waiver for mDLs;
- Non-State issuers of other forms of digital identification; or
- Federal agencies that elect not to accept mDLs.

A State seeking a waiver for Federal acceptance of its mDLs for official purposes is required to file with TSA a complete application and supporting documents.[65] A State must demonstrate how its mDLs meet the requirements for a waiver set forth in §§ 37.10(a) and (b) when completing the application.

*E. Use Cases Affected by This Rule*

This final rule applies only to Federal acceptance of mDLs for official purposes, defined by the REAL ID regulations as accessing Federal facilities, entering nuclear power plants, and boarding Federally regulated commercial aircraft. Any other purpose is beyond the scope of this rulemaking. For example, a waiver issued under this rule does not apply to any of the following:

- mDL acceptance by Federal agencies for non-REAL ID official uses (*e.g.,* applying for Federal benefits);
- mDL acceptance by non-Federal agencies (*e.g.,* State agencies, businesses, private persons);
- Commercial transactions; or
- Physical driver's licenses or identification cards.

Nothing in this rule *requires* Federal agencies to accept mDLs, as each Federal agency retains the discretion to determine its identification policies. Additionally, nothing in this rule *requires* a State to seek a waiver or issue mDLs.

*F. Severability*

TSA notes that these changes impact multiple provisions that are not necessarily interrelated and can function independent of one another. As such, TSA believes that some of the provisions of each new part can function sensibly independent of other provisions. Therefore, in the event that any provisions in this rulemaking action as finalized are invalidated by a reviewing court, TSA intends remaining provisions to remain in effect to the fullest extent possible.

## IV. Discussion of Comments

TSA published the NPRM on August 30, 2023,[66] and the deadline for public comments was October 16, 2023. TSA received 31 comments,[67] including some comments that were submitted shortly after the comment period closed. TSA carefully considered every comment received as part of the official record, including those that were submitted late. Comments and TSA's responses are as summarized by topic below.

*A. Waiver Eligibility*

*Comments:* Several State driver's licensing agencies, an association, and some vendors expressed concerns that under §§ 37.7(b)(3) and 37.10(a)(1)(vii) of the NPRM, TSA would issue waivers to States that issued mDLs only to holders of REAL ID-compliant physical cards, but a State that issues mDLs to two groups of individuals—both holders of REAL ID-compliant AND non-compliant physical cards—would be ineligible for a waiver because of issuance to the latter group. Stated differently, a State's issuance of mDLs to holders of non-compliant physical cards alone would remove the State's eligibility to apply for a waiver.

Another commenter requested clarification regarding whether a State may still apply for and receive a waiver after enforcement of the REAL ID Act and regulations begins on May 7, 2025.

*TSA Response:* TSA agrees with commenters and is revising the final rule to clarify that a State will not be excluded from eligibility to apply for a waiver if a State issues mDLs to both REAL ID compliant and non-compliant physical cardholders. The intended purpose of TSA's requirement is for States to ensure that an individual's mDL matches the compliance status of the underlying physical card, and for States to issue an mDL in a manner that enables a verifying Federal agency to confirm the underlying physical card's REAL ID compliance status.

Consistent with that intent, and to address commenters' concerns, the final rule makes three changes to the NPRM. First, this final rule deletes § 37.7(b)(3), as proposed by the NPRM, which provided as a criterion of waiver eligibility that a State must issue mDLs only to individuals who have been issued REAL ID-compliant physical cards.

Second, the final rule deletes a similar requirement from § 37.10(a)(1)(vii), as proposed by the NPRM, which provided that States must issue an mDL only to a resident who has been issued a valid, unexpired, and REAL ID-compliant physical card that underlies the mDL. The final rule modifies this provision to require States to populate this data field to correspond to the REAL ID compliance status of the underlying physical driver's license or identification card that a State has issued to an mDL holder. Specifically, § 37.10(a)(1)(vii)(A) requires mDL data element ''DHS_compliance'' to be populated with ''F'' if the underlying card is REAL ID-compliant, or as required by the AAMVA Guidelines,[68] Section 3.2. In addition, § 37.10(a)(1)(vii)(B) requires mDL data element ''DHS_compliance'' to be populated ''N'' if the underlying card is not REAL ID-compliant.

Third, the final rule adds new § 37.8(c), which requires Federal agencies to confirm that the physical card underlying the mDL is REAL ID-compliant, as Federal agencies will only be permitted to accept mDLs if the underlying card is REAL ID-compliant. Federal agencies would make that determination by reviewing data element ''DHS_compliance'' and confirming that it has been marked ''F.'' These changes ensure—without compromising a State's waiver eligibility—that an individual's mDL matches the compliance status of the physical card, and that Federal agency will accept only those mDLs that are based on a REAL ID-compliant underlying physical card.

Separately, in response to the commenter's question regarding waiver applications after REAL ID enforcement begins on May 7, 2025, TSA confirms that a State indeed may apply for and receive a waiver after enforcement begins.

*B. Conditions on Federal Agencies Accepting mDLs*

*Comments:* An association requested clarification concerning requirements

[65] Section 37.9(a).

[66] *See* 88 FR 60056.

[67] The 31 total comments include one duplicate, one correction, and one confidential submission.

[68] The AAMVA Guidelines require, among other things, that if the 'EDL_credential' element is present, the 'DHS_compliance' element shall have a value of ''F.''

on Federal agencies that choose to accept mDLs. Specifically, the commenter noted that the preamble provided that one of the ''conditions for TSA acceptance'' is that TSA has determined the mDL issuing State is REAL ID-compliant. The commenter sought clarification on the timing of when this compliance determination is made, specifically, whether this is a one-time determination, whether it is made at the time when TSA is reviewing a State's application, or if the State's re-certification schedule is applicable.

*TSA Response:* First, TSA notes that this rule does not set conditions only for ''TSA Acceptance.'' Instead, the rule sets forth requirements for all Federal agencies who choose to accept mDLs for official purposes as defined in the REAL ID Act. Second, TSA clarifies that determination of a State's REAL ID compliance status is not a requirement for other Federal agencies to make. The only conditions on Federal agencies who accept mDLs are set forth in § 37.8, which requires the agency to: (1) confirm the State holds a valid waiver by reviewing the specified TSA website, (2) use an mDL reader to communicate with and validate an individual's mDL, (3) confirm that the underlying physical card is REAL ID-compliant, and (4) notify TSA within 72 hours of the discovery of specified security, privacy, or data integrity threats. A State's compliance status is an element of a State's eligibility to apply for a waiver, as set forth in § 37.7(b)(1), and TSA will make this determination when reviewing a State's application. However, TSA acknowledges that the preamble to the NPRM states that a Federal agency must make this compliance determination. TSA has revised the preamble to this final rule to reflect the intended requirements.

In response to comments, TSA also provides further clarification on the timing of its determination of a State's compliance status. TSA will make an initial determination of State compliance status at the time of application, but this is *not* a one-time determination. States have a continuing obligation, under 6 CFR 37.55(b), to maintain their compliance status by recertifying compliance every 3 years, an obligation which continues throughout the duration of the waiver. If recertification occurs after a State is issued a waiver and TSA determines the State is no longer in compliance, the waiver may be subject to review pursuant to § 37.9(e)(5).

*C. Waiver Application Criteria*

1. Personally Identifiable Information and Privacy

*Comments:* An association remarked that § 37.10(a)(1)(i) introduces additional requirements concerning individuals' Personally Identifiable Information (PII) that are not related to mDL issuance and exceed existing requirements in the regulations. The commenter advised that the rule should not expand REAL ID requirements that are unrelated to mDLs.

The association further noted that although privacy is an important concept, it applies mostly to the agreement between an issuing State and the mDL holder, and that the only applicability to verifying Federal agencies is ensuring that the agency receives only the information necessary for identity verification. The commenter therefore recommended updating § 37.10(a)(3) so that States are only required to provision mDLs to digital wallets in a manner that will release only the data requested by the verifier. Additional privacy requirements, the commenter submitted, while important to individuals and States, may not affect verifying agencies.

*TSA Response:* Sections 37.10(a)(1)(i) and (a)(3) of this rule extend to mDLs PII protections that are analogous to those in the existing regulations regarding physical cards. This rule is adding mirroring PII provisions because mDLs involve a new data set and additional elements that must be protected, which are not addressed in the current regulations. Section 37.10(a)(1)(i) requires encryption of PII, and § 37.10(a)(3) requires an explanation of the means used to protect PII during processing, storage, and destruction of mDL records and provisioning records. Nothing in this final rule modifies or imposes new requirements regarding physical cards. While TSA concurs that there is a privacy interest between individuals and States, verifying Federal agencies have an equally important privacy interest in trusted mDL transactions.

2. Provisioning

*Comments:* An association contended that although the intended goal of §§ 37.10(a)(1)(iii)–(vi) is the step of ''binding,'' which means ensuring that an mDL is provisioned to the correct mDL holder's device, binding has no value to verifying Federal agencies, other than copy protection, at the time of identity verification. The association questions, therefore, the need for these requirements.

*TSA Response:* ''Binding,'' a critical step in mDL provisioning, refers to the process where the issuing State binds, or pairs, the mDL data to a specific device through the generation of the device key and signing of the mobile security object. Binding is critically important to all stakeholders involved in an mDL transaction, including verifying Federal agencies, as they share a strong interest in a secure, trusted mDL ecosystem in which identity data is protected during mDL provisioning, provided only to the rightful holder of the data, bound to that holder's device, and resists cloning to other devices unless approved by the issuing State. Section 37.10(a)(1) sets forth requirements for provisioning, and the requirements specified in § 37.10(a)(1)(iii)-(vi) provide the requisite security and privacy protections to achieve secure binding. The TSA Waiver Guidance also sets forth recommendations for provisioning and binding. To clarify the relationship between provisioning and binding, the final rule adds a new definition to § 37.3 for ''provisioning.''

3. AAMVA mDL Implementation Guidelines

*Comments:* AAMVA noted that § 37.10(a)(4) refers to version 1.1 of the AAMVA Guidelines, conflicting with § 37.4, which incorporates by reference version 1.2 of this document.

*TSA Response:* TSA agrees that § 37.10(a)(4) of the NPRM inadvertently listed version 1.1, instead of version 1.2, of the AAMVA Guidelines. TSA notes that the NPRM correctly cited version 1.2 in all other instances [69] where it referenced the AAMVA Guidelines, and only made a typographical error to version ''1.1'' in a single instance, in § 37.10(a)(4). TSA did not receive any comments to the contrary. Accordingly, the final rule has made a technical correction in § 37.10(a)(4) to address this typographical error and correctly refer to version 1.2.

4. Resident Address Data Element

*Comments:* AAMVA submitted that § 37.10(a)(4)(i) of the NPRM characterizes the ''resident_address'' data element as ''optional,'' despite that the AAMVA Guidelines define this data element as mandatory.

*TSA Response:* TSA clarifies that the ''resident_address'' data element required in § 37.10(a)(4)(i) refers to the data element as defined in the ISO/IEC 18013–5:2021(E) standard namespace ''org.iso.18013.5.1,'' not any data

[69] *See* 88 FR 60056, 60062, 60068, 60071, 60085, & 60087 (Aug. 30, 2023).

elements defined in the AAMVA Guidelines. The use of the term ''optional'' in § 37.10(a)(4)(i) reflects ISO/IEC's designation of that data element as defined in ISO/IEC 18013–5:2021(E). For clarification, despite ISO/IEC's designation of ''resident_address'' as an ''optional'' data field in ISO/IEC 18013–5:2021(E), § 37.10(a)(4)(i) of this final rule mandates inclusion of that data field.

*D. TSA Waiver Application Guidance*

*Comments:* An association recommended that the TSA Waiver Guidance should include references to the corresponding sections of the rule. The association further recommended that the documents incorporated by reference in § 37.4 should be moved to the Guidance to facilitate efficient updates as new standards are published. A State noted that the Guidance was not available at the website specified in § 37.10(c).

*TSA Response:* TSA agrees that the Guidance would be more helpful if it references the applicable provisions in the final rule to which the Guidance applies. The Guidance has been revised to specifically include the corresponding regulatory provisions where possible. TSA appreciates the commenter's perspective and this opportunity to provide clarity to the public and stakeholders.

Regarding the recommendation to move the standards from § 37.4 to the Guidance to reflect updated or newly-published standards, TSA notes that the Guidance is non-binding and does not establish any legally enforceable requirements. All security measures, practices, and metrics set forth are simply illustrative, non-exclusive examples for States to consider as part of their overall strategy to address the requirements under § 37.10(a). Any legally enforceable requirements must be set forth in regulatory text. Moreover, as provided in § 37.10(c), TSA may update this Guidance as necessary to provide additional information or address evolving threats to security, privacy, or data integrity.

TSA also clarifies that the Guidance was available during the comment period at the public rulemaking docket at *www.regulations.gov,* and continues to be available. The website specified in § 37.10(c), and throughout the rule, was under development at the time of the NPRM but is now live.

*E. General Concerns About mDLs*

*Comments:* Some public interest organizations posited that public demand for mDLs is ''non-existent'' and ''conjectural.'' However, some States disagreed. One State commented that it has issued more than 200,000 mDLs to residents following a pilot in 2017 and more recent expansion in 2022 and 2023. Another State commented that in the 3 months since it began offering its mDL app, it has been downloaded more than 7,000 times. Other commenters questioned the claimed mDL benefits concerning security, privacy, consumer protection, contact-free hygiene, among others, with one commenter opining that any such benefits would be realized only by those with the financial and technical means to purchase mobile devices that meet the specifications in the proposed rule. Some commenters further noted that mDLs would increase the vulnerability of driver's licensing agency databases to cyberattacks.

However, other commenters believe mDLs provide potential security and privacy benefits. One industry vendor commented that the rule would strengthen mDL integrity and security, which the commenter believes is critical to mDL holders and verifying entities. The commenter specifically noted that unlike physical cards, which require an agency's verifying officer to have specialized knowledge of potentially ''hundreds'' of different card designs of 56 issuing jurisdictions, the electronic safeguards built into mDLs obviate the need for such knowledge. The commenter further opined that mDLs provide privacy protections by empowering the mDL holder to control precisely what information is shared and with whom.

*TSA Response:* TSA disagrees that public demand for mDLs is weak. As discussed in Part II.C.2., above, TSA understands that more than half of all 56 issuing jurisdictions are considering or issuing mDLs, and this number continues to increase. Indeed, TSA notes that some States submitted comments disagreeing about the purported lack of demand for mDLs.

Regarding potential benefits of mDLs, TSA continues to believe that mDLs provide potential benefits, including security, privacy, efficiency, and contact-free hygiene, as discussed further in the NPRM.[70] TSA has directly observed some of these benefits through its ongoing mDL testing at airport checkpoints (discussed in Part II.C.2, above). In addition, as discussed above, some commenters agreed with TSA's view that mDLs provide potential security and privacy benefits.

TSA disagrees that the rule effectively requires the purchase of smartphones that are costly or technologically complex, which commenters contend would limit potential mDL benefits only to those with financial and technical means. The potential benefits of mDLs can be realized using nearly any smartphone available today. The only technical requirements for such devices, as a result of this final rule, are a smartphone that employs Bluetooth Low Energy and has secure hardware capability to protect the device key associated with the mDL. These technologies are widely available on most smartphones.

With respect to concerns that mDLs introduce new cyber vulnerabilities, TSA continues to believe that the minimum security requirements set forth in this rule would minimize the potential for harm resulting from such threats. As discussed in Part III.C.4.iii above, cyber threats are diverse and evolving, and TSA intends to address them by updating its Waiver Application Guidance as necessary. Some commenters agreed that this rulemaking would improve mDL security and the ability to resist cyber threats. An advocacy group shared that some States and industry today are using non-standardized technological approaches with wide substantive variances in security methodologies, thereby making some mDLs susceptible to fraud and privacy intrusions. The commenter noted that the proposed rule would overcome those concerns by providing standardized approaches to protect security and privacy.

*F. Scope of Rulemaking and mDL Acceptance*

*Comments:* An association opined that mDLs could provide benefits to Federal agencies beyond the uses discussed in the proposed rule. Specifically, the association noted that the Departments of State and Transportation could accept mDLs to improve issuance of passports and commercial driver's licenses, respectively. The commenter also sought clarification on how mDL acceptance, and REAL ID broadly, will be operationalized at TSA, both today and when enforcement of the REAL ID Act begins.

One State recommended that the definition of mDLs in the proposed rule be expanded to include Enhanced Driver's Licenses and Enhanced Identification Cards (collectively ''Enhanced Driver's Licenses'' or ''EDLs'').

*TSA Response:* TSA reiterates that the final rule applies only to Federal acceptance of mDLs for official purposes, defined by the REAL ID Act regulations as accessing Federal facilities, entering nuclear power plants,

[70] *See* 88 FR at 60062.

and boarding Federally regulated commercial aircraft. Any other purpose is beyond the scope of this rulemaking.

TSA further notes that each Federal agency that chooses to accept mDLs for official purposes must build its infrastructure, train its workforce, and operationalize mDL acceptance. Each Federal agency has the discretion to determine its own policies concerning acceptable IDs for access to their facilities, and for communicating this information to the public. TSA advises that questions concerning individual Federal agency identification policies and operational details should be directed to the appropriate program offices of individual agencies.

Regarding EDLs, the definition of ''mDL'' does not require modification because EDLs comply with REAL ID standards (despite that they are not governed by the REAL ID Act).[71] For that reason, this rule makes clear that mDLs issued based on EDLs will be accepted by Federal agencies under the waiver process. Indeed, the AAMVA Guidelines (incorporated by reference; see § 37.4) similarly treat EDLs as synonymous with REAL ID-compliant driver's licenses, requiring that States encode EDL-based mDLs as REAL ID-compliant. To confirm that States properly encode an EDL as REAL ID-compliant, § 37.10(a)(1)(vii)(A) of this final rule requires States to populate the ''DHS_compliance'' data element with ''F,'' indicating REAL ID-compliant, as required by the AAMVA Guidelines (*see* Part IV.A., above). This ensures that a Federal officer verifying an EDL-based mDL will correctly identify the REAL ID compliance status of the underlying EDL. TSA appreciates the commenter's perspective and this opportunity to provide clarity to stakeholders.

*G. Privacy*

*Comments:* Several public interest organizations expressed concerns that this rulemaking would establish a national digital ID that Federal agencies could use in wide ranging circumstances and purposes. They suggested that this type of ID could lead to sharing of data between State driver's licensing agencies and Federal agencies, producing serious harms to privacy and security, particularly for immigrant communities. Immigrants, the commenters argue, could suffer because many States are issuing non-compliant cards to them, and this rule could influence States to share with Federal agencies information provided in immigrant applications, potentially resulting in deportation.

Other public interest organizations noted that the proposed rule would facilitate tracking and surveillance because the rule requires ''installation of a government app on a mobile device of a certain type.'' An organization further suggested that it be allowed to view source code for these apps in order to learn their true intent. Commenters recommended that the rule should not go forward without additional privacy safeguards, noting that standard ISO/IEC 18013–5:2021(E) is not sufficient.

*TSA Response:* In the REAL ID Act, Congress established minimum standards for the issuance of State-issued driver's licenses and identification cards acceptable for official Federal purposes. Neither the Act nor implementing regulations, 6 CFR part 37, contemplate the creation of a sole national identification card or Federal database of driver's license information. Under the statute, the official purposes for Federal agency acceptance of mDLs relate to identity verification, and Congress neither created nor authorized a national identification card. Each individual licensing jurisdiction continues to issue its own unique licenses, maintain its own records, and control access to those records and the circumstances under which access may be provided. In addition, States continue to have full discretion to issue driver's licenses that are non-REAL ID compliant, or to issue dual classes of compliant and non-compliant cards, which some States are doing. States also have full discretion to choose not to issue mDLs at all. The REAL ID Act does not prevent compliant States from issuing driver's licenses and identification cards where the identity of the applicant cannot be assured or for whom lawful presence is not determined. This rule does not intend to interfere with existing State laws that are designed to protect driver's licensing agency data from being shared and used to enforce Federal immigration laws.

Nothing in this final rule requires a Federal agency to accept mDLs. Agencies that choose to do so will receive mDL user information only with the individual's consent, and individuals will control access and use of the mDL in their mobile devices. For example, in TSA mDL testing at airport security checkpoints, passengers present their mDLs to TSA, which uses an mDL reader to establish a secure communications channel with the passenger's mobile device to receive the passenger's mDL data. TSA's mDL readers are programmed to request access only to the relevant data needed for identity verification, which TSA cannot receive unless the passenger provides consent. Upon consent, the passenger's mobile device releases the mDL data to TSA, which automatically validates the authenticity of the information by confirming the digital signature of the issuing State driver's licensing agency (*see* discussion in Part II.C.1., above). TSA emphasizes that it receives passenger data *only* from the passenger's mobile device, and not from the issuing State driver's licensing agency. Although TSA does communicate with a driver's licensing agency, this is solely to receive the agency's private key for data validation purposes—not identity verification. TSA further emphasizes that it never communicates with driver's licensing agencies information regarding the locations or instances of passengers' mDL use. The passenger's PII is used in the same manner that biographic information from physical IDs is used. The PII that is collected from the mDL, along with the live photo taken by TSA, is overwritten when the next passenger scan occurs or when TSA switches off its ID scanner, whichever occurs first.

An mDL offers additional privacy and security benefits over physical IDs. An mDL transmits only the necessary information requested by TSA, rather than sharing all data elements found on a physical ID, and requires user's consent. All mDL data is encrypted at rest, during transfer, and during all transactions through secure channels. Nothing in this rule mandates that individuals must install a ''government'' app or any type of app at all. Nothing in this rule requires individuals to use a mobile device of any type, or to choose to receive an mDL at all. TSA appreciates the opportunity to provide a detailed explanation of the privacy protections conferred by mDLs. Additional information can be found in DHS's Privacy Impact Assessment[72] concerning privacy risks in the use of digital IDs in the identity verification process at TSA airport security checkpoints.

*H. Waiver Validity Period and Renewals*

*Comments:* An industry vendor sought clarification on whether a waiver is valid until revoked or for a defined period. An association urged that the

[71] EDLs are governed by the Western Hemisphere Travel Initiative. As explained in the 2008 Final Rule, DHS worked closely with States to ensure that EDLs would comply with REAL ID standards. 73 FR 5272, 5276 (Jan. 29, 2008). Some States mark EDLs as REAL ID compliant on the front of the card.

[72] *See* DHS, Privacy Impact Assessment for the Travel Document Checker Automation—Digital Identity Technology Pilots, *www.dhs.gov/sites/default/files/2022-01/privacy-pia-tsa051-digitalidentitytechnologypilots-january2022_0.pdf* (last visited July 17, 2024).

validity period of a waiver should be long enough such that States are not frequently submitting applications for renewals and awaiting determinations, and that the period should cover both waiver applications and State re-certifications. The association further submitted that TSA should consider a grace period to allow a waiver to remain valid for some period after the Phase 2 rule is effective. A State sought clarification of requirements for renewing a waiver if the subsequent Phase 2 rulemaking does not commence within 3 years of publication of this final rule in order to assess the resources required to prepare the renewal application. A vendor sought clarification regarding whether a new audit report is required for renewal applications if a State uses the same issuance vendors for both the initial and renewal applications.

*TSA Response:* Under § 37.9(e)(1), a waiver will be valid for three years from date of issuance unless suspended or terminated under §§ 37.9(e)(4) or (5). As discussed in Part III.C.6., above, this rule specifies a three-year waiver validity period because it aligns with the frequency for States to re-certify compliance with § 37.55(b). TSA believes this period is sufficient given the expedient timeframes specified in § 37.9(b) for TSA to respond to applications. As set forth therein, TSA will provide: an initial decision on applications within 60–90 calendar days, replies to States responses to notices of insufficiency within 30 calendar days, and determinations on petitions for reconsideration within 60 calendar days. These timeframes resist the commenter's concern about potentially being trapped in an enduring cycle of submitting renewal applications and waiting extensive period for TSA responses. Moreover, the three-year waiver validity period equals the three-year frequency of States to recertify compliance required by § 37.55(b), as the commenter notes.

Regarding the timing of the Phase 2 rulemaking and the need for a grace period, § 37.9(e)(6) specifies requirements for States that seek to renew waivers beyond the validity period. Renewal provides a mechanism for waivers to persist independent of the timing of future rulemakings, which obviates the need for a grace period.

With respect to audit reports for renewal applications, TSA confirms that States must submit an audit report for renewals, regardless of a State's mDL issuance vendors or system changes. Regarding the resources required for renewal applications, TSA assumes such audit costs for subsequent waiver applications will remain the same as the audit for the initial application, but TSA does estimate a 25 percent to 70 percent reduction in the renewal application cost because the State would have gained experience and collected evidence from the previously approved waiver application.[73] The processes to renew a waiver are identical to those set forth in § 37.9 for initial applications.

*I. Vendor and Technology ''Lock-in'' Effects*

*Comments:* Some public interest organizations commented that the NPRM would promote a ''lock-in'' effect, in which certain technologies and vendors would gain a durable competitive advantage that would be difficult for competitors to overcome. In particular, the commenters expressed concern that markets for digital wallets and mDL readers are likely to be harmed because of the rule's reliance on standards such as ISO/IEC 18013–5:2021(E), which the commenters believe create security, privacy, and interoperability risks. According to the commenters, digital wallets and other necessary mDL technology should be based on open standards.

*TSA Response:* TSA is currently testing mDLs issued by seven States who are partnering with multiple providers of digital wallets. One provider, SpruceID, is based on an open-source toolkit for developing decentralized IDs.[74] Additional digital wallet providers are expected to enter the market in the near-term, and States are expected to partner with them and seek to test their mDLs with TSA. The rule provides States broad discretion to select technology vendors of their choice, and does not prescribe any specific type of technology. This absence of prescriptive requirements is intentional, as it accommodates innovation and organic demand from consumers to facilitate technological diversity.

The final rule resists technology lock-in by providing minimum standards for security, privacy, and interoperability, while remaining technology-agnostic. The ISO/IEC 18013–5:2021(E) standard enables the required interoperability for REAL ID use cases where mDL holders present their mDLs in person to an mDL reader. Adhering to this standard for interoperability does not harm the developers of digital wallets or readers because the standard does not prohibit other standards or technologies from working alongside the ISO/IEC 18013–5:2021(E) standard. Indeed, California is pursuing this approach with SpruceID. The California mDL digital wallet, built on the open-source SpruceID toolkit, supports both ISO/IEC 18013–5:2021(E) requirements and an alternative technology, known as TruAge®, which allows the mDL to be used in broader transactions, such as age-verified purchases.[75] TSA recognizes that in a broad sense, there may be a false ''lock-in'' effect of certain types of mDLs, namely, those that meet the waiver application criteria set forth in the rule. However, this is not a true lock-in in the traditional sense of economic path dependence, in which barriers prevent innovation and deployment of equal or potentially superior alternatives. The rule requires States to demonstrate that they issue mDLs that provide security, privacy, and interoperability necessary for Federal acceptance for official purposes, but also allows States and industry wide latitude to innovate as necessary to meet the regulatory requirements.

As structured, this rule does not create dependencies on specific vendors, systems, or technologies. Instead, the rule facilitates development of more secure, privacy enhancing, and interoperable mDLs using technology-agnostic solutions. Accordingly, this rule resists the risk of true technology lock-in that otherwise may have occurred if market participants select technologies, developed by first-movers, that lack the protections necessary for Federal acceptance for official purposes.

*J. Pseudonymous Validation and On-Device Biometric Matching*

*Comments:* An individual urged that it is critical to support ''pseudonymous validation'' under standard ETSI TR 119 476. In addition, the commenter argued that mDL transactions should support biometric matching on the mobile device itself to avoid sharing biometric data. The commenter claimed these recommendations are necessary to avoid becoming ''an autocratic state.''

*TSA Response:* ''Pseudonymous validation'' is the concept of using a pseudonym or alias to identify an

[73] States with an established mDL program will incur a 45-hour time burden to complete an mDL waiver reapplication, down from a 60-hour time burden for the initial mDL waiver application (25 percent reduction). States without an established program may experience a 70 percent reduction in the time to complete a waiver reapplication compared to the initial mDL waiver application (from 140 hours to 45 hours). *See* § 2.4.1 of the Regulatory Impact Analysis.

[74] *See generally* SpruceID, *https://spruceid.com/products/issuing-digital-ids* (last visited July 17, 2024).

[75] *See* State of California Department of Motor Vehicles, TruAge Age-Verified Purchasing, *https://www.dmv.ca.gov/portal/ca-dmv-wallet/truage/* (last visited July 17, 2024).

individual without revealing that person's true identity. Although this may provide valuable privacy protection in some uses, it also enables an individual to operate under a consistent—but false—identity. This is contrary to the REAL ID Act and regulations' purpose of improving the security of State-issued identity cards.

On-device biometric sharing is the subject of standards ISO/IEC 23220–5 and ISO/IEC 23220–6, which are currently in development. TSA is not aware of any currently published standards enabling the establishment of trusted on-device biometric matching in the mDL ecosystem, which makes it premature to require such functionality in the final rule.

*K. Access to Standards*

*Comments:* A public interest organization contended that the NPRM failed to provide adequate access to the 19 standards incorporated by reference in the proposed rule. Specifically, the commenter noted that under the NPRM, ''the only way'' for the public to gain access was to email a request to the address specified in the rule. The commenter noted that it sent multiple emails to this address, but never received a response. The commenter also noted that the NPRM directed individuals to visit ''DHS headquarters in Washington DC'' but did not provide a specific address.

Other public interest organizations asserted that NPRM failed to provide reasonable access to ISO/IEC 18013–5:2021(E) without a substantial fee. A commenter noted that the ANSI link providing free access to the standard was not helpful, and that attempts ''to even load the standards on a modern computer failed completely.'' Further, the commenter stated that ANSI required ''an unnecessarily onerous process,'' which required signing up for an account and completing an online license agreement form, and that access was on a view-only basis.

*TSA Response:* TSA regrets that the commenter's multiple emails seeking access were not answered. However, TSA notes that the NPRM specified multiple mechanisms for the public to access the standards, consistent with IBR requirements specified by the OFR.[76] All but one of the 19 standards incorporated by reference in § 37.4 are available to the public for free download, and the NPRM provided the website addresses to access each of these documents. In addition, the NPRM provided detailed information for the publisher of each of these standards, including most, if not all, of the following: publisher name, address, phone, email, and website. For the sole standard that is not publicly available for free, ISO/IEC 18013–5:2021(E), the NPRM facilitated free access via ANSI, a private organization with whom TSA has no affiliation. The NPRM specifically noted that ANSI's policy required individuals to complete an online license agreement form asking for only name, professional affiliation, and email address. The NPRM also stated that access would be available on a view-only basis, and provided publisher information for individuals who sought a greater level of access. TSA received many comments discussing the 19 standards, demonstrating that the NPRM provided sufficient notice regarding access to these standards.

Although the NPRM provided sufficient notice to access the standards, the final rule modifies access instructions in existing § 37.4 to clarify and provide additional means for access. Specifically, the final rule replaces DHS with TSA as a location where IBR material is available for inspection and provides additional points of contact at TSA. The final rule also specifies that certain IBR material is available in the Federal Docket Management System at *https://www.regulations.gov,* docket number TSA–2023–0002.

*L. Standards and Standards Development Generally*

*Comments:* Several commenters sought clarification on how TSA would update the final rule to reflect evolving industry standards and government guidelines. Commenters suggested that instead of incorporating by reference a specific version of a document, the rule should require compliance with the ''most recent version.'' Some commenters requested specificity regarding the process and timeframes given to States to conform to any updated standards.

Other commenters questioned the validity of the standards-development processes followed by ISO/IEC, AAMVA, and others. Commenters asserted that these bodies are secretive, unaccountable to the public, have onerous membership criteria, are influenced by foreign authoritarian governments, among other deficiencies.

Some commenters asserted that the documents incorporated by reference in § 37.4 of the proposed rule were insufficient because they provided only partial requirements to address security and operational issues. Commenters also criticized some of the references for their absence of protections to address: emerging threats from quantum computing, evolving risks from digital identification, outdated encryption algorithms, and digital wallet design, user experience, among other deficiencies.

*TSA Response:* Under applicable legal requirements, Federal agencies must seek approval from the OFR for a specific version, edition, or date of a publication that an agency seeks to IBR in a final rule.[77] Revisions or updates to a publication already IBR'd in a final rule require re-approval from the OFR, and rules therefore do not update ''dynamically'' to reflect future versions.[78] Therefore, the rule cannot exclude publication version or date information, or update dynamically to reflect future versions. States will be expected to comply with the standards as published in the final rule. TSA actively monitors evolving standards and guidelines, and may consider whether to IBR those publications (pending review of the final documents) through subsequent rulemaking.

Regarding criticisms of standards-development bodies and their deliberations generally, the standards development process for international technology standards, particularly those intended to be interoperable globally, is developed by membership-based bodies comprised of interested parties representing participants from international governmental entities, educational organizations, research groups, non-profit organizations, commercial entities, and the public at large. Each standards-development organization sets its own criteria for membership, fees, standards development processes, and publication structure.

With respect to the criticism that the chosen standards and guidelines provide insufficient protections and lack future-proofing to address unknown threats, TSA notes that due to the nature of innovation and evolving technology, and legal constraints of Federal rulemaking, it is not possible to develop ''future-proofed'' regulations. TSA acknowledged in the NPRM that this is a nascent market experiencing rapid innovation, and that many key standards and guidelines are currently being developed. Although imperfect, the chosen standards reflect industry

[76] *See* 1 CFR 51.5(a); Office of Federal Register, Incorporation by Reference Handbook (June 2023, rev'd Aug. 28, 2023), *http://www.archives.gov/federal-register/write/handbook/ibr/* (last visited July 17, 2024) [hereinafter ''IBR Handbook''].

[77] *See* 1 CFR 51.5(b) & 51.9; IBR Handbook, *http://www.archives.gov/federal-register/write/handbook/ibr/.*

[78] *See* IBR Handbook, *http://www.archives.gov/federal-register/write/handbook/ibr/.*

state-of-the-art ahead of publication of emerging standards that likely will support the subsequent Phase 2 rulemaking. TSA made a risk-based determination that the 19 standards provide the key security, privacy, and interoperability requirements necessary for trusted Federal acceptance, and are commensurate with existing REAL ID standards for physical cards. The two-phased rulemaking approach is intended to address the near-term need for established security, privacy, and interoperability requirements, while accommodating the medium-term evolution of technology and standardization.

With respect to comments regarding specific deficiencies in some of the chosen standards, TSA offers the following responses. TSA acknowledges that ISO/IEC 18013–5:2021(E) was developed broadly for international consumption and does not fully address the needs for REAL ID use cases in the U.S. The waiver application criteria set forth in § 37.10(a), therefore, adapt ISO/IEC 18013–5:2021(E) for REAL ID use cases by supplementing this standard with requirements from other references as set forth in this rule. For example, §§ 37.10(a)(1) and (a)(3) address the provisioning and privacy requirements not covered by ISO/IEC 18013–5:2021(E). Other issues relevant to mDL transactions that are not addressed in ISO/IEC 18013–5:2021(E), such as device user experience and digital wallet design are beyond the scope of this rule and intentionally omitted.

*M. TSA's Identity Verification Policies*

*Comments:* A public interest organization raised questions regarding TSA's identity verification policies at the screening checkpoint.

*TSA Response:* This rulemaking is focused on allowing Federal agencies to accept mDLs for Federal official purposes as defined by the REAL ID Act. Issues regarding TSA's identify verification processes unrelated to mDLs are beyond the scope of this rulemaking.:

*N. Paperwork Reduction Act*

*Comments:* A public interest organization argued that every mDL transaction with a Federal agency is a collection of information subject to the Paperwork Reduction Act (PRA), and that no exemptions apply. The organization further contended that because neither TSA nor any other Federal agency has sought approval from the Office of Management and Budget (OMB) for these collections, any use of mDLs violates the PRA. Without an approved information collection, the commenter noted that it is not able to determine the costs or purposes of this information collection.

*TSA Response:* TSA disagrees with the commenter's assertion that every mDL transaction with a Federal agency is a collection of information subject to the PRA because a request for identify verification is not the ''soliciting . . . of facts or opinions . . . calling for . . . answers to identical questions.'' 44 U.S.C. 3502(3) (defining ''collection of information''); *cf.* 5 CFR 1320.3(h)(1) (excepting from the definition information affirmations or certifications that ''entail no burden other than that necessary to identify the respondent''). This final rule establishes a process for States to apply to TSA for a temporary waiver that enables Federal agencies to accept mDLs issued by those States when REAL ID enforcement begins on May 7, 2025. This rule does not, however, require any mDL transactions with a Federal agency or set requirements for the use of mDL information. Therefore, this comment is beyond the scope of this rulemaking.

*O. Legal Authority*

*Comments:* A public interest organization questioned the legality of DHS's delegation of authority to TSA to administer the REAL ID program because the public was deprived of an opportunity to comment on it. The commenter further argued that it is improper for TSA, a transportation-focused agency, to regulate use of mDLs by other Federal agencies for non-transportation uses.

Other public interest organizations posited that neither the REAL ID Act, nor subsequent amendments in the REAL ID Modernization Act, authorize issuance of the waiver as set forth in the NPRM. The commenters argued that DHS is statutorily authorized only to prescribe standards, certify State compliance, and extend time to facilitate compliance, and the implementing regulations prevent DHS from waiving any mandatory minimum standards.

*TSA Response:* Generally, Federal agencies' delegations of duties and authority are exempt from notice-and-comment requirements of the Administrative Procedure Act because they are matters of ''agency management'' and ''rules of agency organization, procedure or practice.'' [79] Matters involving internal agency organization, procedure, practice, and delegations of duties and authority are directed primarily towards improving the efficiency and effectiveness of agency operations, and therefore are not required to be posted for public comment. DHS's delegation of authority to TSA to administer the REAL ID program falls within this exemption, obviating the need for public comment.

TSA further clarifies that the REAL ID Act, as amended, authorizes the Secretary to promulgate regulations to implement the requirements under the REAL ID Act.[80] And the REAL ID Modernization Act amended the definitions of ''driver's license'' and ''identification card'' to specifically include mDLs that have been issued in accordance with regulations prescribed by the Secretary of Homeland Security.[81] TSA is adopting the waiver process established in this final rule pursuant to its authority to implement the requirements of the REAL ID Act as amended, and the final rule is consistent with all statutory requirements.'' The waiver application criteria specify issuance-related security and privacy requirements that are commensurate with requirements for physical cards. The final rule further provides that these are temporary requirements that will be superseded by a subsequent rulemaking setting forth more comprehensive requirements after emerging industry standards are published over the next few years.

*P. Economic Impact Analysis*

1. Alternatives

*Comments:* Several commenters, including a State, associations, and an individual, commented on various aspects of the assessment regarding the costs and benefits of available regulatory alternatives.[82] Some commenters recommended that TSA should accept Alternatives 1, 3, or 4 compared to the proposed rule. The commenter recommending acceptance of Alternative 1 stated the proposed rule does not address the market failures associated with a lack of common standards, such as increased complexity of mDL use across States, and may result in larger costs in the long run when formal mDL standards are finalized. The commenter supporting Alternative 3 recommended that TSA promulgate comprehensive mDL regulations that enable States to develop and issue REAL ID-compliant mDLs, as well as a process for Federal agencies to accept them. The commenter recommending acceptance of Alternative 4 stated it would eliminate the time and expense required to

[79] 5 U.S.C. 553(a)(2), (b)(A).

[80] Sec. 205 of the REAL ID Act.

[81] Sec. 1001 of the REAL ID Modernization Act, 134 Stat. 2304.

[82] *See* NPRM, 88 FR at 60079–80.

prepare and submit a waiver application and audit report, and another commenter sought clarification on how the scope of Alternative 4 differs from the proposed rule.

*TSA Response:* Regarding Alternative 1, TSA reiterates that this rule establishes requirements for States to issue mDLs that provide specified levels of security, privacy, and interoperability, which provides guidance and direction for State mDL issuance systems and reduces the complexity of mDL use across different jurisdictions. The mDL waiver application criteria would likely form the foundation of the more comprehensive requirements in the Phase 2 rulemaking. While States may have to incur cost to alter their mDL programs when more comprehensive requirements are issued, they are less likely to have to make significant changes and incur larger costs under this rule than under Alternative 1.

The final rule provides benefits to States and mDL users. The waiver process will allow the continued use of mDLs for official purposes when REAL ID enforcement begins on May 7, 2025. An mDL is more secure than a physical card, affords users privacy controls over the information transmitted to the relying party, and enables contact-free transactions. TSA does not believe the waiver process delays development of industry standards and Federal guidelines. Many such standards and guidelines are in development that would inform requirements in the Phase 2 rulemaking, and this final rule will facilitate, not impede, this process. For these reasons, TSA recommends the final rule over Alternative 1.

Regarding Alternative 3, TSA believes it is premature to promulgate comprehensive mDL regulations, given that several important industry standards and Federal guidelines are in development and would likely inform future requirements in the Phase 2 rulemaking, such as requirements related to mDL provisioning. Until the subsequent rulemaking is published, this final rule sets requirements based on current, available industry standards and guidelines that serve as a basis for, and bridge towards, more comprehensive requirements.

Alternative 4 would establish interim minimum requirements, similar to the waiver application criteria, for States to issue REAL ID compliant mDLs instead of a wavier process that enables Federal agencies to accept mDLs from States that meet the waiver criteria. TSA clarifies that Alternative 4 would largely convert the waiver application criteria to requirements for the issuance of REAL ID-compliant mDLs. If States could meet those requirements, under Alternative 4, States' mDLs would be deemed REAL ID compliant. In contrast, the final rule, through the waiver process, enables Federal agencies to accept for official purposes States' mDLs that meet the waiver criteria.

As discussed further in Part VI.A.4., below, TSA rejects this alternative because it effectively would codify standards that may become obsolete in the near future, thereby implying a degree of certainty that TSA believes is premature given emerging standards that are still in development. Although Alternative 4 eliminates the waiver process, TSA would continue to require a mechanism to validate that a State's mDLs complies with the established standards under Alternative 4. Thus, States would still need to provide information to TSA similar to the waiver process, including audit reports, to demonstrate compliance with the requirements. TSA believes the time and expense to provide such information under Alternative 4 would be similar to the waiver process under the final rule, and a waiver process provides more flexibility and allows States and TSA to gain insight and experience in the mDL environment.

2. Familiarization and Training Costs

*Comments:* A vendor recommended inclusion in Table 2 of the NPRM (Total Costs of the Rule to States) of States' Familiarization Cost in years 2–5 to reflect evolving standards, and a similar inclusion in Table 3 (Total Cost of the Rule to DHS) for DHS, but did not provide any cost estimates.[83] The vendor further recommended inclusion of States' training or continuing education costs in Table 2, which the vendor believes should be similar to DHS's training costs set forth in Table 3 ($5 million over 10 years). The commenter also requested clarification of the definition of training costs in Table 3, and whether it includes State training related to certificate systems and record maintenance.

An association posited that the economic analysis did not address TSA's costs, training requirements, and process changes to adapt to an mDL system.

*TSA Response:* TSA does not believe a State's familiarization or training cost estimates require modification. The familiarization cost estimate represents the cost and time burden for States to review the final rule. All State driver's licensing agencies would incur this cost in the first year after the publication of the rule. Although familiarization costs do not include time spent reviewing new standards, the NPRM does discuss, qualitatively, potential State costs to monitor and study mDL technology as it evolves including standards development and other relevant factors. TSA did not receive any cost estimates related to reviewing new standards.

The training costs in Table 3 relate to costs TSA would incur to train Transportation Security Officers (TSOs) to verify mDLs for identification purposes at airport security checkpoints. As such, States would not incur similar costs of roughly $5 million for such training. TSA is unclear as to the type of or specific training or continuing education the commenter refers and what may be needed in the future. However, for clarification, any such training and certifications have been added to the qualitative discussion of potential additional State costs (section 3.1.5 of the RIA).

TSA believes the costs related to training and process changes to adapt to an mDL system are accounted for and quantified where available. TSA quantifies the costs for TSOs to undertake training to verify mDLs for identification purposes at the security checkpoint, and for additional clarity, TSA has also added the cost to TSA to provide such training for TSOs. TSA also quantifies the costs related to the equipment that must be acquired to integrate the use of mDLs for identity verification in section 2.6 of the RIA. In addition, TSA added a qualitative discussion in the economic analysis (section 3.2.5) regarding costs TSA may incur related to process changes to adapt to an mDL system, such as changes to standard operating procedures and informational campaigns.

3. Estimated Time To Complete Waiver Applications; Estimated Costs for mDL Readers

*Comments:* An industry vendor recommended increasing the estimated time to complete waiver applications from 20 hours, as set forth in the NPRM, to 80 hours, and increasing the estimated cost for mDL readers by 35 percent, for both DHS and other Relying Parties.

*TSA Response:* TSA clarifies that the total time burden to complete a waiver application does not require modification because the estimate includes two components: (1) the time to complete the application and provide the information required under § 37.10(a), and (2) the time to gather all supporting documentation. TSA estimates completing the application

[83] *See* NPRM, 88 FR at 60074–76.

will require an average of 20 hours. Separately, the time burden estimate for gathering supporting documentation can range from 40 to 120 hours. TSA estimates States with existing mDL solutions (15 States) will require a total of 40 hours, while States considering mDLs but lacking mDL solutions (25 States) will require a total 120 hours for their initial waiver application submission. Thus, TSA estimates an average time burden of 110 hours to complete a waiver application, by adding the time to complete application materials (20 hours) and a weighted average time to gather supporting documentation (90 hours).[84] TSA also estimates States will incur an average time burden of 47.5 hours to complete a waiver resubmission, which is separate from the initial waiver application. *See* Section 2.4 of the Regulatory Impact Analysis (RIA) for additional details.

The cost of mDL readers is uncertain given evolving technology, and could vary up or down by 35 percent compared to TSA's current estimate. For example, within TSA specifically, TSA may integrate mDL readers in existing infrastructure, and TSA's costs are different than other relying parties (other Federal agencies that choose to accept mDLs for official purposes). For TSA mDL reader costs, TSA structures its estimate around internal data on actual procurement to quantify the cost of its mDL reader equipment, which also includes the cost of quarterly updates. Given the uncertainty of mDL reader costs, the final rule expands the range of possible reader costs for relying parties up and down by the comment suggested 35 percent of the TSA internal estimate which results in a range of about $260 to $540 with a midpoint of $400. While TSA does not change its primary estimate based on the estimated cost of a smartphone which is assumed to be used in combination with an application to serve as the mDL reader, it does recognize that such costs could range from $2.1 million to $4.4 million over 10 years.[85]

4. Cost-Benefit Analysis Generally

*Comments:* A public interest organization suggested that the cost-benefit analysis was hastily prepared and speculative.

*TSA Response:* TSA recognizes mDLs are an emerging market with uncertain costs and benefits. Nonetheless, TSA quantifies costs where it is able to with the best available data along with assumptions, proxies, and subject matter expert estimates, and TSA discusses potential additional costs qualitatively where TSA was unable to quantify the costs. TSA observes that the commenter did not offer specific recommendations to improve estimates of future costs, urging only that TSA should delay this rulemaking in light of the uncertainty. However, TSA believes there may be additional costs to stakeholders by delaying the rule. For example, mDL users would not be able to use mDLs for official purposes when full enforcement of REAL ID begins on May 7, 2025, which would delay or deny realization of the security, privacy, convenience, and contact-free hygiene benefits mDLs. States and industry would risk continued investments based on non-standardized processes that lack the security, privacy, and interoperability necessary for Federal acceptance for official purposes. Federal agencies would be delayed in realizing the security and privacy benefits conferred by mDLs compared to physical cards. In addition, through continued and increased mDL usage enabled by this final rule, TSA will gain insight and data that could better inform costs and benefits of the Phase 2 rulemaking.

*Q. Communicating Status of Waiver; System Disruptions*

*Comments:* Some commenters sought clarification on how the status of a waiver, specifically, suspensions and terminations, would be communicated to Federal agencies. Another commenter asked whether TSA would provide support mechanisms to communicate information about system disruptions that could impact mDL acceptance by Federal agencies.

*TSA Response:* As provided in §§ 37.9(b)(1), (e)(4)(iii), and (e)(5)(iii), TSA will publish, at *www.tsa.gov/real-id/mDL,* a list of States that hold valid waivers, including updates to note any final suspensions and terminations. As required by § 37.8, any Federal agency that elects to accept, for REAL ID official purposes, mDLs issued by States with a waiver must regularly review the specified website to confirm that a State holds a valid waiver. Suspensions and terminations will occur only for the violations specified in § 37.9(e), which TSA anticipates will be rare instances.

Regarding support mechanisms for system outages and other disruptions to mDL acceptance, each Federal agency that elects to accept mDLs for official purposes will be responsible for maintaining and supporting its mDL acceptance infrastructure. With respect to Federal agency access to the State mDL waiver list at *www.tsa.gov/real-id/mDL,* DHS and TSA IT systems already provide the necessary level of support to reduce the risk of widespread impacts from a temporary system outage. To further reduce risk of potential disruptions, TSA strongly encourages all mDL holders to carry their physical REAL ID cards in addition to their mDLs.

*R. Impact of Waiver on States Currently Testing mDLs With TSA*

*Comments:* A State that is currently testing mDLs with TSA sought clarification regarding the extent to which the waiver application criteria align with or differ from terms in the TSA-State testing agreement. The State sought this comparison to assess the amount of additional resources that the State may require to meet the waiver criteria.

*TSA Response:* Due to confidentiality provisions in TSA's contracts with States, TSA cannot publicly disclose the terms of such agreements or compare any differences with the waiver application criteria. However, to assist any States who have entered into such agreements with TSA, the agency encourages such States to contact TSA for further discussions. All States are subject to the requirements of this rule to obtain a waiver, and TSA intends to work with States that are testing mDLs with TSA to help ensure a smooth transition.

Regarding concerns about the time and resources necessary to successfully apply for a waiver, TSA estimates the 10-year cost to all States seeking a waiver is approximately $814 million. On a per-State basis, TSA estimates the average cost to complete a waiver application is approximately $40,000 (this includes the cost to complete the initial application and resubmission; *see* Table 2–8 in the RIA), and the average cost to comply with the application criteria $3.13 million in the initial year of a State's application (as discussed in Section 2.5 of the RIA).

*S. Notice for Changes to mDL Issuance Processes*

*Comments:* A State requested clarification regarding whether § 37.9(e)(2) requires States to provide 60 calendar days' advance notice before adding a new digital wallet provider.

*TSA Response:* In some circumstances, the addition of a new digital wallet provider may trigger the

[84] Weighted average time to gathering supporting documentation of 90 hours = ((15 States × 40 hours) + (25 States × 120 hours)) ÷ (15 States + 25 States).

[85] DHS multiplies the total number of mDL readers relying parties will procure over 10 years of 8,174.9 (Table 2–11: Relying Party mDL Reader Procurement in the Final Regulatory Impact Analysis) by a low mDL reader cost of $261.30 and high mDL reader cost of $542.70.

requirement under § 37.9(e)(2) to provide notice to TSA, depending on the extent of the changes required to the State's mDL issuance processes. This is especially true as more standards are developed in the area of mDL provisioning. Although States are responsible for assessing if any changes are significant and trigger the reporting requirements, TSA recognizes that it is not possible to define precise circumstances that require, or do not require, reporting. To assist States in determining whether changes in their specific circumstances warrant notification under § 37.9(e)(2), the final rule revises this section by adding the following sentence at the end: ''If a State is uncertain whether its particular changes require reporting, the State should contact TSA as directed at *www.tsa.gov/real-id/mDL.*'' TSA will collaborate with States to facilitate a determination of whether reporting is required. TSA appreciates this opportunity to provide clarity and reduce potential burdens on the entities directly regulated by this final rule.

*T. Clarification Regarding* ''*Days*''

*Comments:* A vendor requested clarification whether § 37.9(b) of the NPRM, under which TSA would provide decisions on waiver applications ''within 60 days'' and ''in no event longer than 90 days,'' means ''calendar days'' or ''business days.''

*TSA Response:* TSA clarifies that all references in this rulemaking to ''days'' means calendar days, not business days. The final rule revises the following NPRM provisions to implement this clarification: §§ 37.9(b), (c) & (e), and Appendix A, paragraph 6.3.

*U. Audit Requirements*

1. Questionable Necessity; Excessive Costs; Alternatives to Independent Auditor

*Comments:* An association recommended that the requirement for an independent, third-party audit was unnecessary and should be optional, not mandatory, and further suggested that an audit could be a substantiating element together with any self-certification that a State already presents to TSA under REAL ID requirements. Another commenter posited that an audit (and the waiver application process) is extraneous for States that have invested in mDLs and entered into testing agreements with TSA. Several States and an association expressed concerns about the costs of, and need for, an independent evaluator, noting the timing of budgetary requests and varying ability among States to afford the costs.

Some commenters recommended alternatives to independent auditors, including internal State-conducted audits, an audit conducted in conformity with the AAMVA Digital Trust Service (DTS), and processes in lieu of audits entirely. Another commenter recommended specifying detailed criteria, based on a set of established industry requirements and/or guidelines, along with relevant Root Program or industry policies, against which auditors would perform an assessment.

*TSA Response:* TSA clarifies that the term ''independent entity'' in § 37.10(b)(1) is intended to include entities that are employed or contracted by a State and independent of the State's driver's licensing agency. This final rule revises the proposed § 37.10(b)(1) to include this clarification.

TSA disagrees that an independent audit is unnecessary or of questionable importance. The purpose of the audit is to validate the accuracy of the information that a State provides to TSA in support of its application for a waiver. This validation ensures TSA has correct information to efficiently evaluate the sufficiency of a State's application. TSA believes an independent auditor that meets the requirements of § 37.10(b) can provide a defensible level of accuracy that cannot be achieved via other means, such as a self-certification.

TSA also disagrees that costs for independent audits will be excessive. As discussed in section 2.4.1 of the RIA, TSA estimates the audit cost range is between $5,000 and $60,000 on a per-State basis.

TSA disagrees that an audit conducted in conformity with requirements for a State to participate in AAMVA's DTS is an acceptable alternative to the audit requirements specified in this rule. The requirements imposed on States to participate in the AAMVA DTS are not identical to the requirements imposed in this rule. In particular, the AAMVA DTS requirements lack the specific cybersecurity risk control requirements addressed in § 37.10(a)(2) to establish public trust in States' mDL issuance systems. Finally, establishing specific audit criteria may be the subject of the upcoming Phase 2 rulemaking that will set forth detailed requirements that would enable States to issue mDLs that comply with the REAL ID Act.

2. Auditor Qualifications

*Comments:* One association recommended that the rule should allow an auditor with credentials that are more closely aligned to certification of systems management, ethics, and business practice. Alternatively, the commenter recommended that instead of requiring any specific license, the rule should only require that the name of the auditor be listed.

*TSA Response:* Regarding auditor qualifications, the requirement in § 37.10(b) that auditor must hold a Certified Public Accountant (CPA) license provides the necessary duty of care to report accurately and truthfully in the State in which the audit occurs, and TSA has not identified any suitable alternatives. TSA understands that auditors experienced in certification of systems management, ethics, and business practice are not an equivalent substitute to auditors who are CPAs, who possess additional qualifications as specified through their Certified Information Technology Professional credential. Similarly, merely listing the name of the auditor is not sufficient. The certification requirements in § 37.10(b) are common in auditing technical and information systems and provide proof of expertise.

*V. Appendix A to Subpart A: mDL Issuance Requirements*

1. Compliance With Full Reference or Specific Provisions

*Comments:* An association noted that some Appendix A provisions require full compliance with the cited references instead of specific parts of those references. For illustration, the association provided some non-exhaustive examples, including the CA/Browser Forum's *Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates* and *Network and Certificate System Security Requirements.* The association and another commenter requested specifying pertinent parts of the cited references that are applicable to compliance with requirements in this rule.

*TSA Response:* TSA agrees that the agency can provide paragraph or section numbers for some of the references cited in Appendix A to aid in understanding which parts of the references require compliance. TSA made the following technical corrections in the final rule:

- In Appendix A, paragraph 1.1, the CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates were qualified with the addition of the following identifiers: sections 2, 4.3, 4.9, 5, and 6. TSA also qualified ISO/IEC 18013–5:2021(E) with the addition of Annex B to provide guidance on requirements for a certificate policy and to clarify its

applicability. Compliance with ISO/IEC 18013–5:2021(E) Annex B is already required by § 37.10(a)(4), and inclusion here reduces burden by providing States greater specificity on certificate profiles to include in their mDL certificate policy. For NIST SP 800–57, Part 1, Rev. 5, the final rule adds qualifications for sections 3 and 5–8. For NIST SP 800–57, Part 3, Rev. 1, the final rule adds qualifications for sections 2–4 and 8–9.

• In Appendix A, paragraph 2.13, the final rule adds a qualification to section 4.2 of NIST SP 800–63B to provide further clarity on the specific requirements for AAL2 authenticators.

Regarding the CA/Browser Forum Network and Certificate System Security Requirements document, the final rule requires full compliance with this document because these requirements define a minimum set of security controls to establish publicly trusted certificate systems. This model has proven successful as the basis for securing the certificate systems used to secure the global internet.

2. Paragraph 2.2: Changing Authentication Keys and Passwords

*Comments:* An association commented that the terms ''privileged account'' and ''service account'' in this paragraph are undefined.

*TSA Response:* The terms ''privileged account'' and ''service account'' fall under the definition of ''trusted role'' in § 37.3. Accordingly, the final rule has revised proposed Appendix A, paragraph 2.2, to replace ''privileged account'' and ''service account'' with ''trusted role.'' TSA appreciates the feedback and the opportunity to provide this clarification.

3. Paragraphs 2.11–2.14: Multifactor Authentication

*Comments:* An association requested clarification as to whether the Multifactor Authentication (MFA) required by paragraphs 2.11–2.14 of Appendix A is PKI-based or crypto-based phishing-resistant MFA.

*TSA Response:* Appendix A, paragraphs 2.11–2.14, do not require PKI-based or crypto-based phishing resistant MFA. While phishing resistant cryptographic authenticators are a best practice to achieve the highest level of assurance for multi-factor authentication, for the purposes of demonstrating compliance with Appendix A requirements in paragraphs 2.11–2.14, MFA is achievable through a combination of technologies and methods covered by NIST SP 800–63B section 4.2. TSA believes this approach optimally balances mitigation of risks associated with access to certificate systems with costs of implementation.

4. Paragraph 3: Facility, Management, and Operational Controls

*Comments:* An industry vendor questioned whether the requirements in paragraph 3 of Appendix A mean that only U.S. citizens or lawful permanent residents are qualified to be authorized personnel who can access such systems. The commenter sought further clarification on whether the specified controls apply to ''as a service'' offerings on *www.GovCloud.com.*

*TSA Response:* TSA clarifies that Appendix A, paragraph 3.3, does not require that only U.S. citizens or lawful permanent residents can serve as personnel authorized to access state certificate systems. This provision requires States to specify the controls for employees, contractors, and delegated third parties, including any cloud service providers, necessary to prevent risks posed by foreign ownership, control, or influence. Regarding applicability to other cloud-based services, this provision also requires States to specify the security controls for all ''as-a-service'' providers, who are considered to be delegated third parties.

5. Paragraph 4: Personnel Security

a. Background Checks

*Comments:* A commenter sought clarification regarding whether this section requires a Federal fingerprint background check, State fingerprint background check, or other non-fingerprint based background check.

*TSA Response:* Appendix A, paragraph 4, does not specify any particular types of screening procedures. Instead, States are responsible for specifying screening procedures for employees, contractors, and delegated third parties in trusted roles. Title 6 CFR 37.45 specifies requirements for background checks and applies to covered employees, and this final rule does not alter those requirements.

b. Paragraph 4.1: Coordination Among States; Applicable Laws

*Comments:* A commenter sought clarification regarding how ''coordination among State entities'' applies to a policy to control security risks from insider threats. The commenter sought further clarification of the requirement in this paragraph that a State's policy must comply with ''all applicable laws, executive orders, directives, regulations, policies, standards, and guidelines.''

*TSA Response:* TSA clarifies that under Appendix A, paragraph 4.1, the term ''State entities'' refers to the agencies and offices that comprise the State's governmental operations. Coordination among State entities is intrastate for the purposes of State-run insider threat programs, not interstate coordination among different States. TSA believes that States are likely familiar, from decades of experience issuing physical driver's licenses under the requirements of § 37.45, as well as familiarity with other State-specific information and security laws, with the applicable legal requirements governing policies to address risks from insider threats, many of which are State-specific.

c. Timeframe To Disable System Access; Cybersecurity Incident Reporting

*Comments:* A State commented that Appendix A, paragraph 4.5, which requires a State to disable an employee's system access within 4 hours of the employee's termination, conflicts with Appendix A, paragraph 8.6, which requires States to provide notice to TSA within 72 hours after discovery of a cyber incident. The State recommends that time periods in both sections be amended to 24 hours, urging that disabling an employee's system access within 4 hours of termination is overly aggressive in situations where termination is amicable, such as retirements or transfers.

*TSA Response:* TSA maintains that a 4-hour requirement to disable system access, as set forth in Appendix A, paragraph 4.5, is essential in all termination situations. A coordinated and prompt surrender of logical and physical access for all departing employees is a critical component of a program to address insider threats. It is highly unlikely that a State would allow employees to have physical access to buildings or other infrastructure after termination. Disabling access to logical systems is as critical as requiring the surrender of keys and media providing physical access. When an employee is terminated for misconduct or other exigent circumstances that could compromise security, timely denial of system access is critical. Although amicable termination situations may present fewer security risks, States have sufficient time, in these circumstances, to pre-plan for the prompt disabling of system access before the employee's final day, similar to how States pre-plan the recovery of any physical keys or key cards for building access.

TSA further maintains that the proposed requirement for States to report cybersecurity incidents within 72

hours of discovery, as set forth in Appendix A, paragraph 8.6, is appropriate, and TSA therefore declines the recommendation to shorten the timeframe to 24 hours. While TSA has established in other contexts outside of this rulemaking a shorter timeframe for reporting by certain transportation owners or operators, that timeframe reflects the potential impact of cybersecurity incidents that could jeopardize the safety of individuals and property. In that context, early reporting is critical to ensure the ongoing availability of critical operational capabilities. Here, in contrast, the requirement for reports to be made within no more than 72 hours is appropriate given TSA's assessment of the operational impact of a cybersecurity incident on a State's mDL issuance infrastructure. In addition, the 72-hour requirement is consistent with the timeframe required for the rulemaking by CISA under the Cyber Incident Reporting for Critical Infrastructure Act of 2022.[86] The 72-hour reporting requirement supports the policy objective of regulatory harmonization, to the greatest extent possible.

In light of the comments, TSA also seeks to provide greater clarity regarding the types of incidents that must be reported, and the mechanics of reporting. Accordingly, this final rule makes several clarifying edits to Appendix A, paragraph 8.6. First, the final rule modifies the requirement for reporting ''a significant cyber incident or breach'' to ''any reportable cybersecurity incident, as defined in the TSA Cybersecurity Lexicon available at *www.tsa.gov*.'' This modification provides greater certainty and assurance regarding events that would trigger reporting. Second, the final rule modifies the requirement for reporting ''within 72 hours'' to ''within no more than 72 hours'' to encourage more timely reporting, as recommended by a commenter. Third, the final rule modifies the requirement that regulated entities ''provide written notice to TSA'' at the specified website, to requiring that ''[r]eports must be made as directed'' at that website, which clarifies that the website will include information concerning the format or content of the report. Finally, the final rule adds a provision that reports *may* contain SSI, and if so, would be subject to requirements of 49 CFR part 1520. TSA made similar edits to a requirement concerning Federal agency reporting, § 37.8(d), to add that reports must be made to TSA ''as directed'' at the specified website, and that reports may be subject to the requirements of 49 CFR part 1520 if they contain SSI. The SSI protection provisions were not proposed in the NPRM and were added in response to public comments, discussed below in Part IV.W., below.

d. Paragraph 4.7: Training for Personnel Performing Certificate Systems Duties

*Comments:* A commenter sought clarification on whether training item 2 in paragraph 4.7 of Appendix A, which concerns authentication and vetting, applies to States that issue certificates to other entities as described in the CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates. The commenter believes that this training is not applicable because in the mDL context, States do not issue document signer certificates to anyone beyond the State.

*TSA Response:* TSA appreciates the commenter's perspective, but notes that the training required under Appendix A, paragraph 4.7, is essential for State personnel in executing their duties regarding certificate systems. Although it is correct that States do not issue document signer certificates to other States, States issue document signer certificates to support their own mDLs, namely, to sign and establish public trust. In particular, training on authentication and vetting processes for employees, contractors, and other delegated third parties is a critical component of a well-developed insider threat program because each employee will be aware of the processes for employment and will be aided in identifying potential suspicious activity.

6. Paragraph 5.4: Hardware Security Modules (HSMs)

*Comments:* A commenter sought clarification as to whether the term ''dedicated hardware security modules'' in paragraph 5.4 of Appendix A requires HSMs to be dedicated to root certificate private keys and/or dedicated only to the issuing State. The commenter also asked whether this requirement excludes the use of an HSM that physically supports multiple States, but is partitioned into segments controlled by individual States.

*TSA Response:* Under Appendix A, paragraph 5.4, the term ''dedicated'' means that a State must use one HSM solely for IACA root private key functions and no other functions within the State's certificate system. TSA clarifies that Appendix A, paragraph 5.6, requires a State to use a separate HSM for document signer private key functions, but this HSM does not have to be ''dedicated'' solely to that function and may be used to support additional functions within the State's certificate system. TSA further clarifies that Appendix A, paragraphs 5.4 and 5.6, require ''sole control'' (as defined in § 37.3) of an HSM, which does not permit multiple States to share a single HSM, but States are permitted to use multi-tenant cloud-based HSMs, where each tenant-State is separated with logical and physical controls.

In an effort to further enable the availability of cloud HSMs, TSA is revising related NPRM Appendix A, paragraphs 5.13 and 5.14, which are related to Appendix A, paragraphs 5.4 and 5.6. Paragraphs 5.13 and 5.14 set forth requirements to generate IACA root certificate key pairs, and document signer key pairs, respectively. NPRM Appendix A, paragraph 5.13 proposed requiring two administrators (hereinafter ''multi-administrator split knowledge key generation'') and one witness to perform this function, and paragraph 5.14 proposed requiring at least two administrators. However, TSA understands that although States have strong competitive procurement options for local HSMs that support multi-administrator split knowledge key generation, suitable options for multi-tenant cloud HSMs may not exist for many States. States that are unable to procure such devices potentially would have been forced by the NPRM requirement to purchase local HSMs, which are not only costlier than cloud HSMs, but potentially less secure for States that lack HSM management capabilities. TSA understands that generally, security provided by cloud HSM services exceeds the capabilities that most States can afford to provide for local HSMs. After carefully considering a number of factors, including potential security and privacy risks, TSA believes that proposed Appendix A, paragraphs 5.13 and 5.14, imposed unnecessarily restrictive requirements concerning the minimum personnel required to perform multi-administrator split knowledge key generation. Accordingly, the final rule declines to adopt those proposals, and revises the requirement in the proposed Appendix A, paragraph 5.13, to reduce the number of administrators required to generate IACA root key pairs from two to one. The final rule similarly revises the proposed Appendix A, paragraph 5.14, to allow for the generation of document signer key pairs using one administrator and one witness as an alternate to using two administrators with split knowledge key

[86] Public Law 117–103, Div. Y (2022) (as codified at 6 U.S.C. 681–681g).

generation. TSA believes this reduction in personnel maximizes States' competitive procurement options, reflects current industry state-of-the-art, reduces burdens on regulated stakeholders, and does not compromise security, privacy, or interoperability.

7. Certificate Policies and Practices

*Comments:* A vendor noted that standard ISO/IEC 18013–5:2021(E) defines profiles for online certificate status protocol (OCSP) and certificate revocation list (CRL), but the standard does not mandate their implementation. The vendor recommended that the rule should specify which of the methods is required, including implementation requirements for certificate type. According to the vendor, it is important to immediately revoke a certificate when the issuing State's private key shows signs of compromise.

The vendor also recommended that the rule should require States to maintain a Certificate Practice Statement (CPS), in addition to the requirement in the NPRM to maintain a certificate policy. A CPS, the vendor explained, should follow a format specified by standard IETF RFC 3647 format, which covers certificate issuance, revocation, and renewal.

*TSA Response:* Although both OCSP and CRL are methods for validating the revocation status of a certificate, OCSP is out-of-scope for the IACA root and document signer certificates for mDLs, as that protocol is not part of a certificate validation process because mDLs must work in an offline environment. In addition, standard ISO/IEC 18013–5:2021(E) specifies that CRL is mandatory, not optional, and the standard fully defines the profiles and implementation requirements. Section 37.10(a)(2) of this rule requires States to explain the means used for revocation of their certificate systems in compliance with applicable requirements of Appendix A. Paragraphs 1, 5, and 8 of the Appendix set forth requirements applicable to certificate revocation. As discussed in Part IV.V.1, above, the final rule revised Appendix A, paragraph 1.1, as proposed in the NPRM, by adding specific provisions of the cited references with which States must comply. This addition provides greater clarity to States regarding requirements for a certificate policy.

Regarding the recommendation to require States to maintain a CPS following standard IETF RFC 3647,[87] paragraph 1.1 of Appendix A of this final rule already specifies that requirement. The provision requires a State to adopt certificate policies that meet the requirements in CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates section 2. In addition, the provision requires a State to develop a CPS based on requirements set forth in standard IETF RFC 3647.

8. mDL Lifecycle Management

*Comments:* A commenter recommended that the rule implement requirements on States to manage the lifecycle of issued mDLs. Examples of such lifecycle management practices include validity periods, refresh periods, push-based updates, harmonized expiration dates of mDL and physical cards, and limitations on the numbers of devices to which a given mDL can be provisioned.

*TSA Response:* Because mDL issuance and Federal agency experience are still in their infancies, together with an absence of standardized mechanisms to implement certain lifecycle management tasks and minimal data to support specific requirements, TSA believes it is premature to prescribe requirements that the commenter recommends. Imposing such requirements now, while technologies are unsettled and evolving, risks upsetting this rule's equilibrium between security and privacy on the one hand, and innovation on the other. TSA also notes that mDL lifecycle management is addressed in the AAMVA mDL Implementation Guidelines.

*W. Protection of Sensitive Security Information in Waiver Applications*

*Comments:* A commenter sought clarification on procedures for protecting any SSI that may be included in waiver applications.

*TSA Response:* TSA has comprehensively re-evaluated the need to protect SSI that may be included in response to requirements throughout this rule. TSA believes that SSI protection is warranted not only for information included in waiver applications, but also in response to other requirements in this rule (§§ 37.9(b)(2), (c), (e)(2), (e)(4)(ii) & (e)(5)(ii), and Appendix A, paragraph 8.6). Accordingly, this final rule revises NPRM § 37.9 to add new paragraph (g), which provides that information provided in response to §§ 37.9(a), (b)(2), (c), (e)(2), (e)(4)(ii), and (e)(5)(ii), and Appendix A, paragraph 8.6, *may* contain SSI and therefore must be handled and protected in accordance with 49 CFR part 1520.

## V. Consultation With States and the Department of Transportation

Under section 205 of the REAL ID Act, issuance of REAL ID regulations must be done in consultation with the Secretary of Transportation and the States. During the development of this final rule, DHS and TSA consulted with the Department of Transportation and other Federal agencies with an interest in this rulemaking via regular meetings. DHS and TSA also consulted with State officials through meetings with their representatives to AAMVA.

## VI. Regulatory Analyses

*A. Economic Impact Analyses*

1. Regulatory Impact Analysis Summary

Changes to Federal regulations must undergo several economic analyses. First, E.O. 12866 (Regulatory Planning and Review),[88] as affirmed by E.O. 13563 (Improving Regulation and Regulatory Review),[89] and as amended by E.O. 14094 (Modernizing Regulatory Review),[90] directs Federal agencies to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (RFA)[91] requires agencies to consider the economic impact of regulatory changes on small entities. Third, the Trade Agreement Act of 1979[92] prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995[93] (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted for inflation) in any one year.

2. Assessments Required by E.O. 12866 and E.O. 13563

Executive Order 12866 (Regulatory Planning and Review), as affirmed by Executive Order 13563 (Improving Regulation and Regulatory Review) and

[87] Internet Engineering Task Force, Internet X.509 Public Key Infrastructure Certificate Policy and Certification Practices Framework, Nov. 2003, *www.rfc-editor.org/rfc/rfc3647.html* (last visited July 17, 2024).

[88] 58 FR 51735 (Oct. 4, 1993).

[89] 76 FR 3821 (Jan. 21, 2011).

[90] 88 FR 21879 (Apr. 11, 2023).

[91] Public Law 96–354, 94 Stat. 1164 (Sept. 19, 1980) (codified at 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)).

[92] Public Law 96–39, 93 Stat. 144 (July 26, 1979) (codified at 19 U.S.C. 2531–2533).

[93] Public Law 104–4, 109 Stat. 66 (Mar. 22, 1995) (codified at 2 U.S.C. 1181–1538).

amended by Executive Order 14094 (Modernizing Regulatory Review), directs 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.

The OMB has designated this rule a ''significant regulatory action'' as defined under section 3(f) of E.O. 12866, as amended by Executive Order 14094. Accordingly, OMB has reviewed this rule.

In conducting these analyses, TSA has made the following determinations:

(a) While TSA attempts to quantify costs where available, TSA primarily discusses the costs and benefits of this rulemaking in qualitative terms. At present, mDLs are part of an emerging and evolving industry with an elevated level of uncertainty surrounding costs and benefits. Nonetheless, TSA anticipates the final rule will not result in an effect on the economy of $200 million or more in any year of the analysis. The rulemaking will not adversely affect the economy, interfere with actions taken or planned by other agencies, or generally alter the budgetary impact of any entitlements.

(b) In accordance with the RFA, and pursuant to 5 U.S.C. 605(b), TSA certifies that the rule will not have a significant economic impact on a substantial number of small entities, including small governmental jurisdictions. The rule will only directly regulate the 50 States, the District of Columbia, and the five U.S. territories who voluntarily participate in the mDL waiver process, who under the RFA are not considered small entities.

(c) TSA has determined that the final rule imposes no significant barriers to international trade as defined by the Trade Agreement Act of 1979; and

(d) TSA has determined that the final rule does not impose an unfunded mandate on State, local, or tribal governments, such that a written statement will be required under the UMRA, as its annual effect on the economy does not exceed the $100 million threshold (adjusted for inflation) in any year of the analysis.

TSA has prepared an analysis of its estimated costs and benefits, summarized in the following paragraphs, and in the OMB Circular A–4 Accounting Statement. When estimating the cost of a rulemaking, agencies typically estimate future expected costs imposed by a regulation over a period of analysis. For this final rule's period of analysis, TSA uses a 10-year period of analysis to estimate costs.

This final rule establishes a temporary waiver process that permits Federal agencies to accept mDLs, on an interim basis, for official purposes, as defined in the REAL ID Act, when full enforcement of the REAL ID Act and regulations begins on May 7, 2025. Federal agencies that opt to accept mDLs for official purposes must also procure an mDL reader in order to validate the identity of the mDL holder. As part of the application process for the mDL waiver, States are required to submit to TSA an application, including supporting data, and other documentation necessary to establish that their mDLs meet specified criteria concerning security, privacy, and interoperability. When REAL ID Act and regulations enforcement begins on May 7, 2025, Federal agencies will be prohibited from accepting non-compliant driver's licenses and identification cards, including both physical cards and mDLs, for official purposes.

In the following paragraph TSA summarizes the estimated costs of the rule on the affected parties: States, TSA, mDL users, and relying parties (Federal agencies that voluntarily choose to accept mDLs for official purposes). TSA has also identified other non-quantified impacts to affected parties. As Table 2 displays, TSA estimates the 10-year total cost of the rule to be $829.8 million undiscounted, $698.1 million discounted at 3 percent, and $563.9 million discounted at 7 percent. The total cost to States comprises approximately 98 percent of the total quantified costs of the rule.

TABLE 2—TOTAL COST OF THE RULE BY ENTITY

[$ Thousands]

| Year | States cost | TSA cost | Relying party cost | Total rule cost | | |
|---|---|---|---|---|---|---|
| | a | b | c | d = a + b + c | | |
| | | | | Undiscounted | Discounted at 3% | Discounted at 7% |
| 1 | $42,876 | $1,595 | $79 | $44,551 | $43,253 | $41,636 |
| 2 | 62,791 | 1,715 | 919 | 65,424 | 61,669 | 57,144 |
| 3 | 71,352 | 1,209 | 537 | 73,098 | 66,895 | 59,670 |
| 4 | 83,182 | 1,102 | 381 | 84,665 | 75,224 | 64,591 |
| 5 | 94,460 | 864 | 375 | 95,699 | 82,551 | 68,232 |
| 6 | 91,467 | 695 | 1,160 | 93,323 | 78,156 | 62,185 |
| 7 | 91,881 | 727 | 742 | 93,351 | 75,903 | 58,134 |
| 8 | 91,743 | 730 | 558 | 93,031 | 73,440 | 54,145 |
| 9 | 91,467 | 719 | 531 | 92,717 | 71,060 | 50,432 |
| 10 | 91,881 | 774 | 1,289 | 93,944 | 69,903 | 47,757 |
| Total | 813,102 | 10,128 | 6,573 | 829,803 | 698,054 | 563,925 |
| Annualized | | | | | 81,833 | 80,290 |

**Note:** Totals may not add due to rounding.

States incur costs to familiarize themselves with the requirements of the rule, purchase access to an industry standard, submit their mDL waiver application, submit an mDL waiver reapplication, and comply with waiver application criteria requirements. As displayed in Table 3, the 10-year cost to States is $813.1 million undiscounted,

$683.7 million discounted at 3 percent, and $552.0 million discounted at 7 percent.

TABLE 3—TOTAL COST OF THE RULE TO STATES
[$ Thousands]

| Year | Familiarization cost | Standards cost | Waiver application cost | Reapplication cost | Escalated review cost | Infrastructure security cost | Total cost to states | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | g = a + b + c + d + e + f | | |
| | a | b | c | d | e | f | Undiscounted | Discounted at 3% | Discounted at 7% |
| 1 | $63.3 | $1.9 | $592.1 | $0 | $7.2 | $42,212 | $42,876 | $41,628 | $40,071 |
| 2 | 0 | 1.3 | 394.7 | 0 | 12.0 | 62,383 | 62,791 | 59,186 | 54,844 |
| 3 | 0 | 0.6 | 197.4 | 0 | 14.4 | 71,140 | 71,352 | 65,297 | 58,244 |
| 4 | 0 | 0.6 | 197.4 | 413.9 | 16.8 | 82,553 | 83,182 | 73,906 | 63,459 |
| 5 | 0 | 0.6 | 197.4 | 275.9 | 19.2 | 93,967 | 94,460 | 81,482 | 67,349 |
| 6 | 0 | 0 | 0 | 138.0 | 19.2 | 91,310 | 91,467 | 76,603 | 60,949 |
| 7 | 0 | 0 | 0 | 551.8 | 19.2 | 91,310 | 91,881 | 74,708 | 57,219 |
| 8 | 0 | 0 | 0 | 413.9 | 19.2 | 91,310 | 91,743 | 72,423 | 53,395 |
| 9 | 0 | 0 | 0 | 138.0 | 19.2 | 91,310 | 91,467 | 70,102 | 49,752 |
| 10 | 0 | 0 | 0 | 551.8 | 19.2 | 91,310 | 91,881 | 68,368 | 46,708 |
| Total | 63.3 | 5.0 | 1,578.9 | 2,483.2 | 165.2 | 808,807 | 813,102 | 683,704 | 551,991 |
| Annualized | | | | | | | | 80,151 | 78,591 |

**Note:** Totals may not add due to rounding.

TSA incurs costs associated with reviewing mDL waiver applications and mDL waiver renewals, purchasing access to industry standards, procuring mDL readers, and mDL training. As displayed in Table 4, the 10-year cost to TSA is $0.131 million undiscounted, $8.87 million discounted at 3 percent, and $7.56 million discounted at 7 percent.

TABLE 4—TOTAL COST OF THE RULE TO TSA ($ THOUSANDS)

| Year | Standards cost | Application review cost | Reapplication review cost | mDL reader cost | mDL training cost | Total cost to TSA | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | | f = a + b + c + d + e | | |
| | a | b | c | d | e | Undiscounted | Discounted at 3% | Discounted at 7% |
| 1 | $0.4 | $74.3 | $0 | $1,418.8 | $101.5 | $1,595.0 | $1,548.5 | $1,490.6 |
| 2 | 0 | 49.5 | 0 | 699.8 | 965.4 | 1,714.7 | 1,616.3 | 1,497.7 |
| 3 | 0 | 24.8 | 0 | 547.9 | 636.2 | 1,208.9 | 1,106.4 | 986.9 |
| 4 | 0 | 24.8 | 39.9 | 440.6 | 596.4 | 1,101.8 | 978.9 | 840.5 |
| 5 | 0 | 24.8 | 26.6 | 240.6 | 571.7 | 863.7 | 745.0 | 615.8 |
| 6 | 0 | 0.0 | 13.3 | 199.4 | 482.0 | 694.7 | 581.8 | 462.9 |
| 7 | 0 | 0.0 | 53.2 | 200.9 | 473.3 | 727.5 | 591.5 | 453.0 |
| 8 | 0 | 0.0 | 39.9 | 202.3 | 487.4 | 729.7 | 576.0 | 424.7 |
| 9 | 0 | 0.0 | 13.3 | 203.8 | 501.4 | 718.5 | 550.7 | 390.8 |
| 10 | 0 | 0.0 | 53.2 | 205.2 | 515.5 | 773.9 | 575.9 | 393.4 |
| Total | 0.4 | 198.2 | 239.6 | 4,359.4 | 5,330.8 | 10,128.4 | 8,870.9 | 7,556.4 |
| Annualized | | | | | | | 1,039.9 | 1,075.9 |

**Note:** Totals may not add due to rounding.

Relying parties represent Federal agencies that elect to accept mDLs for official purposes. Per the final rule, relying parties are required to use an mDL reader to retrieve and validate mDL data. As a result, relying parties will incur costs to procure mDL readers should they voluntarily choose to accept mDLs for official purposes. TSA is also considered a relying party, but due to the particular impact to TSA related to the requirement for REAL ID related to boarding Federally regulated commercial aircraft, those impacts are discussed separately. As displayed in Table 5, the 10-year cost to relying parties is $6.58 million undiscounted, $5.48 million discounted at 3 percent, and $4.38 million discounted at 7 percent.

TABLE 5—TOTAL COST OF THE RULE TO RELYING PARTIES ($ THOUSANDS)

| 79Year | mDL reader cost | Total cost to relying parties | | |
|---|---|---|---|---|
| | | b = a | | |
| | a | Undiscounted | Discounted at 3% | Discounted at 7% |
| 1 | $79.3 | $79.3 | $76.9 | $74.1 |
| 2 | 918.8 | 918.8 | 866.0 | 802.5 |

TABLE 5—TOTAL COST OF THE RULE TO RELYING PARTIES ($ THOUSANDS)—Continued

| 79Year | mDL reader cost | Total cost to relying parties | | |
|---|---|---|---|---|
| | | b = a | | |
| | a | Undiscounted | Discounted at 3% | Discounted at 7% |
| 3 | 537.4 | 537.4 | 491.8 | 438.7 |
| 4 | 381.3 | 381.3 | 338.8 | 290.9 |
| 5 | 375.0 | 375.0 | 323.5 | 267.4 |
| 6 | 1,160.4 | 1,160.4 | 971.9 | 773.3 |
| 7 | 741.8 | 741.8 | 603.1 | 461.9 |
| 8 | 558.3 | 558.3 | 440.7 | 324.9 |
| 9 | 531.2 | 531.2 | 407.1 | 288.9 |
| 10 | 1,289.1 | 1,289.1 | 959.2 | 655.3 |
| Total | 6,572.6 | 6,572.6 | 5,479.1 | 4,377.9 |
| Annualized | ..... | ..... | 642.3 | 623.3 |

**Note:** Totals may not add due to rounding.

TSA has also identified other non-quantified impacts to the affected entities. States may incur costs to: monitor and study mDL technology as it evolves; resolve the underlying issues that could lead to a suspension or termination of an mDL waiver; report serious threats to security, privacy, or data integrity; report material changes to mDL issuance processes; remove conflicts of interest with independent auditor; and request reconsideration of a denied mDL waiver application. TSA may incur costs to: investigate circumstances that could lead to suspension or termination of a State's mDL waiver; provide notice to States, relying parties, and the public related to mDL waiver suspensions or terminations; develop an information technology (IT) solution that maintains an up-to-date list of States with valid mDL waivers; develop materials related to the process changes to adapt to mDL systems; and resolve a request for reconsideration of a denied mDL waiver application. mDL users may incur costs with additional application requirements to obtain an mDL. Relying parties may incur costs to resolve any security or privacy issue with the mDL reader; report serious threats to security, privacy, or data integrity; verifying the list of States with valid mDL waivers; train personnel to verify mDLs; and update the public on identification policies.

TSA believes that States implementing an mDL, absent the rulemaking, would still comply with the AAMVA Guidelines. Many of the requirements of the waiver application criteria are already contained within the AAMVA Guidelines. This includes waiver application criteria concerning: data encryption; authentication; device identification keys; user identity verification; applicant presentation; REAL ID compliant physical card; data record; records retention; privacy; and interoperability. Only the waiver application criteria related to escalated review and infrastructure security/issuance are not contained with the AAMVA Guidelines. Operating under the assumption that States interested in mDLs would comply with the AAMVA Guidelines, TSA assumes the application criteria that overlap with the AAMVA Guidelines would otherwise be incurred and thus not included as a cost of the rule.

This final rule establishes waiver application criteria that serves as interim requirements regarding security, privacy, and interoperability for those States choosing to issue mDLs that can be accepted for official purposes. The waiver application criteria may help guide States in their development of mDL technologies which will provide a shared standard that could potentially improve efficiency while also promoting higher security, privacy, and interoperability safeguards.

The application criteria set requirements establishing security and privacy protections to safeguard an mDL holder's identity data. They also set interoperability requirements to ensure secure transactions with Federal agencies. States, via their mDL waiver application, must establish that their mDLs meet the application criteria thus helping to ensure adequate security and privacy protections are in place. Absent the rule, individual States may choose insufficient security and privacy safeguards for mDL technologies that fail to meet the intended security purposes of REAL ID and the privacy needs of users.

An mDL may provide additional security benefits by offering a more secure verification of an individual's identity and authentication of an individual's credential compared to physical cards. In general, mDLs use a cryptographic protocol that ensures the mDL was obtained through a trusted authority, such as a State's Department of Motor Vehicles.[94] This same protocol may prevent the alteration of mDLs and reduce the threat of counterfeit credentials.[95] An mDL also offers increased protection of personal identifiers by preventing over-collection of information. An mDL may enable the ability to share only those attributes necessary to validate the user identity with the relying party.[96] When using a physical card, the user has no ability to limit the information that is shared, regardless of the amount of information required for verification.

The waiver application criteria can help guide State development and investment in mDLs. The waiver application criteria will foster a level of standardization that would potentially reduce complexity by limiting individual State nuances while also ensuring interoperability across States and with the Federal Government. This increased interoperability reduces implementation costs by limiting the need for different protocols or

[94] Global News Wire, *Secure Technology Alliance's Mobile Driver's License Workshop Showcases mDLs Role in the Future of Identification,* Dec. 14, 2021, *https://www.globenewswire.com/en/news-release/2021/12/14/2351757/22743/en/Secure-Technology-Alliance-s-Mobile-Driver-s-License-Workshop-Showcases-mDLs-Role-in-The-Future-of-Identification.html* (last visited July 17, 2024).

[95] *Id.*

[96] Biometric Update, *Mobile ID can bring both convenience and citizen privacy,* July 15, 2021, *https://www.biometricupdate.com/202107/mobile-id-can-bring-both-convenience-and-citizen-privacy* (last visited July 17, 2024).

mechanisms to accept mDLs from individual States.

Identification of waiver application criteria that can be used across States will result in efficiency gains through multiple States pursuing similar objectives, goals, and solutions. Establishing application criteria early in the technology development process has the potential to align development activities across disparate efforts. Early guidance might also reduce re-work or modifications required in future regulations thus saving time and resources redesigning systems and functionality to adhere to subsequent Federal guidelines.

Furthermore, the waiver application criteria may potentially encourage investment in mDLs and the pooling of resources to develop mDL technology capabilities across States and address common concerns or issues. Such collaboration, or unity of effort, can help spread research and development risk and reduce inefficiencies that may arise from States working independently. Greater clarity over mDL regulations, with the rule part of an incremental, multi-phased rulemaking approach, may spur new entrants (States and technology companies) into the mDL ecosystem.

The rule allows Federal agencies to continue to accept mDLs for official purposes when REAL ID enforcement begins. This will avoid the sudden halting of mDL acceptance when REAL ID enforcement begins which will reverse trends in providing for a more customer-friendly screening experience. The experience and insight learned through the mDL waiver process could also be used to inform future standards and rulemaking.

3. OMB A-4 Statement

The OMB A-4 Accounting Statement presents annualized costs and qualitative benefits of the rule.

TABLE 6—OMB A–4 ACCOUNTING STATEMENT

[$ Millions, 2022 dollars]

| Category | Estimates | | | Units | | | Notes |
|---|---|---|---|---|---|---|---|
| | Primary estimate | Low estimate | High estimate | Year dollar | Discount rate % | Period covered | |
| Benefits: | | | | | | | |
| Annualized Monetized ($ millions/year). | N/A | N/A | N/A | N/A | 7 | N/A | Not quantified. |
| | N/A | N/A | N/A | N/A | 3 | N/A | |
| Annualized Quantified | N/A | N/A | N/A | N/A | 7 | N/A | Not quantified. |
| | N/A | N/A | N/A | N/A | 3 | N/A | |
| Qualitative | The rule will produce benefits by reducing uncertainty in the mDL technology environment by helping to foster a minimum level of security, privacy and interoperability, and reduce potential costs through the alignment of development activities across disparate efforts. | | | | | | |
| Costs: | | | | | | | |
| Annualized Monetized ($ millions/year). | $80.29 | N/A | N/A | 2022 | 7 | 10 years | NPRM Regulatory Impact Analysis (RIA). |
| | $81.83 | N/A | N/A | 2022 | 3 | 10 years | |
| Annualized Quantified | N/A | N/A | N/A | N/A | 7 | N/A | Not quantified. |
| | N/A | N/A | N/A | N/A | 3 | N/A | |
| Qualitative | States may incur incremental costs to: monitor and study mDL technology as it evolves; resolve the underlying issues that could lead to a suspension or termination of an mDL waiver; report serious threats to security, privacy, or data integrity; report material changes to mDL issuance processes; remove conflicts of interest with an independent auditor; and request reconsideration of a denied mDL waiver application. TSA may incur costs to: investigate circumstances that could lead to suspension or termination of a State's mDL waiver; provide notice to States, relying parties, and the public related to mDL waiver suspensions or terminations; develop an IT solution that maintains an up-to-date list of States with valid mDL waivers; develop materials related to the process changes to adapt to mDL systems; and resolve a request for reconsideration of a denied mDL waiver application. An mDL user may incur costs with additional application requirements to obtain an mDL. Relying parties may incur costs to resolve any security or privacy issue with the mDL reader; report serious threats to security, privacy, or data integrity; verifying the list of States with valid mDL waivers; train personnel to verify mDLs; and update the public on identification policies. | | | | | | |
| Transfers: | | | | | | | |
| From/To | From: | N/A | | To: | N/A | | |
| | States may pass on costs associated with mDLs and the final rule to the public. | | | | | | |
| Effects On: State, Local, and/or Tribal Government: The final rule will result in States incurring 552.0 million discounted at 7 percent. Small Business: None. Wages: None. Growth: Not measured. | | | | | | | NPRM Regulatory Flexibility Analysis (RFA). |

4. Alternatives Considered

In addition to the rule, or the ''preferred alternative,'' TSA also considered four alternative regulatory options.

The first alternative (Alternative 1) represents the status quo, or no change relative to the creation of an mDL waiver. This represents a scenario without a rulemaking or a waiver process to enable mDL acceptance for official Federal purposes. Under this alternative, States would continue to develop mDLs in a less structured manner while waiting for relevant guiding standards to be published which would likely result in dissimilar

mDL implementation and technology characteristics. This alternative was not selected because it does not address the market failures associated with a lack of common standards, such as increased complexity of mDL use across States, and may result in larger costs in the long run when formal mDL standards are finalized.

The second alternative (Alternative 2) features the same requirements of the rule, including an mDL waiver process, but would allow Federal agencies to accept mDLs issued by certain States whose mDLs TSA has deemed to be ''low-risk,'' and therefore presumptively eligible to be granted a waiver. TSA would identify mDLs from States who have fulfilled the rule's minimum requirements prior to applying for the waiver and have sufficiently demonstrated (*e.g.,* via TSA initiative or recent evaluation by a trusted party) to TSA that their mDL systems present adequate interoperability and low security and privacy risk. The presumptive eligibility provision would allow Federal agencies to immediately (or conditionally) accept those ''low-risk'' mDLs for official purposes pending final approval of the respective State mDL waiver applications. However, TSA rejects this alternative because TSA believes the emerging technology underlying mDLs is insufficiently established to accept the security, privacy, and interoperability of States' mDL systems without an evaluation by TSA or another trusted party. In addition, a similar presumptive eligibility process is not available for other aspects of REAL ID and such an action would not reduce the burden on States to comply with any framework TSA develops.

Under the third alternative (Alternative 3), TSA would establish more comprehensive requirements than those in the rule to ensure mDLs comply with the REAL ID Act. States would be required to adopt the more comprehensive requirements to issue valid mDLs that can be accepted for official purposes. These technical requirements could include specific standards related to mDL issuance, provisioning, verification, readers, privacy, and other security measures. TSA rejects this alternative because promulgating more comprehensive requirements for mDLs is premature, as both industry standards and technology used by States are still evolving. Restrictive requirements could stifle innovation by forcing all stakeholders to pivot toward compliance. This could impede TSA from identifying and implementing a more efficient regulatory approach in the future.

Finally, under the fourth alternative (Alternative 4), instead of a waiver process, TSA would first establish minimum requirements for issuing REAL ID compliant mDLs before TSA later sets more comprehensive requirements as additional guidance and standards become available in the mid- and long-term. The interim minimum requirements would consist of similar requirements for security, privacy, and interoperability, based on 19 industry and government standards and guidelines, described in the rule regarding waiver applications. Alternative 4 effectively would codify standards that may become obsolete in the near future, as existing standards are revised, emerging standards publish, and new cyber threats proliferate. TSA rejects this alternative because establishing minimum requirements that may become obsolete in the near future may limit the ability for TSA to revise standards quickly and would increase the security and privacy risks of accepting mDLs. In addition, this alternative implies a degree of certainty that TSA believes is premature given emerging standards that are still in development. Also, costs under Alternative 4 would roughly be similar to costs under the rule, as both options would require audits and other compliance costs.

### 5. Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act (RFA) of 1980, as amended,[97] was enacted by Congress to ensure that small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) will not be unnecessarily or disproportionately burdened by Federal regulations. Section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulations are not expected to have a significant economic impact on a substantial number of small entities.

In accordance with the RFA, pursuant to 5 U.S.C. 605(b), TSA certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule will directly impact States that voluntarily choose to apply for a waiver that will permit mDLs issued by those States to be accepted for official Federal purposes.

### 6. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. The Trade Agreement Act does not consider legitimate domestic objectives, such as essential security, as unnecessary obstacles. The statute also requires that international standards be considered and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this rule and has determined this rule will not have an adverse impact on international trade.

### 7. Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, TSA generally must prepare a written Statement, including a cost-benefit analysis, for and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments in the aggregate or by the private sector of $100 million or more (adjusted for inflation) in any one year.

Before TSA promulgates a rule for which a written statement is required, section 205 of the UMRA generally requires TSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rulemaking. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows TSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the final rule provides an explanation why that alternative was not adopted. Before TSA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of TSA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

When adjusted for inflation, the threshold for expenditures becomes $177.1 million in 2022 dollars. TSA has

[97] Public Law 96–354, 94 Stat. 1164 (Sept. 19, 1980) (codified at 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)).

determined that this rule does not contain a Federal mandate as it is voluntary. Furthermore, estimated expenditures for State, local, and tribal governments do not exceed that amount in the aggregate in any one year.

*B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public. Under the provisions of PRA section 3507(d), TSA must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. This rule calls for a collection of information under the PRA. Accordingly, TSA has submitted to OMB for review the information collections that follow below and is pending approval. *See* 5 CFR 1320.11(a). TSA has published a separate notice in the **Federal Register** soliciting comment on the PRA collection included in this final rule. As defined in 5 CFR 1320.3(c), ''collection of information'' includes reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. This section provides the description of the information collection and of those who must collect the information as well as an estimate of the total annual time burden. TSA cannot request submission of waiver applications under this rule until OMB has approved the information collection.

The rule establishes a process for States to apply to TSA for a temporary waiver. Such a request is voluntary but will require the submission of an mDL waiver application, resubmission of an mDL waiver application deemed insufficient or denied, and reapplication for an mDL waiver when the term of the mDL waiver expires. All of these items are considered new information collections.

TSA uses the current State of mDL implementation to inform its estimate on how many State entities will request an mDL waiver during the period of analysis.[98] All 50 States, the District of Columbia, and five territories (collectively referred to as ''States'' hereafter) are eligible to apply for an mDL waiver as discussed in the rule. However, TSA assumes that not all States will apply for the mDL waiver. TSA assumes 15 States will apply for an mDL waiver in Year 1 of the analysis, 10 States in Year 2, and five States in Year 3.[99]

Following the State submission of its mDL waiver application, TSA determines if the application is approved, insufficient, or denied. States are allowed to amend an insufficient or denied mDL waiver application and resubmit to TSA review.

TSA assumes that all submissions will initially be deemed insufficient due to the mDL waiver criteria being new and with mDLs an emerging technology. Nonetheless, TSA intends to work individually with interested States to meet the mDL criteria to maximize the likelihood of receiving a waiver. Based on these assumptions, TSA estimates all initial mDL waiver applications will be deemed insufficient and that 90 percent of States will resubmit their mDL waiver applications.[100]

A State's mDL waivers will be valid for three years. Therefore, States granted an mDL waiver in Year 1 will need to reapply in Year 4 which is beyond the scope of this particular information collection.

TSA technology subject matter experts estimate that the mDL waiver application will take, on average, 20 hours to complete. TSA also estimates that mDL waiver resubmissions will take 25 percent of the initial mDL waiver application time which equates to 5 hours.[101] Finally, TSA estimates that mDL waiver reapplications will take 75 percent of the initial mDL waiver application time which equates to 15 hours. [102]

These hour burden estimates are combined with the number of collection activities to calculate the total and average time burden associated with the rule. TSA estimates the rule's total three-year burden for mDL waiver applications, mDL waiver resubmissions, and mDL waiver reapplications is 57 responses and 735 hours. TSA estimates an average yearly burden of 19 responses and 245 hours. Details of the calculation can be found in Table 7.

TABLE 7—PRA INFORMATION COLLECTION RESPONSES AND BURDEN HOURS

| Collection activity | Number of responses | | | | | | Total hours | Average annual hours |
|---|---|---|---|---|---|---|---|---|
| | Year 1 | Year 2 | Year 3 | Total responses | Average annual responses | Time per response (hours) | | |
| | | | | d = a + b + c | e = d/3 | f | g = d * f | h = g/3 |
| mDL Waiver Application | 15.0 | 10.0 | 5.0 | 30.0 | 10.0 | 20 | 600 | 200 |
| mDL Waiver Resubmission | 13.5 | 9.0 | 4.5 | 27.0 | 9.0 | 5 | 135 | 45 |
| mDL Waiver Reapplication | 0 | 0 | 0 | 0 | 0 | 15 | 0 | 0 |
| Total | 28.5 | 19.0 | 9.5 | 57.0 | 19.0 | | 735 | 245 |

[98] As of December 2023, 10 States currently provide mDLs. Roughly 18 States have taken steps towards mDL implementation, including six States participating in the TSA mDL testing without a current mDL solution.

[99] Each State would submit one mDL waiver application.

[100] DHS assumes that 10 percent of applications deemed insufficient would no longer pursue an mDL waiver due to the level of effort involved to become sufficient and wait until the mDL environment is more fully developed.

[101] mDL Waiver Resubmission burden = 20 hours [initial mDL waiver application burden] × 0.25 = 5 hours.

[102] mDL Waiver Renewal burden = 20 hours [initial mDL waiver application burden] × (1 − 0.25) = 15 hours.

In addition, States will incur costs associated with audits of their mDL infrastructure. TSA estimates an average cost of $26,974 per submission. States will incur this cost for the initial mDL waiver application and mDL waiver reapplication. As there are no reapplications anticipated for this information collection request, TSA multiplies the annual average number of mDL waiver applications from Table 7 above (10) and the audit cost of $26,974 for a total mDL waiver application cost of $269,742.

*C. Federalism (E.O. 13132)*

A rule has implications for federalism under E.O. 13132 of August 6, 1999 (Federalism) if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. TSA analyzed this rule under this order and determined that although this rule affects the States, it does not preempt State law or impose substantial direct compliance costs.

This final rule establishes a process for States to request a temporary waiver that enables Federal agencies to accept mDLs issued by those States when REAL ID enforcement begins on May 7, 2025. The rule does not, however, require States to apply for a waiver, and does not impact States who elect not to do so.

States that elect to apply for a waiver under this rule must submit an application, supporting data, and other documentation to establish that its mDLs meet the specified criteria concerning security, privacy, and interoperability. TSA intends to work with each State a case-by-case basis to ensure that its mDLs meet the minimum requirements necessary to obtain a waiver. This rule does not impact the broad policymaking discretion that States currently exercise regarding other aspects of driver's license issuance.

DHS recognizes that States seeking a waiver will incur compliance costs for which Federal funds are generally not available. However, TSA emphasizes again that this rule does not require States to apply for a waiver, and TSA is promulgating this rule in response to States' concerns regarding mDL acceptance when REAL ID enforcement begins. To minimize States' costs, this rule affords States the maximum possible discretion consistent with the purposes of the REAL ID Act and regulations. Although the rule prescribes baseline requirements, it allows States broad discretion to implement technology decisions, tailored to each State's unique situation, that meet the requirements.

TSA therefore has determined that the rule is consistent with Executive Order 13132 and does not have these implications for federalism.

*D. Customer Service (E.O. 14058)*

E.O. 14058 of December 13, 2021 (Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government), is focused on enhancing the of technology ''to modernize Government and implement services that are simple to use, accessible, equitable, protective, transparent, and responsive for all people of the United States.'' The Secretary of Homeland Security has specifically committed to testing the use of innovative technologies at airport security checkpoints to reduce passenger wait times. This rule supports this commitment. Using mDLs to establish identity at airport security checkpoints is intended to provide the public with increased convenience, security, privacy, and health benefits from ''contact-free'' identity verification. In 2022, DHS and TSA began a collaboration with States and industry to test the use of mDLs issued by participating States at select TSA airport security checkpoints (see Part II.B.2., above). As of the date of this final rule, TSA is currently testing mDLs issued by 11 States (Arizona, California, Colorado, Georgia, Hawaii, Iowa, Louisiana, Maryland, New York, Ohio, Utah) at 27 airports.[103]

*E. Energy Impact Analysis (E.O. 13211)*

TSA analyzed this rule under E.O. 13211 of May 18, 2001 (Actions Concerning Regulations That Significantly Affected Energy Supply, Distribution or Use), and determined that it is not a ''significant energy action'' under that E.O. and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, this rulemaking does not require a Statement of Energy Effects.

*F. Environmental Analysis*

DHS and its components review actions to determine whether the National Environmental Policy Act[104] (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive 023–01, Rev. 01 (Directive) and Instruction Manual 023–01–001–01,[105] Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations[106] for implementing NEPA. The CEQ regulations allow Federal agencies to establish in their NEPA implementing procedures categories of actions (''categorical exclusions'') which experience has shown normally do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS).[107]

Under DHS 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.[108]

As discussed throughout this preamble, this final rule amends existing REAL ID regulations to add definitions and establish a process enabling States to apply to TSA for a temporary waiver, which would allow Federal agencies to accept, for official purposes when REAL ID enforcement begins in May 2025, mDLs issued by States to whom TSA has issued a waiver. These requirements interpret or amend an existing regulation without changing its environmental effect.

TSA therefore has determined that this final rule clearly fits within by categorical exclusion number A3 in Appendix A of the Instruction Manual. Categorical exclusion A3 applies to promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature: (a) Those of a strictly administrative or procedural nature; (b) those that implement, without substantive change, statutory or regulatory requirements; (c) those that implement, without substantive change, procedures, manuals, and other guidance documents; (d) those that interpret or amend an existing regulation without changing its

[103] TSA, Facial Recognition and Digital Identity Solutions, *https://www.tsa.gov/digital-id* (last visited July 17, 2024).

[104] *See* Public Law 91–190, 42 U.S.C. 4321- 4347.

[105] *See* DHS, Implementing the National Environmental Policy Act, *DHS Directive 023–01, Rev 01* (Oct. 31, 2014), and *DHS Instruction Manual 023–01–001–01, Rev. 01* (Nov. 6, 2014), *https://www.dhs.gov/publication/directive-023-01-rev-01-and-instruction-manual-023-01-001-01-rev-01-and-catex* (last visited July 17, 2024).

[106] 40 CFR parts 1500 through 1508.

[107] *See* 40 CFR 1501.4(a).

[108] *See* Instruction Manual, section V.B.2 (a–c).

environmental effect; (e) technical guidance on safety and security matters; or (f) guidance for the preparation of security plans.

This final rule is not a piece of a larger action. Under section V.B(2)(b) of the Instruction Manual, and as informed by the scoping requirements of 40 CFR 1501.9(e), actions must be considered in the same review if the actions are connected, meaning that an action may trigger another action, an action cannot or will not proceed unless another action is taken, or an action depends on a larger action for its justification. While TSA anticipates future rulemaking efforts to further amend REAL ID regulations and create requirements enabling States to issue REAL ID-compliant mDLs, any subsequent final rule, as well as this final rule, are each stand-alone regulatory actions. Thus, this final rule is not connected to any other action for purposes of the NEPA categorical exclusion analysis.

In accordance with the Instruction Manual's NEPA implementing procedures, TSA has completed an evaluation of this rule to determine whether it involves one or more of the ten identified extraordinary circumstances that present the potential for significant environmental impacts. TSA concludes from its analysis that no extraordinary circumstances are present requiring further environmental analysis and documentation. Therefore, this action is categorically excluded and no further NEPA analysis is required.

**List of Subjects in 6 CFR part 37**

Document security, Driver's licenses, Identification cards, Incorporation by reference, Licensing and registration, Motor vehicle administrations, Motor vehicle. safety, Motor vehicles, Personally identifiable information, Physical security, Privacy, Reporting and recordkeeping requirements, Security measures.

**Regulatory Amendments**

For the reasons set forth in the preamble, the Department of Homeland Security amends 6 CFR part 37 to read as follows:

## PART 37—REAL ID DRIVER'S LICENSES AND IDENTIFICATION CARDS

■ 1. The authority citation for part 37 continues to read as follows:

**Authority:** 49 U.S.C. 30301 note; 6 U.S.C. 111, 112.

### Subpart A—General

■ 2. Amend § 37.3 by adding the definitions for ''Administration'', ''Certificate authority'', ''Certificate management system'', ''Certificate policy'', ''Certificate system'', ''Critical security event'', ''Delegated third party'', ''Delegated third party system'', ''Denial of service'', ''Digital certificates'', ''Digital signatures'', ''Distributed denial of service'', ''Execution environment'', ''Front end system'', ''Hardware security module'', ''High security zone'', ''Identity proofing'', ''Identity verification'', ''Internal support system'', ''Issuing authority'', ''Issuing authority certificate authority'', ''Issuing system'', ''mDL'', ''Mobile driver's license'', ''Mobile identification card'', ''Multi-Factor authentication'', ''Online certificate status protocol'', ''Penetration test'', ''Provisioning'', ''Public key infrastructure'', ''Rich execution environment'', ''Root certificate authority'', ''Root certificate authority system'', ''Secure element'', ''Secure hardware'', ''Secure key storage device'', ''Secure zone'', ''Security support system'', ''Sole control'', ''State root certificate'', ''System'', ''Trusted execution environment'', ''Trusted role'', ''Virtual local area network'', ''Vulnerability'', ''Vulnerability scanning'', and ''Zone'' in alphabetical order to read as follows:

**§ 37.3 Definitions.**

* * * * *

*Administration* means management actions performed on *Certificate Systems* by a person in a *Trusted Role.*

* * * * *

*Certificate authority* means an issuer of *digital certificates* that are used to certify the identity of parties in a digital transaction.

*Certificate Management System* means a system used by a State or *delegated third party* to process, approve issuance of, or store *digital certificates* or *digital certificate* status information, including the database, database server, and storage.

*Certificate policy* means the set of rules and documents that forms a State's governance framework in which *digital certificates, certificate systems,* and cryptographic keys are created, issued, managed, and used.

*Certificate system* means the system used by a State or *delegated third party* to provide services related to *public key infrastructure* for digital identities.

*Critical security event* means detection of an event, a set of circumstances, or anomalous activity that could lead to a circumvention of a *zone's* security controls or a compromise of a *certificate system's* integrity, including excessive login attempts, attempts to access prohibited resources, *Denial of service* or *Distributed denial of service* attacks, attacker reconnaissance, excessive traffic at unusual hours, signs of unauthorized access, system intrusion, or an actual compromise of component integrity.

* * * * *

*Delegated third party* means a natural person or legal entity that is not the state and that operates any part of a *certificate system* under the State's legal authority.

*Delegated third party system* means any part of a *certificate system* used by a *delegated third party* while performing the functions delegated to it by the State.

*Denial of service* means the prevention of authorized access to resources or the delaying of time-critical operations.

* * * * *

*Digital certificates* identify the parties involved in an electronic transaction, and contain information necessary to validate *Digital signatures.*

* * * * *

*Digital signatures* are mathematical algorithms used to validate the authenticity and integrity of a message.

*Distributed denial of service* means a *denial of service* attack where numerous hosts perform the attack.

* * * * *

*Execution environment* means a place within a device processer where active application's code is processed.

* * * * *

*Front end system* means a system with a public IP address, including a web server, mail server, DNS server, jump host, or authentication server.

* * * * *

*Hardware security module* means a physical computing device that safeguards and manages cryptographic keys and provides cryptographic processing.

*High security zone* means a physical location where a State's or *Delegated third party's* private key or cryptographic hardware is located.

* * * * *

*Identity proofing* refers to a series of steps that the State executes to prove the identity of a person.

*Identity verification* is the confirmation that identity data belongs to its purported holder.

* * * * *

*Internal support system means* a system which operates on a State's internal network and communicates with the *certificate system* to provide business services related to mDL management.

*Issuing authority* means the State that issues a *mobile driver's license* or *mobile identification card.*

*Issuing authority certificate authority* means a *certificate authority* operated by or on behalf of an *issuing authority* or a State's *root certificate authority.*

*Issuing system* means a system used to sign *mDLs, digital certificates,* mobile security objects, or validity status information.

* * * * *

*mDL* means *mobile driver's license* and *mobile identification cards,* collectively.

*Mobile driver's license* means a *driver's license* that is stored on a mobile electronic device and read electronically.

*Mobile identification card* means an *identification card,* issued by a State, that is stored on a mobile electronic device and read electronically.

*Multi-Factor authentication* means an authentication mechanism consisting of two or more of the following independent categories of credentials (*i.e.,* factors) to verify the user's identity for a login or other transaction: something you know (knowledge factor), something you have (possession factor), and something you are (inherence factor).

* * * * *

*Online certificate status protocol* means an online protocol used to determine the status of a *digital certificate.*

* * * * *

*Penetration test* means a process that identifies and attempts to exploit vulnerabilities in systems through the active use of known attack techniques, including the combination of different types of exploits, with a goal of breaking through layers of defenses and reporting on unpatched vulnerabilities and system weaknesses.

* * * * *

*Provisioning* means the process by which a State transmits and installs an *mDL* on an individual's mobile device.

*Public key infrastructure* means a structure where a *certificate authority* uses *digital certificates* for issuing, renewing, and revoking digital credentials.

* * * * *

*Rich execution environment,* also known as a ''normal execution environment,'' means the area inside a device processor that runs an operating system.

*Root certificate authority* means the State *certificate authority* whose public encryption key establishes the basis of trust for all other *digital certificates* issued by a State.

*Root certificate authority system* means a system used to create a State's *root certificate* or to generate, store, or sign with the private key associated with a *State root certificate.*

* * * * *

*Secure element* means a tamper-resistant secure hardware component which is used in a device to provide the security, confidentiality, and multiple application environment required to support various business models.

*Secure hardware* means hardware provided on a mobile device for key management and trusted computation such as a *secure element* (SE) or *trusted execution environment.*

*Secure key storage device* means a device certified as meeting the specified FIPS PUB 140–3 Level 2 overall, Level 3 physical, or Common Criteria (EAL 4+).

*Secure zone* means an area (physical or logical) protected by physical and logical controls that appropriately protect the confidentiality, integrity, and availability of *certificate systems.*

*Security support system* means a system used to provide security support functions, which may include authentication, network boundary control, audit logging, audit log reduction and analysis, vulnerability scanning, and intrusion detection (host-based intrusion detection, network-based intrusion detection).

* * * * *

*Sole control* means a condition in which logical and physical controls are in place to ensure the *administration* of a *certificate system* can only be performed by a State or *delegated third party.*

* * * * *

*State root certificate* means a public *digital certificate* of a *root certificate authority* operated by or on behalf of a State.

*System* means one or more pieces of equipment or software that stores, transforms, or communicates data.

* * * * *

*Trusted execution environment* means an *execution environment* that runs alongside but isolated from a *rich execution environment* and has the security capabilities necessary to protect designated applications.

*Trusted role* means an employee or contractor of a State or *delegated third party* who has authorized access to or control over a *secure zone* or *high security zone.*

* * * * *

*Virtual local area network* means a broadcast domain that is partitioned and isolated within a network.

*Vulnerability* means a weakness in an information system, system security procedures, internal controls, or implementation that could be exploited or triggered by a threat source.

*Vulnerability scanning* means a technique used to identify host attributes and associated *vulnerabilities.*

*Zone* means a subset of *certificate systems* created by the logical or physical partitioning of systems from other *certificate systems.*

■ 3. Revise § 37.4 to read as follows:

**§ 37.4 Incorporation by reference.**

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Transportation Security Administration (TSA) and at the National Archives and Records Administration (NARA). Please contact TSA at Transportation Security Administration, Attn.: OS/ESVP/REAL ID Program, TSA Mail Stop 6051, 6595 Springfield Center Dr., Springfield, VA 20598–6051, (866) 289–9673, or visit *www.tsa.gov.* You may also contact the REAL ID Program Office at *REALID-mDLwaiver@tsa.dhs.gov* or visit *www.tsa.gov/REAL-ID/mDL.* For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may also be obtained from the following sources:

(a) American Association of Motor Vehicle Administrators (AAMVA) 4301 Wilson Boulevard, Suite 400, Arlington, VA 22203; phone: (703) 522–4200; website: *www.aamva.org.*

(1) 2005 AAMVA Driver's License/Identification Card Design Specifications, Annex A, section A.7.7.2., March 2005 (AAMVA Specifications); IBR approved for § 37.17.

(2) Mobile Driver's License (mDL) Implementation Guidelines, Version 1.2January 2023; IBR approved for § 37.10(a). (Available at *https://aamva.org/getmedia/b801da7b-5584-466c-8aeb-f230cef6dda5/mDL-Implementation-Guidelines-Version-1-2_final.pdf.*)

(b) Certification Authority Browser Forum (CA/Browser Forum), 815 Eddy St., San Francisco, CA 94109; phone: (415) 436–9333; email: *questions@cabforum.org;* website: *www.cabforum.org.*

(1) Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates, Version

1.8.6, December 14, 2022; IBR approved for appendix A to this subpart. (Available at *https://cabforum.org/wp-content/uploads/CA-Browser-Forum-BR-1.8.6.pdf.*)

(2) Network and Certificate System Security Requirements, Version 1.7, April 5, 2021; IBR approved for appendix A to this subpart. (Available at *https://cabforum.org/wp-content/uploads/CA-Browser-Forum-Network-Security-Guidelines-v1.7.pdf.*)

(c) Cybersecurity and Infrastructure Security Agency, Mail Stop 0380, Department of Homeland Security, 245 Murray Lane, Washington, DC 20528–0380; phone: (888) 282–0870; email: *central@cisa.gov;* website: *www.cisa.gov.*

(1) Federal Government Cybersecurity Incident & Vulnerability Response Playbooks, November 2021; IBR approved for appendix A to this subpart. (Available at *www.cisa.gov/sites/default/files/publications/Federal_Government_Cybersecurity_Incident_and_Vulnerability_Response_Playbooks_508C.pdf.*)

(2) [Reserved]

(d) Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528; phone: (202) 282–8000; website: *www.dhs.gov.*

(1) National Cyber Incident Response Plan, December 2016; IBR approved for appendix A to this subpart. (Available at *www.cisa.gov/uscert/sites/default/files/ncirp/National_Cyber_Incident_Response_Plan.pdf.*)

(2) [Reserved]

(e) International Civil Aviation Organization (ICAO), ICAO, Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7; phone: (514) 954–8219; email: *sales@icao.int;* website: *www.icao.int.*

(1) ICAO 9303, ''Machine Readable Travel Documents,'' Volume 1, part 1, Sixth Edition, 2006; IBR approved for § 37.17.

(2) [Reserved]

(f) International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland; phone: +41 22 749 01 11; email: *customerservice@iso.org;* website: *www.iso.org/contact-iso.html.* (Also available by contacting ANSI at ANSI, 25 West 43rd Street, 4th Floor, New York, New York 10036 website: *www.ansi.org.*)

(1) ISO/IEC 19794–5:2005(E) Information technology—Biometric Data Interchange Formats—Part 5: Face Image Data, dated June 2005; IBR approved for § 37.17.

(2) ISO/IEC 15438:2006(E) Information Technology—Automatic identification and data capture techniques—PDF417 symbology specification, dated June 2006; IBR approved for § 37.19.

(3) ISO/IEC 18013–5:2021(E), Personal identification—ISO-compliant driving license—Part 5: Mobile driving license (mDL) application, First Edition, September 2021; IBR approved for §§ 37.8(b); 37.10(a); and appendix A to this subpart.

(g) National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899; phone: (301) 975–2000; website: *www.nist.gov.*

(1) FIPS PUB 140–3, Federal Information Processing Standard Publication: Security Requirements for Cryptographic Modules, March 22, 2019; IBR approved for appendix A to this subpart. (Available at *https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.140-3.pdf.*)

(2) FIPS PUB 180–4, Federal Information Processing Standard Publication: Secure Hash Standard (SHS), August 2015; IBR approved for § 37.10(a). (Available at *https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.180-4.pdf.*)

(3) FIPS PUB 186–5, Federal Information Processing Standard Publication: Digital Signature Standard (DSS), February 3, 2023; IBR approved for § 37.10(a). (Available at *https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.186-5.pdf.*)

(4) FIPS PUB 197-upd1, Federal Information Processing Standard Publication: Advanced Encryption Standard (AES), May 9, 2023; IBR approved for § 37.10(a). (Available at *https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.197.pdf.*)

(5) FIPS PUB 198–1, Federal Information Processing Standard Publication: The Keyed-Hash Message Authentication Code (HMAC), July 2008; IBR approved for § 37.10(a). (Available at *https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.198-1.pdf.*)

(6) FIPS PUB 202, Federal Information Processing Standard Publication: SHA–3 Standard: Permutation-Based Hash and Extendable-Output Functions, August 2015; IBR approved for § 37.10(a). (Available at *https://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.202.pdf.*)

(7) NIST SP 800–53 Rev.5, NIST Special Publication: Security and Privacy Controls for Information Systems and Organizations, Revision 5, September 2020 (including updates as of December. 10, 2020); IBR approved for appendix A to this subpart. (Available at *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r5.pdf.*)

(8) NIST SP 800–57 Part 1 Rev.5, NIST Special Publication: Recommendation for Key Management: Part 1—General, Revision 5, May 2020; IBR approved for appendix A to this subpart. (Available at *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-57pt1r5.pdf.*)

(9) NIST SP 800–57 Part 2 Rev.1, NIST Special Publication: Recommendation for Key Management: Part 2—Best Practices for Key Management Organization, Revision 1, May 2019; IBR approved for appendix A to this subpart. (Available at *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-57pt2r1.pdf.*)

(10) NIST SP 800–57 Part 3 Rev.1, NIST Recommendation for Key Management: Part 3: Application-Specific Key Management Guidance, Revision 1, January 2015; IBR approved for appendix A to this subpart. (Available at *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-57Pt3r1.pdf.*)

(11) NIST SP 800–63–3, NIST Special Publication: Digital Identity Guidelines, June 2017; IBR approved for appendix A to this subpart. (Available at *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63-3.pdf.*)

(12) NIST SP 800–63B, NIST Special Publication: Digital Identity Guidelines Authentication and Lifecycle Management, June 2017 (including updates as of December. 1, 2017); IBR approved for appendix A to this subpart. (Available at *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-63b.pdf.*)

(13) NIST Framework for Improving Critical Infrastructure Cybersecurity, Version 1.1, April 16, 2018); IBR approved for appendix A to this subpart. (Available at *https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf.*)

4. Add §§ 37.7 through 37.10 to read as follows:

Sec.



**§ 37.7 Temporary waiver for mDLs; State eligibility.**

(a) *Generally.* TSA may issue a temporary certificate of waiver to a State

that meets the requirements of §§ 37.10(a) and (b).

(b) *State eligibility.* A State may be eligible for a waiver only if, after considering all information provided by a State under §§ 37.10(a) and (b), TSA determines that—

(1) The State is in full compliance with all applicable REAL ID requirements as defined in subpart E of this part; and

(2) Information provided by the State under §§ 37.10(a) and (b) sufficiently demonstrates that the State's mDL provides the security, privacy, and interoperability necessary for acceptance by Federal agencies.

**§ 37.8 Requirements for Federal agencies accepting mDLs issued by States with temporary waiver.**

Notwithstanding § 37.5(b), Federal agencies may accept an mDL for REAL ID official purposes issued by a State that has a valid certificate of waiver issued by TSA under § 37.7(a). A Federal agency that elects to accept mDLs under this section must—

(a) Confirm the State holds a valid certificate of waiver consistent with § 37.7(a) by verifying that the State appears in a list of mDLs approved for Federal use, available as provided in § 37.9(b)(1);

(b) Use an mDL reader to retrieve and validate mDL data as required by standard ISO/IEC 18013–5:2021(E) (incorporated by reference; see § 37.4);

(c) In accordance with the deadlines set forth in § 37.5, verify that the data element ''DHS_compliance'' is marked ''F'', as required by §§ 37.10(a)(4)(ii) and (a)(1)(vii); and

(d) Upon discovery that acceptance of a State's mDL is likely to cause imminent or serious threats to the security, privacy, or data integrity, the agency's senior official responsible for REAL ID compliance, or equivalent function, must report such discovery to TSA as directed at *www.tsa.gov/real-id/mDL* within 72 hours of such discovery. Information provided in response to this paragraph *may* contain SSI, and if so, must be handled and protected in accordance with 49 CFR part 1520.

**§ 37.9 Applications for temporary waiver for mDLs.**

(a) *Application process.* Each State requesting a temporary waiver must file with TSA a complete application as set forth in §§ 37.10(a) and (b). Application filing instructions may be obtained from TSA at *www.tsa.gov/real-id/mDL.*

(b) *Decisions.* TSA will provide written notice via email to States within 60 calendar days, to the extent practicable, but in no event longer than 90 calendar days, indicating that TSA has made one of the following decisions:

(1) *Approved.* Upon approval of an application for a temporary waiver, TSA will issue a certificate of waiver to the State, and publish the State's name in a list of mDLs approved for Federal use at *www.tsa.gov/real-id/mDL.*

(2) *Insufficient.* Upon determination that an application for a temporary waiver is incomplete or otherwise deficient, TSA will provide the State an explanation of deficiencies, and an opportunity to address any deficiencies and submit an amended application. States will have 60 calendar days to respond to the notice, and TSA will respond via email within 30 calendar days.

(3) *Denied.* Upon determination that an application for a waiver fails to meet criteria specified in §§ 37.10(a) and (b), TSA will provide the State specific grounds on which the denial is based, and provide the State an opportunity to seek reconsideration as provided in paragraph (c) of this section.

(c) *Reconsideration*—(1) *How to File Request.* States will have 90 calendar days to file a request for reconsideration of a denied application. The State must explain what corrective action it intends to implement to correct any defects cited in the denial or, alternatively, explain why the denial is incorrect. Instructions on how to file a request for reconsideration for denied applications may be obtained from TSA at *www.tsa.gov/real-id/mDL.* TSA will notify States of its final determination within 60 calendar days of receipt of a State's request for reconsideration.

(2) *Final agency action.* An adverse decision upon reconsideration is a final agency action. A State whose request for reconsideration has been denied may submit a new application at any time following the process set forth in paragraph (a) of this section.

(d) *Terms and conditions.* A certificate of waiver will specify—

(1) The effective date of the waiver;

(2) The expiration date of the waiver; and

(3) Any additional terms or conditions as necessary.

(e) *Limitations; suspension; termination*—(1) *Validity period.* A certificate of waiver is valid for a period of 3 years from the date of issuance.

(2) *Reporting requirements.* If a State, after it has been granted a certificate of waiver, makes any significant additions, deletions, or modifications to its mDL issuance processes, other than routine systems maintenance and software updates, that differ materially from the information the State provided in response to §§ 37.10(a) and (b) under which the waiver was granted, the State must provide written notice of such changes to TSA at *www.tsa.gov/real-id/mDL* 60 calendar days before implementing such additions, deletions, or modifications. If a State is uncertain whether its particular changes require reporting, the State may contact TSA as directed at *www.tsa.gov/real-id/mDL.*

(3) *Compliance.* A State that is issued a certificate of waiver under this section must comply with all applicable REAL ID requirements in § 37.51(a), and with all terms and conditions specified in paragraph (d)(3) of this section.

(4) *Suspension.* (i) TSA may suspend the validity of a certificate of waiver for any of the following reasons:

(A) *Failure to comply.* TSA determines that a State has failed to comply with paragraph (d)(3) or (e)(2) of this section, or has issued mDLs in a manner not consistent with the information provided under §§ 37.10(a) or (b); or

(B) *Threats to security, privacy, and data integrity.* TSA reserves the right to suspend a certificate of waiver at any time upon discovery that Federal acceptance of a State's mDL is likely to cause imminent or serious threats to the security, privacy, or data integrity of any Federal agency. In such instances, TSA will provide written notice via email to each affected State as soon as practicable after discovery of the triggering event, including reasons for suspension, an explanation of any corrective actions a State must take to resume validity of its certificate of waiver.

(ii) Before suspending a certificate of waiver under paragraph (e)(4)(i)(A) of this section, TSA will provide to such State written notice via email of intent to suspend, including an explanation of deficiencies and instructions on how the State may cure such deficiencies. States will have 30 calendar days to respond to the notice, and TSA will respond via email within 30 calendar days. TSA's response would include one of the following: withdrawal of the notice, a request for additional information, or a final suspension.

(iii) If TSA issues a final suspension, TSA will temporarily remove the State from the list of mDLs approved for Federal acceptance for official purposes. TSA will continue to work with a State to whom TSA has issued a final suspension to resume validity of its existing certificate of waiver. A State that has been issued a final suspension may seek a new certificate of waiver by submitting a new application following the process set forth in paragraph (a) of this section.

(5) *Termination.* (i) TSA may terminate a certificate of waiver at an earlier date than specified in paragraph (d)(2) of this section if TSA determines that a State—

(A) Does not comply with applicable REAL ID requirements in § 37.51(a);

(B) Is committing an egregious violation of requirements specified under paragraph (d)(3) or (e)(2) of this section that the State is unwilling to cure; or

(C) Provided false information in support of its waiver application.

(ii) Before terminating a certificate of waiver, TSA will provide the State written notice via email of intent to terminate, including findings on which the intended termination is based, together with a notice of opportunity to present additional information. States must respond to the notice within 7 calendar days, and TSA will reply via email within 30 calendar days. TSA's response would include one of the following: withdrawal of the notice, a request for additional information, or a final termination.

(iii) If TSA issues a final termination, TSA will remove the State from the list of mDLs approved for Federal acceptance for official purposes. A State whose certificate of waiver has been terminated may seek a new waiver by submitting a new application following the process set forth in paragraph (a) of this section.

(6) *Reapplication.* A State seeking extension of a certificate of waiver after expiration of its validity period must file a new application under paragraph (a) of this section.

(f) *Effect of status of certificate of waiver.* (1) Issuance of a certificate of waiver is not a determination of compliance with any other section in this part.

(2) An application for certificate of waiver that TSA has deemed insufficient or denied, or a certificate of waiver that TSA has deemed suspended, terminated, or expired, is not a determination of non-compliance with any other section in this part.

(g) *SSI.* Information provided in response to paragraphs (a), (b)(2), (c), (e)(2), (e)(4)(ii), and (e)(5)(ii) of this section *may* contain SSI, and if so, must be handled and protected in accordance with 49 CFR part 1520.

**§ 37.10 Application criteria for issuance of temporary waiver for mDLs; audit report; waiver application guidance.**

(a) *Application criteria.* A State requesting a certificate of waiver must establish in its application that the mDLs for which the State seeks a waiver are issued with controls sufficient to resist compromise and fraud attempts, provide privacy protections sufficient to safeguard an mDL holder's identity data, and provide interoperability for secure acceptance by Federal agencies under the terms of a certificate of waiver. To demonstrate compliance with such requirements, a State must provide information, documents, and/or data sufficient to explain the means, which includes processes, methodologies, or policies, that the State has implemented to comply with requirements in this paragraph (a).

(1) *Provisioning.* For both remote and in-person provisioning, a State must explain the means it uses to address or perform the following—

(i) *Data encryption.* Securely encrypt mDL data and an mDL holder's Personally Identifiable Information when such data is transferred during provisioning, and when stored on the State's system(s) and on mDL holders' mobile devices.

(ii) *Escalated review.* Review repeated failed attempts at provisioning, resolve such failures, and establish criteria to determine when the State will deny provisioning an mDL to a particular mDL applicant.

(iii) *Authentication.* Confirm that an mDL applicant has control over the mobile device to which an mDL is being provisioned at the time of provisioning.

(iv) *Device identification keys.* Confirm that the mDL applicant possesses the mDL device private key bound to the mDL during provisioning.

(v) *User identity verification.* Prevent an individual from falsely matching with the licensing agency's records, including portrait images, of other individuals.

(vi) *Applicant presentation.* Prevent physical and digital presentation attacks by detecting the liveness of an individual and any alterations to the individual's appearance during remote and in-person provisioning.

(vii) *DHS_compliance data element.* Set the value of data element ''DHS_compliance'', as required by paragraph (a)(4)(ii) of this section, to correspond to the REAL ID compliance status of the underlying physical driver's license or identification card that a State has issued to an mDL holder as follows—

(A) ''F'' if the underlying card is REAL ID-compliant, or as otherwise required by AAMVA Mobile Driver's License (mDL) Implementation Guidelines, Section 3.2 (incorporated by reference; see § 37.4); or

(B) ''N'' if the underlying card is not REAL ID-compliant.

(viii) *Data record.* Issue mDLs using data, including portrait image, of an individual that matches corresponding data in the database of the issuing State's driver's licensing agency for that individual.

(ix) *Records retention.* Manage mDL records and related records, consistent with requirements set forth in AAMVA Mobile Driver's License (mDL) Implementation Guidelines (incorporated by reference; see § 37.4).

(2) *Issuance.* A State must explain the means it uses to manage the creation, issuance, use, revocation, and destruction of the State's certificate systems and keys in full compliance with the requirements set forth in appendix A to this subpart.

(3) *Privacy.* A State must explain the means it uses to protect Personally Identifiable Information during processing, storage, and destruction of mDL records and provisioning records.

(4) *Interoperability.* A State must explain the means it uses to issue mDLs that are interoperable with ISO/IEC 18013–5:2021(E) and the ''AAMVA mDL data element set'' defined in the AAMVA Mobile Driver's License (mDL) Implementation Guidelines (incorporated by reference; see § 37.4) as follows:

(i) A State must issue mDLs using the data model defined in ISO/IEC 18103–5:2021(E) section 7 (incorporated by reference; see § 37.4), using the document type ''org.iso.18013.5.1.mDL'', and using the name space ''org.iso.18013.5.1''. States must include the following mDL data elements defined as mandatory in ISO/IEC 18103–5:2021(E) Table 5: ''family_name'', ''given_name'', ''birth_date'', ''issue_date'', ''expiry_date'', ''issuing_authority'', ''document_number'', ''portrait'', and must include the following mDL data elements defined as optional in Table 5: ''sex'', ''resident_address'', ''portrait_capture_date'', ''signature_usual_mark''.

(ii) States must use the AAMVA mDL data element set defined in AAMVA Mobile Driver's License (mDL) Implementation Guidelines, Section 3.2 (incorporated by reference; see § 37.4), using the namespace ''org.iso.18013.5.1.aamva'' and must include the following data elements in accordance with the AAMVA mDL Implementation Guidelines: ''DHS_compliance'', and ''DHS_temporary_lawful_status''.

(iii) States must use only encryption algorithms, secure hashing algorithms, and digital signing algorithms as defined by ISO/IEC 18103–5:2021(E), section 9 and Annex B (incorporated by reference; see § 37.4), and which are included in the following NIST Federal Information Processing Standards (FIPS): NIST FIPS PUB 180–4, NIST

FIPS PUB 186–5, NIST FIPS PUB 197-upd1, NIST FIPS PUB 198–1, and NIST FIPS PUB 202 (incorporated by reference; see § 37.4).

(b) *Audit report.* States must include with their applications a report of an audit that verifies the information provided under paragraph (a) of this section.

(1) The audit must be conducted by a recognized independent entity, which may be an entity that is employed or contracted by a State and independent of the State's driver's licensing agency,—

(i) Holding an active Certified Public Accountant license in the issuing State;

(ii) Experienced with information systems security audits;

(iii) Accredited by the issuing State; and

(iv) Holding a current and active American Institute of Certified Public Accountants (AICPA) Certified Information Technology Professional (CITP) credential or ISACA (F/K/A Information Systems Audit and Control Association) Certified Information System Auditor (CISA) certification.

(2) States must include information about the entity conducting the audit that identifies—

(i) Any potential conflicts of interest; and

(ii) Mitigation measures or other divestiture actions taken to avoid conflicts of interest.

(c) *Waiver application guidance*—(1) *Generally.* TSA will publish ''Mobile Driver's License Waiver Application Guidance'' to facilitate States' understanding of the requirements set forth in paragraph (a) of this section. The non-binding Guidance will include recommendations and examples of possible implementations for illustrative purposes only. TSA will publish the Guidance on the REAL ID website at *www.tsa.gov/real-id/mDL.*

(2) *Updates.* TSA may periodically update its Waiver Application Guidance as necessary to provide additional information or recommendations to mitigate evolving threats to security, privacy, or data integrity. TSA will publish a notification in the **Federal Register** advising that updated Guidance is available, and TSA will publish the updated Guidance at *www.tsa.gov/real-id/mDL* and provide a copy to all States that have applied for or been issued a certificate or waiver.

■ 5. Add appendix A to subpart A to read as follows:

### Appendix A to Subpart A of Part 37—Mobile Driver's License Issuance Infrastructure Requirements

A State that issues mDLs for acceptance by Federal agencies for official purposes as specified in the REAL ID Act must implement the requirements set forth in this appendix A in full compliance with the cited references. All references identified in this appendix A are incorporated by reference, see § 37.4. If a State utilizes the services of a delegated third party, the State must ensure the delegated third party complies with all applicable requirements of this appendix A for the services provided.

| Paragraph | Requirement |
|---|---|
| | **1: Certificate Authority Certificate Life-Cycle Policy** |
| 1.1 | Maintain a certificate policy, which forms the State's certificate system governance framework. If certificate systems are managed at a facility not controlled by the State, the State must require any delegated third party to comply with the State's certificate policy. These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates, Sections 2, 4.3, 4.9, 5, 6, as applicable;<br>• ISO/IEC 18013–5:2021(E), Annex B;<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST SP 800–57 Part 1, Rev. 5, Sections 3, 5, 6, 7, 8;<br>• NIST SP 800–57 Part 2, Rev. 1;<br>• NIST SP 800–57 Part 3, Rev. 1, Sections 2, 3, 4, 8, 9;<br>• NIST 800–53 Rev. 5, AC–1, AT–1, AU–1, CA–1, CM–1, CP–1, IA–1, IR–1, MA–1, MP–1, PE–1, PL–1, PL–2, PL–8, PL–10, PM–1, PS–1, PT–1, RA–1, SA–1, SC–1, SI–1, and SR–1. |
| 1.2 | Perform management and maintenance processes which includes baseline configurations, documentation, approval, and review of changes to certificate systems, issuing systems, certificate management systems, security support systems, and front end and internal support systems. These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.IP–3; and<br>• NIST SP 800–53 Rev. 5, CM–1, CM–2, CM–3, CM–4, CM–5, CM–6, CM–8, CM–9, CM–10, CM–11, CM–12, MA–2, MA–3, MA–4, MA–5, MA–6, PE–16, PE–17, PE–18, PL–10, PL–11, RA–7, SA–2, SA–3, SA–4, SA–5, SA–8, SA–9, SA–10, SA–11, SA–15, SA–17, SA–22, SC–18, SI–6, SI–7, SR–2, SR–5. |
| 1.3 | Apply recommended security patches, to certificate systems within six months of the security patch's availability, unless the State documents that the security patch would introduce additional vulnerabilities or instabilities that outweigh the benefits of applying the security patch. These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity ID.RA–1, PR.IP–12; and<br>• NIST SP 800–53 Rev. 5, SI–2, SI–3. |
| | **2: Certificate Authority Access Management** |
| 2.1 | Grant administration access to certificate systems only to persons acting in trusted roles, and require their accountability for the certificate system's security, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–4; and<br>• NIST SP 800–53 Rev. 5, AC–1, AC–2, AC–3, AC–5, AC–6, AC–8, AC–21, AC–22, AC–24, CA–6, PS–6. |
| 2.2 | Change authentication keys and passwords for any trusted role account on a certificate system whenever a person's authorization to administratively access that account on the certificate system is changed or revoked, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–1; and<br>• NIST SP 800–53 Rev. 5, AC–1, AC–2, AC–3, AC–6, IA–1, IA–2, PS–4, PS–5. |

| Paragraph | Requirement |
|---|---|
| 2.3 | Follow a documented procedure for appointing individuals to trusted roles and assigning responsibilities to them, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–1; and<br>• NIST SP 800–53 Rev. 5, AC–1, AC–2, AC–3, AC–5, AC–6, IA–1, IA–2. |
| 2.4 | Document the responsibilities and tasks assigned to trusted roles and implement ''separation of duties'' for such trusted roles based on the security-related concerns of the functions to be performed, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity—PR.AC–4; and<br>• NIST SP 800–53 Rev. 5, AC–1, AC–2, AC–5, AC–6, MP–2, PS–9. |
| 2.5 | Restrict access to secure zones and high security zones to only individuals assigned to trusted roles, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC; and<br>• NIST SP 800–53 Rev. 5, AC–1, AC–2, AC–3, AC–5, AC–6, MP–2, PS–1, PS–6. |
| 2.6 | Restrict individuals assigned to trusted roles from acting beyond the scope of such role when performing administrative tasks assigned to that role, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–1, PR.AC–4, PR.AC–6, PR.AT–2; and<br>• NIST SP 800–53 Rev. 5, AT–2, AT–3, PM–13, PM–14. |
| 2.7 | Require employees and contractors to observe the principle of ''least privilege'' when accessing or configuring access privileges on certificate systems, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–4, PR.AC–2; and<br>• NIST SP 800–53 Rev. 5, AC–1, AC–2, AC–3, AC–5, AC–6, PE–1, PE–3, PL–4. |
| 2.8 | Require that individuals assigned to trusted roles use a unique credential created by or assigned to them in order to authenticate to certificate systems, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–1, PR.AC–6, PR.AC–4, PR.AC–7; and<br>• NIST SP 800–53 Rev. 5, AC–1, IA–1, IA–2, IA–3, IA–5, IA–8, IA–12. |
| 2.9 | Lockout account access to certificate systems after a maximum of five failed access attempts, provided that this security measure:<br>1. Is supported by the certificate system;<br>2. Cannot be leveraged for a denial-of-service attack; and<br>3. Does not weaken the security of this authentication control.<br>These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–7; and<br>• NIST SP 800–53 Rev. 5, AC–7. |
| 2.10 | Implement controls that disable all privileged access of an individual to certificate systems within 4 hours of termination of the individual's employment or contracting relationship with the State or Delegated Third Party, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–7; and<br>• NIST SP 800–53 Rev. 5, AC–1, AC–2, PS–1, PS–4, PS–7. |
| 2.11 | Implement multi-factor authentication or multi-party authentication for administrator access to issuing systems and certificate management systems, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity-PR.AC–6, PR.AC–7; and<br>• NIST SP 800–53 Rev. 5, AC–14, IA–1, IA–2, IA–3, IA–5, IA–8, IA–11. |
| 2.12 | Implement multi-factor authentication for all trusted role accounts on certificate systems, including those approving the issuance of a Certificate and delegated third parties, that are accessible from outside a secure zone or high security zone, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–7; and<br>• NIST SP 800–53 Rev. 5, AC–17, AC–18, AC–19, AC–20, IA–1, IA–2, IA–3, IA–4, IA–5, IA–6, IA–8. |
| 2.13 | If multi-factor authentication is used, implement only multi-factor authentication that achieves an Authenticator Assurance Level equivalent to AAL2 or higher, in full compliance with the following references:<br>• NIST SP 800–63–3, Sections 4.3, 6.2;<br>• NIST SP 800–63B, Section 4.2;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–7; and<br>• NIST SP 800–53 Rev. 5, IA–5, IA–7. |
| 2.14 | If multi-factor authentication is not possible, implement a password policy for trusted role accounts in full compliance with NIST SP 800–63B, Section 5.1.1.2, Memorized Secret Verifiers, and implement supplementary risk controls based on a system risk assessment. |
| 2.15 | Require trusted roles to log out of or lock workstations when no longer in use, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements; and<br>• NIST SP 800–53 Rev. 5, AC–11, AC–12. |
| 2.16 | Configure workstations with inactivity time-outs that log the user off or lock the workstation after a set time of inactivity without input from the user. A workstation may remain active and unattended if the workstation is otherwise secured and running administrative tasks that would be interrupted by an inactivity time-out or system lock. These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements; and<br>• NIST SP 800–53 Rev. 5, AC–11, AC–12. |

| Paragraph | Requirement |
|---|---|
| 2.17 | Review all system accounts at least every three months and deactivate any accounts that are no longer necessary for operations, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–1; and<br>• NIST SP 800–53 Rev. 5, AC–2. |
| 2.18 | Restrict remote administration or access to a State issuing system, certificate management system, or security support system, including access to cloud environments, except when:<br>1. The remote connection originates from a device owned or controlled by the State or delegated third party;<br>2. The remote connection is through a temporary, non-persistent encrypted channel that is supported by Multi-Factor Authentication; and<br>3. The remote connection is made to a designated intermediary device—<br>a. located within the State's network or secured Virtual Local Area Network (VLAN),<br>b. secured in accordance with the requirements of this Appendix, and<br>c. that mediates the remote connection to the issuing system.<br>These Requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–3, PR.AC–7; and<br>• NIST SP 800–53 Rev. 5, AC–17, AC–19, AC–20, IA–3, IA–4, IA–6. |
| **3: Facility, Management, and Operational Controls** | |
| 3.1 | Restrict physical access authorizations at facilities where certificate systems reside, including facilities controlled by a delegated third party, by:<br>1. Verifying individual access authorizations before granting access to the facility;<br>2. Controlling ingress and egress to the facility using appropriate security controls;<br>3. Controlling access to areas within the facility designated as publicly accessible;<br>4. Escorting visitors, logging visitor entrance and exit from facilities, and limiting visitor activities within facilities to minimize risks to certificate systems;<br>5. Securing physical keys, combinations, and other physical access devices;<br>6. Maintaining an inventory of physical keys, combinations, and physical access devices; conduct review of this inventory at least annually; and<br>7. Changing combinations and keys every three years or when physical keys are lost, combinations are compromised, or when individuals possessing the physical keys or combinations are transferred or terminated.<br>These requirements must be implemented in full compliance with the following reference:<br>• NIST SP 800–53 Rev. 5, PE–2, PE–3, PE–4, PE–5, PE–8. |
| 3.2 | Implement controls to protect certificate system operations and facilities where certificate systems reside from environmental damage and/or physical breaches, including facilities controlled by a delegated third party, in full compliance with the following reference:<br>• NIST SP 800–53 Rev. 5, CP–2, CP–4, CP–6, CP–7, CP–8, CP–9, CP–10, PE–2, PE–9, PE–10, PE–11, PE–12, PE–13, PE–14, PE–15, PE–21. |
| 3.3 | If certificate systems are managed at a facility not controlled by the State, implement controls to prevent risks to such facilities presented by foreign ownership, control, or influence, in full compliance with the following reference:<br>• NIST SP 800–53 Rev. 5, SR–2, SR–3, SR–4, SR–6. |
| 3.4 | Implement controls to prevent supply chain risks for certificate systems including:<br>1. Employing acquisition strategies, tools, and methods to mitigate risks;<br>2. Establishing agreements and procedures with entities involved in the supply chain of certificate systems;<br>3. Implementing an inspection and tamper protection program for certificate systems components;<br>4. Developing and implementing component authenticity policies and procedures; and<br>5. Developing and implementing policies and procedures for the secure disposal of certificate systems components.<br>These requirements must be implemented in full compliance with the following reference:<br>• NIST SP 800–53 Rev. 5, SR–5, SR–8, SR–9, SR–10, SR–11, SR–12. |
| **4: Personnel Security Controls** | |
| 4.1 | Implement and disseminate to personnel with access to certificate systems and facilities, including facilities controlled by a delegated third party, a policy to control insider threat security risks that:<br>1. Addresses the purpose, scope, roles, responsibilities, management commitment, coordination among State entities, and compliance;<br>2. Complies with all applicable laws, executive orders, directives, regulations, policies, standards, and guidelines; and<br>3. Designates an official in a trusted role to manage the development, documentation, and dissemination of the policy and procedures.<br>These requirements must be implemented in full compliance with the following reference:<br>• NIST SP 800–53 Rev. 5, MA–5, PS–1, PS–8. |
| 4.2 | Assign a risk designation to all organizational positions with access to certificate systems and facilities, in full compliance with the following reference:<br>• NIST SP 800–53 Rev. 5, PS–2, PS–9. |
| 4.3 | Establish screening criteria for personnel filling organization positions with access to certificate system and facilities, in full compliance with the following reference:<br>• NIST SP 800–53 Rev. 5, PS–2, PS–3, SA–21. |
| 4.4 | Screen individual personnel in organizational positions with access to certificate systems and facilities, in full compliance with the following reference:<br>• NIST SP 800–53 Rev. 5, PS–3. |
| 4.5 | Upon termination of individual employment, State or delegated third party must:<br>1. Disable system access within 4 hours; |

| Paragraph | Requirement |
|---|---|
| | 2. Terminate or revoke any authenticators and credentials associated with the individual;<br>3. Conduct exit interviews that include—<br>a. Notifying terminated individuals of applicable, legally binding post-employment requirements for the protection of organizational information, and<br>b. Requiring terminated individuals to sign an acknowledgment of post-employment requirements as part of the organizational termination process;<br>4. Retrieve all security-related organizational system-related property; and<br>5. Retain access to organizational information and systems formerly controlled by terminated individual.<br>These requirements must be implemented in full compliance with the following reference:<br>• NIST SP 800–53 Rev. 5, PS–4. |
| 4.6 | Review and update personnel security policy, procedures, and position risk designations at least once every 12 months, in full compliance with the following reference:<br>• NIST SP 800–53 Rev. 5, PS–1, PS–2. |
| 4.7 | Provide training to all personnel performing certificate system duties, on the following topics:<br>1. Fundamental principles of Public Key Infrastructure;<br>2. Authentication and vetting policies and procedures, including the State's certificate policy;<br>3. Common threats to certificate system processes, including phishing and other social engineering tactics;<br>4. Role specific technical functions related to the administration of certificate systems; and<br>5. The requirements of this Appendix.<br>These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates, Section 5.3.3; and<br>• NIST SP 800–53 Rev. 5, CP–3, IR–2, SA–16. |
| 4.8 | Maintain records of training as required by paragraph 4.7 of this Appendix, in full compliance with the following references:<br>• CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates, Sections 5.3.3, 5.4.1; and<br>• NIST SP 800–53 Rev. 5, AT–4. |
| 4.9 | Implement policies and processes to prevent any delegated third party personnel managing certificate systems at a facility not controlled by a State from being subject to risks presented by foreign control or influence, in full compliance with the following reference:<br>• NIST SP 800–53 Rev. 5, SR–3, SR–4, SR–6. |
| | **5: Technical Security Controls** |
| 5.1 | Segment certificate systems into networks based on their functional or logical relationship, such as separate physical networks or VLANs, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–5; and<br>• NIST SP 800–53 Rev. 5, AC–4, AC–10, CA–3, CA–9, MP–3, MP–4, RA–2, RA–9, SC–2, SC–3, SC–4, SC–8. |
| 5.2 | Apply equivalent security controls to all systems co-located in the same network (including VLANs) with a certificate system, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–5; and<br>• NIST SP 800–53 Rev. 5, MP–5, MP–6, MP–7, RA–2, SC–7, SC–10, SC–39. |
| 5.3 | Maintain State root certificate authority systems in a high security zone and in an offline state or air-gapped from all other network operations. If operated in a cloud environment, State root certificate authority systems must use a dedicated VLAN with the sole purpose of Issuing Authority Certificate Authority (IACA) root certificate functions and be in an offline state when not in use for IACA root certificate functions. These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements; and<br>• NIST SP 800–53 Rev. 5, SC–32. |
| 5.4 | Protect IACA root certificate private keys using dedicated hardware security modules (HSMs), either managed on-premises or provided through cloud platforms, that are under sole control of the State or delegated third party. These requirements must be implemented in full compliance with the following references:<br>• NIST SP 800–57 Part 1, Rev. 5;<br>• NIST FIPS PUB 140–3; and<br>• NIST SP 800–53 Rev. 5, SC–12, SC–13. |
| 5.5 | Protect certificate systems private keys using NIST FIPS PUB 140–3 Level 3 or Level 4 certified HSMs, in full compliance with the following references:<br>• NIST FIPS PUB 140–3; and<br>• NIST SP 800–53 Rev. 5, SC–12, SC–13. |
| 5.6 | Protect document signer private keys using HSMs, either managed on-premises or provided through cloud platforms, that are under sole control of the State or delegated third party. These requirements must be implemented in full compliance with the following references:<br>• NIST SP 800–57 Part 1, Rev. 5;<br>• NIST FIPS PUB 140–3; and<br>• NIST SP 800–53 Rev. 5, SC–12, SC–13. |
| 5.7 | Protect certificate systems document signer keys using NIST FIPS PUB 140–3 Level 2, Level 3, or Level 4 certified HSMs, in full compliance with the following references:<br>• NIST FIPS PUB 140–3; and<br>• NIST SP 800–53 Rev. 5, SC–12, SC–13. |
| 5.8 | Maintain and protect issuing systems, certificate management systems, and security support systems in at least a secure zone, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements; and |

| Paragraph | Requirement |
|---|---|
| | • NIST SP 800–53 Rev. 5, SC–15, SC–20, SC–21, SC–22, SC–24, SC–28, SI–16. |
| 5.9 | Implement and configure: security support systems that protect systems and communications between systems inside secure zones and high security zones, and communications with non-certificate systems outside those zones (including those with organizational business units that do not provide PKI-related services) and those on public networks. These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements; and<br>• NIST SP 800–53 Rev. 5, SC–15, SC–20, SC–21, SC–22, SC–24, SC–28, SI–16. |
| 5.10 | Configure each network boundary control (firewall, switch, router, gateway, or other network control device or system) with rules that support only the services, protocols, ports, and communications that the State has identified as necessary to its operations. These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements; and<br>• NIST SP 800–53 Rev. 5, AC–4, SI–3, SI–8, SC–7, SC–10, SC–23, CM–7. |
| 5.11 | Configure issuing systems, certificate management systems, security support systems, and front end and internal support systems by removing or disabling all accounts, applications, services, protocols, and ports that are not used in the State's or delegated third party's operations and restricting use of such systems to only those that are approved by the State or delegated third party. These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.PT–3; and<br>• NIST SP 800–53 Rev. 5, CM–7. |
| 5.12 | Implement multi-factor authentication on each component of the certificate system that supports multi-factor authentication, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.AC–7; and<br>• NIST SP 800–53 Rev. 5, IA–2. |
| 5.13 | Generate IACA root certificate key pairs with a documented and auditable multi-party key ceremony, performing at least the following steps:<br>1. Prepare and follow a key generation script;<br>2. Require a qualified person who is in a trusted role and not a participant in the key generation to serve as a live witness of the full process of generating the IACA root certificate key pair, or record a video in lieu of a live witness;<br>3. Require the qualified witness to issue a report confirming that the State followed its key ceremony during its key and certificate generation process, and confirming that controls were used to protect the integrity and confidentiality of the key pair;<br>4. Generate the IACA root certificate key pair in a physically secured environment as described in the State's certificate policy and/or certification practice statement;<br>5. Generate the IACA root certificate key pair using personnel in trusted roles under the principles of multiple person control and split knowledge. IACA root certificate key pair generation requires a minimum of two persons, consisting of at least one key generation ceremony administrator and one qualified witness);<br>6. Log the IACA root certificate key pair generation activities, sign the witness report (and video file, if applicable), with a document signing key which has been signed by the IACA root certificate private key, and include signed files and document signing public certificate with the IACA root certificate key pair generation log files; and<br>7. Implement controls to confirm that the IACA root certificate private key was generated and protected in conformance with the procedures described in the State's certificate policy and/or certification practice statement and the State's key generation script. These requirements must be implemented in full compliance with the following reference:<br>• CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates, Section 6.1.1.1. |
| 5.14 | Generate document signer key pairs with a documented and auditable multi-party key ceremony, performing at least the following steps:<br>1. Prepare and follow a key generation script;<br>2. Generate the document signer key pairs in a physically secured environment as described in the State's certificate policy and/or certification practice statement;<br>3. Generate the document signer key pairs using only personnel in trusted roles under the principles of multiple person control and split knowledge. document signer key pair generation requires a, minimum of two persons, consisting of at least one key generation ceremony administrator and at least one qualified witness or at least two key generation ceremony administrators when split knowledge generation is in place;<br>4. If a witness observes the key generation, require a qualified person who is in a trusted role and not a participant in the key generation to serve as a live witness of the full process of generating the document signer key pair; and<br>5. Require the qualified witness to issue a report confirming that the State followed its key ceremony during its key and certificate generation process and confirming that controls were used to rotect the integrity and confidentiality of the key pair;<br>6. Log the document signer key pairs generation activities and signed witness report, if applicable; and<br>7. Implement controls to confirm that the document signer private key was generated and protected in conformance with the procedures described in the State's certificate policy and/or certification practice statement and the State's key generation script. These requirements must be implemented in full compliance with the following reference:<br>• CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates, Section 6.1.1.1. |
| | **6: Threat Detection** |
| 6.1 | Implement a System under the control of State or delegated third party trusted roles that continuously monitors, detects, and alerts personnel to any modification to certificate systems, issuing systems, certificate management systems, security support systems, and front-end/internal-support systems, unless the modification has been authorized through a change management process. The State or delegated third party must respond to the alert and initiate a plan of action within at most 24 hours. These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements; |

| Paragraph | Requirement |
|---|---|
| | • NIST Framework for Improving Critical Infrastructure Cybersecurity DE.CM–7; and<br>• NIST SP 800–53 Rev. 5, CA–7, CM–3, SI–5. |
| 6.2 | Identify any certificate systems under the control of State or delegated third party trusted roles that are capable of monitoring and logging system activity, and enable those systems to log and continuously monitor the events specified in paragraph 7 of this Appendix. These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements; and<br>• NIST SP 800–53 Rev. 5, AU–12. |
| 6.3 | Monitor the integrity of the logging processes for application and system logs using either continuous automated monitoring and alerting, or human review, to confirm that logging and log-integrity functions meet the requirements set forth in paragraph 7 of this Appendix. Alternatively, if a human review is utilized and the system is online, the process must be performed at least once every 31 calendar days. These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements; and<br>• NIST SP 800–53 Rev. 5, AU–1, AU–6, AU–5, AU–9, AU–12. |
| | **7: Logging** |
| 7.1 | Log records must include the following elements:<br>1. Date and time of record;<br>2. Identity of the person or non-person entity making the journal record; and<br>3. Description of the record.<br>These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates Section 5.4.1;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.PT–1; and<br>• NIST SP 800–53 Rev. 5, AU–2, AU–3, AU–8. |
| 7.2 | Log at least certificate system and key lifecycle events for IACA root certificates, document signer certificates, and other intermediate certificates, including:<br>1. Key generation, backup, storage, recovery, archival, and destruction;<br>2. Certificate requests, renewal, and re-key requests, and revocation;<br>3. Approval and rejection of certificate requests;<br>4. Cryptographic device lifecycle management events;<br>5. Generation of Certificate Revocation Lists and OCSP entries;<br>6. Introduction of new Certificate Profiles and retirement of existing Certificate Profiles;<br>7. Issuance of certificates; and<br>8. All verification activities required in paragraph 2 of this Appendix and the State's Certification System Policy.<br>These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates Section 5.4.1;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.PT–1; and<br>• NIST SP 800–53 Rev. 5, AU–1, AU–2, AU–3, AU–4, AU–7, AU–10, SC–17. |
| 7.3 | Log certificate system Security events, including:<br>1. Successful and unsuccessful PKI system access attempts;<br>2. PKI and security system actions performed;<br>3. Security profile changes;<br>4. Installation, update and removal of software on a certificate system;<br>5. System crashes, hardware failures, and other anomalies;<br>6. Firewall and router activities; and<br>7. Entries to and exits from the IACA facility if managed on-premises.<br>These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates Section 5.4.1; and<br>• NIST SP 800–53 Rev. 5, AU–2, AU–3, AU–4, AU–7, AU–10, CM–3, PE–6, SI–11, SI–12. |
| 7.4 | Maintain certificate system logs for a period not less than 36 months, in full compliance with the following references:<br>• CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates Section 5.4.3; and<br>• NIST SP 800–53 Rev. 5, AU–4, AU–10, AU–11. |
| 7.5 | Maintain IACA root certificate and key lifecycle management event logs for a period of not less than 24 months after the destruction of the IACA root certificate private key, in full compliance with the following references:<br>• CA/Browser Forum Baseline Requirements for the Issuance and Management of Publicly-Trusted Certificates Section 5.4.3;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.PT–1; and<br>• NIST SP 800–53 Rev. 5, AU–2, AU–4, AU–10, AU–11. |
| | **8: Incident Response & Recovery Plan** |
| 8.1 | Implement automated mechanisms under the control of State or delegated third party trusted roles to process logged system activity and alert personnel, using notices provided to multiple destinations, of possible critical security events. These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• DHS National Cyber Incident Response Plan;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity RS.CO–5, RS.AN–5; and<br>• NIST SP 800–53 Rev. 5, AU–1, AU–2, AU–6, IR–5, SI–4, SI–5. |

| Paragraph | Requirement |
|---|---|
| 8.2 | Require trusted role personnel to follow up on alerts of possible critical security events, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• DHS National Cyber Incident Response Plan; and<br>• NIST SP 800–53 Rev. 5, AC–5, AC–6, IR–1, IR–4, IR–7, SI–4, SI–5. |
| 8.3 | If continuous automated monitoring and alerting is utilized, respond to the alert and initiate a plan of action within 24 hours, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• DHS National Cyber Incident Response Plan; and<br>• NIST SP 800–53 Rev. 5, IR–1, PM–14, SI–4. |
| 8.4 | Implement intrusion detection and prevention controls under the management of State or delegated third party individuals in trusted roles to protect certificate systems against common network and system threats, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• CISA Federal Government Cybersecurity Incident & Vulnerability Response Playbooks;<br>• DHS National Cyber Incident Response Plan;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity DE.AE–2, DE.AE–3; DE.DP–1; and<br>• NIST SP 800–53 Rev. 5, IR–1, IR–4, IR–7, IR–8, SI–4, SI–5. |
| 8.5 | Document and follow a vulnerability correction process that addresses the identification, review, response, and remediation of vulnerabilities, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• CISA Federal Government Cybersecurity Incident & Vulnerability Response Playbooks;<br>• DHS National Cyber Incident Response Plan;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.IP–9; and<br>• NIST SP 800–53 Rev. 5, CA–5, CP–2, CP–4, CP–6, CP–7, CP–8, CP–9, CP–10, SI–1, SI–2, SI–10. |
| 8.6 | Notify TSA of any reportable cybersecurity incident, as defined in the TSA Cybersecurity Lexicon available at *www.tsa.gov*, that may compromise the integrity of the certificate systems within no more than 72 hours of the discovery of the incident. Reports must be made as directed at *www.tsa.gov/real-id/mDL*. These requirements must be implemented in full compliance with the following references:<br>• DHS National Cyber Incident Response Plan; and<br>• NIST SP 800–53 Rev. 5, IR–6.<br>Information provided in response to this paragraph *may* contain SSI, and if so, must be handled and protected in accordance with 49 CFR part 1520. |
| 8.7 | Undergo a vulnerability scan on public and private IP addresses identified by the State or delegated third party as the State's or delegated third party's certificate systems at least every three months, and after performing any significant system or network changes. These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• DHS National Cyber Incident Response Plan; and<br>• NIST SP 800–53 Rev. 5, CM–1, CM–4, IR–3, RA–1, RA–5. |
| 8.8 | Undergo a penetration test on the State's and each delegated third party's certificate systems at least every 12 months, and after performing any significant infrastructure or application upgrades or modifications. These requirements must be implemented in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• DHS National Cyber Incident Response Plan;<br>• NIST Framework for Improving Critical Infrastructure Cybersecurity PR.IP–7; and<br>• NIST SP 800–53 Rev. 5, CA–2, CA–8, CM–4, RA–3. |
| 8.9 | Record evidence that each vulnerability scan and penetration test was performed by a person or entity with the requisite skills, tools, proficiency, code of ethics, and independence. |
| 8.10 | Review State and/or delegated third party incident response & recovery plan at least once during every 12 months to address cybersecurity threats and vulnerabilities, in full compliance with the following references:<br>• CA/Browser Forum Network and Certificate System Security Requirements;<br>• DHS National Cyber Incident Response Plan; and<br>• NIST SP 800–53 Rev. 5, CP–2, IR–1, IR–2, SC–5. |

Dated: October 10, 2024.

**David P. Pekoske,**

*Administrator.*

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Part IV

## Consumer Product Safety Commission

16 CFR Parts 1112, 1130, and 1242
Safety Standard for Nursing Pillows; Final Rule

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Parts 1112, 1130, and 1242

**[CPSC Docket No. 2023–0037]**

### Safety Standard for Nursing Pillows

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Danny Keysar Child Product Safety Notification Act, section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), the U.S. Consumer Product Safety Commission (Commission or CPSC) is issuing this final rule establishing a consumer product safety standard for nursing pillows. CPSC is also amending its regulations regarding third party conformity assessment bodies, to include the safety standard for nursing pillows in the list of notices of requirements (NORs), along with identifying nursing pillows as a durable infant or toddler product subject to consumer registration requirements.

**DATES:** This rule will become effective April 23, 2025. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of April 23, 2025.

**FOR FURTHER INFORMATION CONTACT:** Will Cusey, Small Business Ombudsman, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; email: *sbo@cpsc.gov;* telephone: (301) 504–7945 or (888) 531–9070.

**SUPPLEMENTARY INFORMATION:**

## I. Background and Statutory Authority

### *A. Background*

Although nursing pillows are primarily intended to support an infant during breast or bottle feeding, they are sometimes used to support infants for sleep or lounging. These sleep and lounging uses have led to infant deaths and serious injuries from suffocation, entrapment, or falls.

In 1992, under the Federal Hazardous Substances Act (FHSA), CPSC adopted a ban on certain types of hazardous ''infant pillows'' that contain loosely filled granular materials that conform to an infant's face or body. This ban is codified at 16 CFR 1500.18(a)(16) (Infant Pillow Ban). 57 FR 27912 (June 23, 1992). Certain nursing pillows are exempt from the Infant Pillow Ban, while others, such as pillows with a non-granular fill, do not fall within its scope. 16 CFR 1500.86(a)(9). Many products are currently marketed for both nursing and ''lounging,'' despite the suffocation hazard posed by propping up very young infants with these products.

On September 26, 2023, the Commission issued a notice of proposed rulemaking (NPR) under section 104 of the CPSIA that proposed a mandatory consumer product safety standard for nursing pillows, to address risks of death and injury associated with these products. 88 FR 65865. The proposed safety standard for nursing pillows addressed the suffocation, entrapment, and fall hazards associated with infants in nursing pillows by including performance requirements, labeling and instructional literature requirements, and a prohibition on the use of infant restraints.

On April 23, 2024, CPSC published a notice of availability (NOA) with a 30-day comment period that closed on May 23, 2024. 89 FR 30294. The NOA announced the availability of, and sought comments from the public on, the incident data relied upon for the NPR. The NOA also sought public comments on how the final rule for nursing pillows should address removable nursing pillow covers, or slipcovers.

On September 10, 2024, after the NPR was published, ASTM International (ASTM) published a voluntary standard, ASTM F3669—24, *Standard Consumer Safety Specification for Nursing Pillows.* A detailed discussion of the voluntary standard can be found in section IV of this preamble. The Commission is finalizing this rule to establish mandatory performance and labeling requirements for nursing pillows based on the proposal in the NPR, public comments on both the NPR and the NOA, and staff's assessment of the recent ASTM voluntary standard for nursing pillows, discussed below in sections VI and VII.

In particular, while a number of provisions of ASTM's voluntary standard are substantially similar to provisions of the NPR and the final rule, the Commission determines that more stringent standards set forth in the final rule would further reduce the risk of injury associated with these products.[1]

### *B. Statutory Authority*

Section 104(b) of the CPSIA, part of the Danny Keysar Child Product Safety Notification Act, requires the Commission to (1) examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts; and (2) promulgate consumer product safety standards for durable infant and toddler products. 15 U.S.C. 2056a(b)(1). Standards issued under section 104 are to be ''substantially the same as'' the applicable voluntary standards, or more stringent than the voluntary standard, if the Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. *Id.* at 2056a(b)(1)(B).

The Commission has examined and assessed the effectiveness of the ASTM voluntary consumer product safety standard for nursing pillows, ASTM F3669—24, *Standard Consumer Safety Specification for Nursing Pillows.* Regarding the consultation requirement in section 104(b)(1) of the CPSIA, CPSC staff regularly participates in the juvenile products subcommittee meetings of ASTM International (ASTM). ASTM subcommittees consist of members who represent producers, users, consumers, government, and academia.[2] CPSC began the consultation process for this rulemaking in December 2021, via a letter from CPSC staff requesting that ASTM form a working group to develop a voluntary standard to reduce the risk of death and injury from hazards associated with infant pillow products, including nursing pillows.[3] CPSC staff provided ASTM with incident data associated with both nursing pillows and infant support cushions. In response, ASTM formed the following subcommittees to develop two separate voluntary standards:

- F15.16 Nursing Pillows subcommittee,[4] intended to develop a standard for nursing pillows; and
- F15.21 Infant Loungers subcommittee, with a remit including

[1] On September 18, 2024, the Commission voted (5–0) to publish this final rule as drafted. Chair Hoehn-Saric and Commissioners Trumka and Boyle issued statements in connection with their vote, available at: *https://www.cpsc.gov/About-CPSC/Chairman/Alexander-Hoehn-Saric/Statement/Statement-of-Chair-Alexander-Hoehn-Saric-on-Commission-Approval-of-a-Final-Rule-Establishing-a-Safety-Standard-for-Nursing-Pillows; https://www.cpsc.gov/About-CPSC/Commissioner/Richard-Trumka/Statement/Commissioner-Trumka-Safety-Changes-for-Nursing-Pillows-Will-Save-Babies%E2%80%99-Lives;* and *https://www.cpsc.gov/About-CPSC/Commissioner/Mary-T-Boyle/Statement/Commissioner-Mary-T-Boyle-Statement-on-Vote-to-Issue-Final-Rule-on-Nursing-Pillows.*

[2] ASTM International website: *www.astm.org,* About ASTM International.

[3] *https://www.cpsc.gov/s3fs-public/Nursing-and-Support-Pillow-VS-request.pdf.*

[4] Since the subcommittee's formation, the name of the subcommittee has evolved and gone through the following variants: Feeding and Infant Support Products subcommittee, Infant Feeding Support Products subcommittee, and Infant Feeding Supports subcommittee.

nursing pillows that are also intended for lounging.

CPSC staff actively participated in the ASTM's F15.16 Nursing Pillows subcommittee to develop ASTM F3669—24 with requirements that address the hazards associated with these products.[5]

Consistent with CPSC staff's assessment of the voluntary standard, the Commission determines that the more stringent requirements included in this final rule would further reduce the risk of injury associated with nursing pillows. In part, the mandatory consumer product safety standard for nursing pillows is ''substantially the same as'' ASTM F3669—24 because it includes similar performance and labeling/instructional material requirements. However, portions of the CPSC mandatory standard are more stringent than the ASTM voluntary standard, as these requirements would further reduce the risk of injury associated with the use of nursing pillows. For example, the definition of a ''nursing pillow'' in the final rule states that these products include removable covers, or slipcovers, that are sold on or together with the nursing pillow. The ASTM standard does not contain any safety requirements for the cover element of nursing pillows. In addition, the product warning in the final rule includes a statement to instruct consumers to move the baby to an infant sleep product if the baby falls asleep or if the caregiver feels drowsy. This scenario is associated with three infant fatalities known to CPSC. Yet the warnings specified in the ASTM standard do not specifically address it. Section 104(d) of the CPSIA requires manufacturers of durable infant or toddler products to establish a product registration program and comply with CPSC's implementing rule, 16 CFR part 1130. Any product defined as a ''durable infant or toddler product'' in part 1130 must comply with the product registration requirements, as well as testing and certification requirements for children's products, as codified in 16 CFR parts 1107 and 1109. Section 104(f)(1) of the CPSIA defines a ''durable infant or toddler product'' as a ''durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.'' 15 U.S.C. 2056a(f)(1). Section 104(f)(2) of the CPSIA includes a non-exhaustive list of categories of products that are durable infant or toddler products, including products used for feeding support, such as high chairs, booster chairs, and hook-on chairs. *Id.* 2056a(f)(2)(C); *See Requirements for Consumer Registration of Durable Infant or Toddler Products,* 74 FR. 68668–68669 (Dec. 29, 2009).

This final rule amends part 1130 to include ''nursing pillow'' as a durable infant or toddler product, as proposed in the NPR, because they are: (1) intended for use, and may be reasonably expected to be used, by children under the age of 5 years; (2) similar to other feeding support products listed in section 104(f)(2) of the CPSIA, such as high chairs, booster chairs, and hook-on chairs; and (3) commonly available for resale or ''handed down'' for use by other children over a period of years.

Lastly, products subject to a consumer product safety rule under the Consumer Product Safety Act (CPSA) must be certified as complying with all applicable CPSC-enforced requirements, based on testing conducted by a CPSC-accepted third party conformity assessment body. 15 U.S.C. 2063(a). The Commission must publish an NOR for the accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which a children's product is subject. *Id.* 2063(a)(3). Accordingly, we now finalize an amendment to part 1112, as proposed in the NPR, to add the new *Safety Standard for Nursing Pillows,* 16 CFR part 1242, to the list of NORs for children's product safety rules. The amendment allows test laboratories applying for CPSC acceptance to seek accreditation to test nursing pillows within the scope of the rule.

### *C. NPR*

The scope of the NPR included all ''nursing pillows,'' defined as any product intended, marketed, or designed to position and support an infant close to a caregiver's body while breastfeeding or bottle feeding. These products rest upon, wrap around, or are worn by a caregiver in a seated or reclined position. The NPR proposed exemptions for (1) maternity pillows, as defined in 16 CFR 1242.2, because they are not intended primarily for nursing and are intended to support the body of a pregnant adult, and (2) sling carriers, as defined in 16 CFR part 1228, because they are subject to the *Safety Standard for Sling Carriers.* 16 CFR part 1228.

The proposed nursing pillow safety standard included performance requirements and labeling and instructional literature requirements to address the following hazards associated with an infant's use of a nursing pillow:

(1) suffocation hazards from the product conforming to an infant's face and occluding the infant's airways;

(2) entrapment hazards posed when the product restricts an infant's head movements;

(3) suffocation and fall risks resulting from the presence of infant restraints that could suggest that infants can safely be left unattended in the product; and

(4) suffocation, entrapment, or fall risks when an infant is left unattended in the product.

In the NPR, the Commission also proposed to amend the consumer registration rule, 16 CFR part 1130, to identify ''nursing pillows'' as a category of ''durable infant or toddler products'' subject to the consumer registration rule and testing and certification as a children's product. Finally, the Commission proposed to amend its regulation at 16 CFR part 1112 to add ''nursing pillows'' to the list of products that require third party testing as a basis for certification.

### *D. Overview of the Final Rule*

Pursuant to section 104 of the CPSIA, the Commission is issuing a mandatory standard for nursing pillows. 15 U.S.C. 2056a. However, based on comments on the NPR and staff's assessment of the draft and published ASTM voluntary standard for nursing pillows in section IV, the final rule contains the following clarifications and changes from the NPR:

- The scope has been clarified to explain that slipcovers sold on or together with a nursing pillow are considered part of the nursing pillow, as defined in 16 CFR 1242.2, within the scope of the rule. Accordingly, the definition of ''nursing pillow'' has been amended to clarify that nursing pillows include any removable covers, or slipcovers, sold on or together with the product.
- Soft infant and toddler carriers, as defined in 16 CFR part 1226, have been added to the list of products outside the scope of the rule.
- The definition of ''caregiver attachment'' has been revised to clarify that a caregiver attachment is not an infant support surface.
- The definition of ''conspicuous'' has been revised to mean visible to the caregiver while placing the nursing pillow on or against the caregiver's body.
- The Small Parts requirement language has been revised to clarify that the cited small parts regulation does not specifically ''define'' a small part, but rather determines whether an item is a

[5] The docket for this rulemaking on *Regulations.gov* (CPSC–2023–0037) contains meeting logs for all CPSC staff-attended ASTM meetings related to the nursing pillow voluntary standard that occurred between issuance of the NPR and completing this final rule.

small part. The language for the Hazardous Sharp Edges or Points requirement has been clarified similarly.

- The Permanency of Labels and Warnings requirement has been corrected by changing a reference from ''infant feeding supports'' to ''nursing pillows.''
- The figure illustrating the firmness test probe, Figure 1, has been revised for clarity.
- The Infant Support Surface Firmness test method has been revised to specify that, when selecting test locations, the edge of the test probe shall not extend beyond the edge of the nursing pillow. However, if the design or size of the product is such that the edge of the probe must extend beyond the product, then the probe must be centered over as much of the test surface as possible. The test method also has been revised to specify that the final force measurement at each location is taken only after the force has stabilized, meaning that it has not changed more than 0.1 Newtons (N) over 30 seconds.
- The Infant Containment test method has been reordered, so products with a caregiver attachment are tested first without the caregiver attachment secured, and then again with the caregiver attachment secured. This test method also revises references from ''inner surfaces'' of the nursing pillow to ''inner wall,'' for clarity, and revises the referenced figure, Figure 4, to clarify the test method and to show additional examples of passing and failing tests.
- The Caregiver Attachment Strength test method has been revised to clarify that the requirement applies to all fastening methods, not just buckles and clasps. The section name has also been corrected to add the term ''Strength.''
- The figure showing the example product warning, Figure 7, has been revised to reflect changes in warning content in response to public comments. These changes include revising the initial sentence to state that ''BABIES HAVE DIED USING NURSING PILLOWS FOR SLEEP OR LOUNGING,'' stating explicitly that nursing pillows are for feeding only, revising and deleting some of the statements to reduce length, and adding a line or border to separate the sleep and suffocation-related warning content from the fall-related warning content.

Section VII of this preamble describes the final rule in more detail.

## II. The Product Category

### *A. Scope of Products Within the Final Rule*

The scope of the final rule includes all nursing pillows, as defined in 16 CFR 1242.2. Nursing pillows are infant products intended to position and support an infant during breastfeeding—also referred to as nursing—or bottle feeding. These products generally rest upon or are ''worn'' by the caregiver while seated or partially reclined. Nursing pillows are most commonly C-, U-, or crescent- (or horseshoe-) shaped to fit closely around the caregiver's torso. However, other designs exist, including a V- or boomerang-shaped product, a round pod with a recessed center to support the infant, a stack of multiple petal-shaped pillows attached to a central tubular pillow, and E-shaped products for twins. Most nursing pillows are filled with synthetic batting or foam, but products filled with cotton, wool, or dried grains are available.

The Commission considers removable nursing pillow covers, or slipcovers, that are sold on or together with the nursing pillow, to be a part of the nursing pillow and are therefore within the scope of the final rule. This comports with the broad definition of a ''consumer product'' in the CPSA as including any ''component part'' of a product. 15 U.S.C. 2052(a)(5). Slipcovers that are sold separately from a nursing pillow, not installed on the pillow or included in the price of the nursing pillow, are not within the scope of the final rule because they are not considered to be intended, marketed or designed as part of the product. Accordingly, the Commission is finalizing the definition of nursing pillow to include this clarification: ''*Nursing pillow* means any product intended, marketed, or designed to position and support an infant close to a caregiver's body while breastfeeding or bottle feeding, *including any removable covers, or slipcovers, sold on or together with such a product.* These products rest upon, wrap around, or are worn by a caregiver in a seated or reclined position.'' (Emphasis added.) ASTM F3669 defines a nursing pillow using similar language about support while feeding but does not explicitly address slipcovers.

In addition to providing a support surface for infants, nursing pillows raise the infant to the desired height for feeding, thereby reducing muscular strain on the caregiver, and provide a buffering surface between the infant and the caregiver, reducing pressure on the caregiver's abdomen. This latter function is especially helpful where the caregiver has abdominal stitches from a caesarean section. Some products include a strap or belt, sometimes with a buckle, to secure the product to the caregiver's body (*i.e.,* a caregiver attachment), and a few have restraints that attach the infant to the product. Many products come with removable fabric covers, and some products have small infant head support bolsters or fabric toys attached.[6]

### *B. Market Description*

As discussed in the NPR, CPSC estimates that annual sales of new nursing pillows likely total approximately $67 million. New nursing pillows range in price from $15 to $100, with most products in the $25 to $65 range. The more expensive models tend to have removable covers. The Commission's estimate of $67 million per year in sales of new nursing pillows assumes an average price of approximately $50 and annual sales of 1.34 million units. The number of infants who feed with a nursing pillow is greater than this, however. Some parents may already own a pillow that was purchased for an older child, make a pillow, or buy a used pillow to use for nursing. Used nursing pillows and replacement covers for nursing pillows are commonly available from secondary marketplaces such as eBay and Mercari, where prices are observed to range from less than $7 to more than $120. The widespread availability of replacement covers extends the useful life and durability of nursing pillows, allowing covers to be cleaned or swapped for other colors, styles or designs.

Although more than a thousand businesses sell nursing pillows and nursing pillow covers online, just nine companies supply the models commonly sold in brick-and-mortar stores. Individual stores typically have fewer than four models of nursing pillows in stock, which limits consumers' ability to assess the safety-related characteristics of the products and to make selections on that basis.

### *C. Infant Cushion/Pillow Ban and Nursing Pillow Exemption*

Unlike the Infant Pillow Ban, this final rule sets a performance standard pursuant to the CPSIA that allows for the sale of nursing pillows that meet the requirements in the standard. As described below, this final rule is based in part on data concerning incidents that occurred between January 2010 through December 2022, many of which were fatal. The final rule does not alter either the Infant Pillow Ban at 16 CFR 1500.18(a)(16) or the exemption

[6] *See* Staff Briefing Package: Staff's Draft Proposed Rule for Nursing Pillows (Aug. 23, 2023) (Staff's NPR Briefing Package) at 5, figures 1 and 2, for examples of nursing pillow designs, available at: *https://www.cpsc.gov/content/Commission-Briefing-Package-Notice-of-Proposed-Rulemaking-Safety-Standard-for-Nursing-Pillows.*

codified at 16 CFR 1500.86(a)(9), both of which remain in place. Thus, products that are not banned under the Infant Pillow Ban but that meet this rule's definition of a nursing pillow need to comply with the final rule.

## III. Incident Data and Hazard Patterns

As described in the NPR, CPSC staff's search of the Consumer Product Safety Risk Management System (CPSRMS)[7] and National Electronic Injury Surveillance System (NEISS)[8] databases identified 154 fatal incidents and 88 nonfatal incidents and consumer concerns associated with nursing pillows, involving infants up to 12 months old, and reported to have occurred between January 1, 2010, and December 31, 2022. Accordingly, for the final rule, the Commission is aware of 242 incident reports associated with nursing pillows. Sixty-four percent of the incidents reported in the NPR involved a fatality.[9] Nearly all (144 of the 154, or 94 percent) of the reported fatalities associated with nursing pillows involved infants 6 months old and younger, and most (110 out of 154, or 71 percent) were deaths of infants 3 months old or younger. Of the nonfatal incidents, 73 percent resulted in an injury and 27 percent reported no injury.[10]

### *A. Fatalities and Associated Hazard Patterns*

The Commission is aware of 142 fatalities that involved use of the nursing pillow for sleep; these cases often involved additional unsafe sleep conditions including sleep-surface sharing—also known as co-sleeping—or the presence of other soft bedding such as pillows or blankets. As described in the NPR, nursing pillows are intended to be used for feeding when both the infant and caregiver are awake, and the caregiver can ensure that the infant's airways are not covered by the pillow. However, consumers often placed infants on or in nursing pillows for sleep.

In addition, because infants frequently fall asleep during or after feeding and because nursing pillows appear to be comfortable sleeping environments and are small enough to fit within other sleep products such as a crib or bassinet, nursing pillows are foreseeably used for infant sleep, which creates a potential hazard for the infant. For example, if a sleeping infant rolls over so their face is pressed against the nursing pillow, the infant's airways may be blocked, causing suffocation. Similarly, if an infant falls into the opening where the caregiver is positioned during feeding, the infant can land face-down with the pillow surrounding their head, causing entrapment against the surface on which the pillow rests. Even if the infant remains with their back against the top of the nursing pillow, if the infant's position shifts so that their head falls against their chest or tilts backwards over the top of the pillow, the hyperextension or hyperflexion of the infant's neck can prevent breathing.

For the most part, no witnesses observed the fatal incidents, and 60 of the 154 fatal cases (39 percent) had insufficient details to enable CPSC staff to determine the hazard pattern or scenario. However, CPSC staff classified the remaining 94 reported fatalities by hazard patterns, based on the best available information about the position in which the victim was found. These positions include the following: face into product, face into other object/bedding outside product, face down in opening, neck extension/flexion, bedding over face, face into product or bedding (unknown),[11] entrapment/overlay while nursing, and overlay.

One hundred twenty-four fatalities (81 percent) involved the nursing pillow being used in or on a sleep product. Specifically, 62 fatalities (40 percent) involved the nursing pillow product being used in an infant sleep product, such as a crib, portable playpen, or bassinet; 61 fatalities (40 percent) involved use of the product on an adult bed or mattress; and one fatality involved a mattress of unknown size. Eighteen reported fatalities (12 percent) involved the product being used on a couch, sofa, or loveseat; one fatality involved the product being used on the caregiver's lap in a recliner chair; and the use location for 11 fatalities is unknown.

### *B. Nonfatal Incidents*

CPSC is aware of 88 nonfatal incidents associated with nursing pillows in which 64 resulted in an injury to the infant and 24 did not lead to a reported injury. Of the 64 injury victims, 19 infants were known to have been treated and released from the emergency department, and all 19 involved the infant falling or rolling off, or out, of the nursing pillow. An additional three injuries, one involving a burn, one due to a fall, and one due to cardiopulmonary arrest after the infant was laying on the nursing pillow, resulted in hospital admission. The remaining 42 injuries, where the level of care was not known, included falls, near suffocation, near strangulation, choking, and skin irritation or allergy. In 66 percent (42 of 64) of the nonfatal injuries, the location was unknown, but the most common locations among the remaining incidents were couches and beds. The Commission is aware of following hazard patterns for the nursing pillow-related nonfatal incidents: skin allergy/irritation; fall/rollout from an elevated surface, from the same or unknown level, and while carrying the infant in the product; filling coming out/choking hazard; product integrity; and strong smell, among others.

## IV. ASTM's Voluntary Standard for Nursing Pillows

On September 10, 2024, ASTM published a new voluntary standard for nursing pillows, ASTM F3669—24, *Standard Consumer Safety Specification for Nursing Pillows.* This section examines and assesses the ASTM standard.

### *A. Terminology*

As noted in section II.A., the voluntary standard defines a nursing pillow similarly to the definition of ''nursing pillow'' in the final rule; however, the voluntary standard's definition does not include language clarifying that nursing pillows include slipcovers that are sold on or together with the product. By expressly including such slipcovers in the

[7] CPSRMS is the epidemiological database that houses all anecdotal reports of incidents received by CPSC, ''external cause''–1based death certificates purchased by CPSC, all in-depth investigations of these anecdotal reports, as well as investigations of select NEISS injuries. CPSRMS documents include hotline reports, online reports, news reports, medical examiner's reports, death certificates, retailer/manufacturer reports, and documents sent by state and local authorities, among others.

[8] NEISS is a statistically valid surveillance system for collecting injury data. NEISS is based on a nationally representative probability sample of hospitals in the U.S. and its territories. Each participating NEISS hospital reports patient information for every emergency department visit associated with a consumer product or a poisoning to a child younger than five years of age. The total number of product-related hospital emergency department visits nationwide can be estimated from the sample of cases reported in the NEISS. *See https://www.cpsc.gov/Research--Statistics/NEISS-Injury-Data.*

[9] More than half of the fatalities of which CPSC is aware were reported to have occurred since 2019. Staff's NPR Briefing Package at Tab A. However, staff noted that because the reported data are anecdotal, fluctuations in the numbers of reported incidents could simply reflect changes in reporting rather than an actual change in incident frequency. *Id.*

[10] Among the reported incidents without injury, some included concerns such as product integrity or the smell of the nursing pillow that are unrelated to the hazards this proposed rule is intended to address.

[11] This hazard pattern includes cases where the infant was found with their face into either the nursing pillow or other bedding, but the specific product is unknown.

definition, the final rule is more stringent than the ASTM standard and further reduces the risk of injury and death relative to the voluntary standard, as explained in section II.A.

The ASTM voluntary standard's definition of ''caregiver attachment'' is similar to the definition in the final rule but appears less protective by referring to the caregiver attachment as a ''device or other mechanism,'' whereas the rule describes a ''caregiver attachment'' more broadly as a ''portion of the product.'' Unlike the voluntary standard, the final rule also clarifies that portions of the product that function as an infant support surface are not considered caregiver attachments.

The ASTM voluntary standard defines ''caregiver opening'' differently than the final rule and adds a new definition for ''inner wall,'' which is not included in the final rule. The voluntary standard's definition of inner wall implies that it includes any surface of the nursing pillow intended to fit against the caregiver's torso during use, even if that surface is part of a caregiver attachment. This contradicts the final rule's definition of ''caregiver opening,'' which excludes caregiver attachments.

The voluntary standard defines ''infant support surface'' differently than the final rule. The ASTM standard differs functionally from the definition in the final rule by specifying that the infant support surface is necessarily horizontal. The Commission is aware of some nursing pillows where the infant support surface is not strictly horizontal during use or where only a portion of the full infant support surface is horizontal. Because the ASTM standard is more restrictive in what it considers to be an infant support surface that is subject to performance requirements, the definition used in the final rule results in a more stringent standard that further reduces the risk of injury associated with nursing pillows, relative to the voluntary standard.

The ASTM voluntary standard does not include definitions for ''maternity pillow'' or ''safety alert symbol,'' both of which are included in the final rule. Maternity pillows are defined in the rule because they are included among the exemptions; however, the voluntary standard does not exempt these products.

The ASTM voluntary standard does not define ''safety alert symbol'' because this is one of the formatting elements for product warnings, and the product warning requirements refer the reader to the requirements of ANSI Z535.4, *Product Safety Signs and Labels* (ANSI Z535.4–11), which already defines this term. Thus, the omission of this definition in the ASTM voluntary standard is inconsequential. The voluntary standard includes other definitions not included in the final rule, specifically for ''fabric,'' ''manufacturer's recommended use position,'' ''non-paper label,'' ''paper label,'' and ''seam.'' These definitions are generally consistent with definitions included in other mandatory and voluntary juvenile product safety standards, and thus not essential for inclusion in this rule.

*B. General Requirements*

ASTM F3669—24 includes general requirements typically found in other ASTM juvenile product standards, such as requirements limiting lead in paints; prohibitions against small parts, hazardous sharp edges or points, and removable components that are accessible to the infant; requirements for toy accessories that are attached to, removable from, or sold with the products; and permanency requirements for product labels and warnings. The voluntary standard's requirements for Lead in Paints, Small Parts, Hazardous Sharp Edges or Points, Removal of Components, and Permanency of Labels and Warnings, and the associated test methods for those requirements, match the same requirements and test methods in the final rule (§ 1242.3(a)–(e)), with one exception: the voluntary standard's Tension Test (section 7.7.4) in the Removal of Components test method does not specify the tension test adapter clamp that may be used if the gap between the back of the component and the base material is 0.04 inches or more. Although the use of such a clamp is optional, the rule's provision of this information is helpful to testers.

ASTM F3669—24 adds a requirement for toy accessories that are attached to, removable from, or sold with a nursing pillow. This requirement is not in the final rule, but CPSC is not aware of any incidents involving toys connected to these products. In addition, the ASTM voluntary standard includes a general requirement that nursing pillows that can be converted into another product or that has features for which a consumer safety specification exists must comply with the applicable requirements of all applicable standards.

*C. Performance Requirements*

ASTM F3669—24 includes five performance requirements intended to address safety hazards specifically associated with nursing pillows:

- *Infant Restraints:* This requirement prohibits nursing pillows from including an infant restraint system, which could entangle an infant and could suggest to caregivers that it is acceptable to leave an infant unattended on the nursing pillow. Aside from editorial differences, the requirement matches the same requirement in the final rule (§ 1242.4(c)).
- *Firmness:* This requirement limits the amount by which certain portions of the product can deflect, or displace, when a 3-inch diameter hemispheric probe is applied with a certain force. Testing is performed at three locations at least 3 inches apart on each of two surfaces: the infant support surface and the inner wall of the caregiver opening (*i.e.,* the surface of the nursing pillow intended to fit against the caregiver's torso during use). After the product is cleaned according to the manufacturer's instructions, the tests are repeated. Although written in the ASTM standard as a three-part requirement (*i.e.,* infant support surface firmness, inner wall firmness, and product conditioning firmness), rather than a single requirement that refers to three separate test methods as in the final rule (§ 1242.4(a)), this requirement is functionally equivalent to the firmness requirement and associated test methods in the final rule, with one exception: the ASTM firmness test method specifies that if the design of the product does not allow for testing three locations that are 3 inches apart, then firmness testing is performed on three separate available locations. The firmness test method in the final rule does not specifically address products that might not allow for testing three locations that are 3 inches apart. The ASTM voluntary standard and the final rule also differ in specific procedure to arrive at the final, stabilized firmness measurement for each location, but the two procedures are functionally equivalent.
- *Infant Containment:* This requirement is intended to reduce the potential for an infant's head to become entrapped within the caregiver opening, and to reduce the extent to which these products are used for infant propping or lounging, by limiting the amount of lateral support available to young infants if they were placed within the opening. The requirement applies a 9-inch diameter head probe to the caregiver opening of a nursing pillow. No contact is permitted between the outer half of the probe and the inner wall of the caregiver opening, and the probe must extend beyond the caregiver opening. When the probe is moved laterally out of the caregiver opening, the outer half of the probe must, again, not contact the inner wall of the product. If the product includes a

caregiver attachment, which is intended to secure the product to the caregiver, the test is performed twice: once with the caregiver attachment unsecured, and again with the caregiver attachment secured and adjusted to its minimum length. Aside from editorial differences and additional figures that illustrate the various elements of the test method, the ASTM requirement and associated test method are functionally equivalent to those in the final rule (§ 1242.4(b)).

- *Seam Strength:* This requirement is intended to address product integrity issues, such as seam failures and material breakage, by applying a specified pull test along each seam and attachment point. Other than editorial differences, this requirement and its associated test method match those in the final rule (§ 1242.4(d)).
- *Caregiver Attachment Strength:* This requirement is intended to address possible failures of the caregiver attachment by requiring each element of the caregiver attachment system (*e.g.,* strap, buckle) to withstand a static load of 20 pounds. Other than editorial differences, this requirement and its associated test method match those in the final rule (§ 1242.4(e)).

*D. Marking, Labeling, and Instructional Requirements*

ASTM F3669—24 includes marking, labeling, and instructional literature requirements, which include requirements for warnings that must appear on nursing pillows covered by the standard.

The warning label in ASTM F3669—24 is nearly identical to the warning in the final rule (§ 1242.6), which was amended based on public comments on the NPR, as discussed in detail in section V and section VI.E. However, the final rule includes an additional warning statement: ''Move baby to an infant sleep product, like a crib or bassinet, if baby falls asleep or if you feel drowsy.'' This statement reinforces the safe-sleep message that consumers should move the baby to a product intended for infant, like a crib or bassinet, if the baby falls asleep during or after feeding, and reminds consumers to stop using the product if the consumer feels themselves falling asleep, which is a scenario associated with three infant fatalities.

ASTM F3669—24 requires the warnings to be permanent and ''conspicuous,'' which the voluntary standard defines as ''visible to the caregiver when the product is being placed onto their body in the manufacturer's use position.'' Other than editorial differences, the definition of ''conspicuous'' is equivalent to the definition included in the final rule, which was amended based on public comments on the NPR, as discussed in section V and section VI.E.

The voluntary standard also includes requirements for the product package to include warnings against using nursing pillows for sleep or in sleep products, and to state the manufacturer's recommended weight, height, age, developmental level, or combination thereof, of the infant. In addition, the package cannot include warnings, statements, or graphics that indicate or imply that the infant may be left in the product without an adult caregiver in attendance. These requirements match the requirements in the final rule (§ 1242.6(f)).

Lastly, ASTM F3669—24 includes requirements for instructional literature to be provided with products covered by the standard. In addition to repeating the warnings on the product, the instructions must warn consumers to: (1) read all instructions before using the product; (2) keep the instructions for future use; and (3) not use the product if it is damaged or broken. The instructions also must indicate the manufacturer's recommended maximum weight, height, age, developmental level, or combination thereof, of the infant. If the product is not intended for use by a child for a specific reason (*e.g.,* a disability that would prevent safe use of the product), the instructions must state this limitation. These requirements match the requirements in the final rule (§ 1242.7).

Staff assesses that ASTM F3669—24 largely aligns with the final rule, with the primary exceptions being related to scope—with the final rule defining nursing pillows to include slipcovers sold on or together with the nursing pillow, while the ASTM voluntary standard does not mention slipcovers—and the product warning—with the final rule including an additional warning statement instructing the consumer to move the baby to an infant sleep product if the baby falls asleep or if the caregiver feels drowsy. In all, the final rule is more stringent and protective of infants than the ASTM voluntary standard.

Although, as explained, there are many similarities between the ASTM voluntary standard and the Commission's rule, we choose not to incorporate portions of the ASTM standard into our rule at this time, for two reasons. First, the Administrative Procedure Act (APA) prevents incorporation by reference of a number of the ASTM provisions that differ from the NPR's provisions absent an additional notice and comment period. Such a process would delay unnecessarily adoption of this rule, and the Commission declines to do so. *See* 5 U.S.C. 553. Second, the CPSC rule contains a number of provisions that are more stringent than the ASTM standard. Adoption of a piecemeal rule, even after an additional notice and comment period, containing some elements of the ASTM standard along with the more stringent requirements of the Commission rule would risk needless complexity and industry confusion. To the extent changes are made to the voluntary standard in the future such that it conforms to the final rule, the Commission may consider incorporating the standard by reference at that time.

## V. Response to Comments

The Commission received 129 comments on the NPR before the comment period closed on November 27, 2023.[12] The Commission also received three public comments on the NOA before its comment period closed on May 23, 2024.

You can access comments by searching for docket number CPSC–2020–0023 at *http://www.regulations.gov.* The topics addressed in these comments fell into several broad categories: (1) scope of the rule; (2) performance requirements; (3) marking and labeling requirements; (4) effective date; (5) small business issues; and (6) procedure. Below we summarize and respond to the comments by topic. Public comments related to the effective date and small business issues are discussed in their respective sections, X and XI.

*A. Scope of the Rule*

1. Slipcovers

*Comments:* First Candle, the Boppy Company, the Juvenile Products Manufacturers Association (JPMA) and the Breastfeeding Infant Development Support Alliance (BFIDSA) requested, in response to the NPR, clarification whether removable nursing pillow covers, or slipcovers, are included within the scope of the rule. The Boppy Company, JPMA, and a consumer commented, in response to the NOA, on whether nursing pillow covers, or slipcovers, should be subject to the requirements of the rule. The consumer comment stated that nursing pillow covers, or slipcovers, and anything else that is sold as part of the product (*e.g.,*

[12] The rulemaking docket for the Safety Standard for Nursing Pillows (CPSC–2023–0037, *https://www.regulations.gov/document/CPSC-2023-0037-0002*) includes nearly 850 emails received prior to the comment period that are essentially identical to these 53 public comments.

buttons, zippers) should be included within the nursing pillow definition and subject to the requirements of the rule. The Boppy Company and JPMA stated that slipcovers should not be subject to the requirements of the rule and the Commission should instead work with ASTM to create a relevant slipcover rule through the Infant Bedding subcommittee. The asserted bases for these two comments include the following:

- Slipcovers are nondurable accessories to nursing pillows, and regulating these accessories under the proposed rule is an overreach of the Commission's legal authority. The comments state that slipcovers sold with nursing pillows should be excluded from the definition of nursing pillows, with one of the comments stating that even slipcovers that are sold pre-installed on the nursing pillow are not subject to CPSIA section 104 regulation, as accessories.
- Regulating slipcovers under the proposed rule for nursing pillows contradicts the precedent set for crib mattresses, which similarly must have a permanent warning, and crib sheets, which are sometimes sold with crib mattresses and would cover up such a warning. Moreover, one of the comments asserts that crib mattresses are even more likely to be used with a sheet than a nursing pillow is to be used with a slipcover.
- Regulating slipcover manufacturers who also manufacture nursing pillows while excluding aftermarket slipcover manufacturers is improper, arbitrary, and capricious. Because most aftermarket slipcover manufacturers are based in China and do not manufacture nursing pillows, commenters state that such action is discriminatory towards U.S. small businesses.

JPMA stated that data do not support that slipcovers present a distinct hazard that should be regulated.

*Response:* Although not all nursing pillows include slipcovers, some nursing pillows are marketed and sold with slipcovers and these covers, though removable (*e.g.,* for washing), are intended, marketed and designed as part of the product to position and support an infant close to a caregiver's body while breastfeeding or bottle feeding, as defined in 16 CFR 1242.2. For example, some products are sold with a slipcover that directly encases the filling material of the product; that is, the slipcover does not cover another exterior fabric cover or casing that itself contains filling material. In such cases, the nursing pillow is not intended to be used without a slipcover.

Staff also found that for nursing pillows with both slipcovers and caregiver attachments, the caregiver attachment is typically sewn onto, or otherwise a part of, the slipcover. Thus, the caregiver attachment, which allows the nursing pillow to perform its intended function by ensuring the product can rest upon, wrap around, or can be worn by a caregiver in a seated or reclined position, as defined in 16 CFR 1242.2, cannot be used without the slipcover being installed on the product.

Lastly, there are nursing pillows that can be used without a slipcover but are sold with a slipcover on or accompanying the nursing pillow. This indicates that these nursing pillows are intended, marketed, or designed to be used with the slipcover that is provided with the product. Such slipcovers are also considered to be part of the nursing pillow as defined in 16 CFR 1242.2.

Considering these findings, the Commission clarifies that nursing pillow slipcovers installed on a pillow, or sold together with a pillow for a single price, are considered a part of the nursing pillow product, and therefore are within the scope of the final rule. The Commission has authority to regulate consumer products under the CPSA, which defines consumer products to include their component parts. 15 U.S.C. 2052(a)(5). Accordingly, the Commission is finalizing the definition of ''nursing pillow'' to include any removable covers, or slipcovers, sold on or together with the product. The Commission also clarifies that slipcovers that are sold separately, not on or together with a pillow, are not within the scope of the final rule because they are not component parts intended, marketed or designed as part of the product.

In response to the commenters' suggestion that a slipcover cannot be regulated because it is an accessory, there are no exemptions in the CPSA for ''accessories'' nor is the term ''accessories'' included in the definition of a ''consumer product.'' Regardless, the Commission does not consider a slipcover sold on or together with a nursing pillow to be an accessory, but rather to be a component part of the consumer product subject to this final rule, the nursing pillow.

Comments asserting that the *Safety Standard for Crib Mattresses,* 16 CFR part 1241, which excluded crib sheets, sets a precedent contradicting this regulation are not persuasive. The decision to exclude crib sheets from the crib mattress mandatory standard was based on the nature and use of the product with other products. 87 FR 8640 (Feb. 15, 2022). Unlike crib sheets, which are frequently interchangeable and, as commenters describe, are sometimes used by consumers for other products such as playpens, play yards, and bassinets, a slipcover provided with a nursing pillow can only be used for, and is intended to be used as part of, a nursing pillow. In addition, unlike cribs, nursing pillows are sold in a variety of shapes and sizes, and therefore slipcovers are designed to fit a specific brand and model of nursing pillow.

The comment stating that slipcovers do not pose a distinct hazard does not recognize the concern that these parts would cover the permanent warning on rule-compliant nursing pillows. Nursing pillow slipcovers that lack the final rule's required product warnings therefore could reduce consumer awareness of the hazards associated with nursing pillows. For this reason, the Commission urges ASTM to address hazards associated with slipcovers that are sold separately. In the meantime, the Commission encourages all manufacturers of out-of-scope slipcovers to protect infants against death and injury by ensuring that their products are consistent with the marking and labeling and other requirements of this safety standard.

Regarding the comment that the rule is discriminatory against U.S. small businesses because it does not include aftermarket or third-party manufacturers of slipcovers that are described as being produced mostly outside of the U.S, the final rule applies uniformly to all products within the scope of the rule, as well as all products outside its scope, independently of where they are manufactured.

2. Exemptions

*Comments:* The ERGO Baby Carrier, Inc. stated that, in addition to sling carriers, the final rule should exempt soft infant and toddler carriers, hip seat carriers, and products that are unable to rest flat on horizontal surfaces. The commenter stated that soft infant and toddler carriers are regulated under 16 CFR part 1226; that ''hip seats,'' or ''hip seat carriers,'' do not have a standard but are often used with an infant partially supported by the caregiver and product, and could foreseeably be viewed as having a slightly u-shaped base that slightly conforms to the caregiver's body and brings the product within the definition of a nursing pillow; and that products that are unable to rest flat on a horizontal surface in its intended use position are unlikely to be used as an infant support product.

*Response:* The Commission recognizes that, like nursing pillows, soft infant and toddler carriers position and support an infant close to a caregiver's body and could possibly be used for nursing or bottle feeding. However, unlike nursing pillows, soft infant and toddler carriers are intended primarily for carrying the infant or child and are unlikely to be used for independent infant propping, lounging, or sleep. In addition, as noted in one of the public comments, these products are already regulated under 16 CFR part 1226. Therefore, the Commission is exempting soft infant and toddler carriers from the final rule for nursing pillows.

Although the ''hip seats'' described in the comment are similar to soft infant and toddler carriers, in that they are intended primarily for carrying the infant or child and are unlikely to be used for independent infant propping, lounging, or sleep, a mandatory standard for these products does not yet exist. Thus, the Commission concludes that an exemption for hip seats from the final rule is not appropriate, and that hip seats intended, designed, or marketed for breastfeeding or bottle feeding, and that otherwise meet the definition of a nursing pillow, will be considered a nursing pillow under the final rule.

The Commission disagrees with the suggestion to exempt products that are unable to rest flat on a horizontal surface in their intended use position because there may be nursing pillows with an uneven bottom surface that still lend themselves to infant propping or lounging. Therefore, the Commission concludes that all nursing pillows, regardless of shape, are subject to the requirements of the final rule.

3. Use of Substitute Products

*Comments:* Seven consumers, five anonymous individuals, a product safety consultant, Perspective Enterprises, the Boppy Company, and BFIDSA, claimed that consumers may use substitute products such as bed pillows or throw pillows, or may obtain noncompliant products from the secondhand market, instead of using nursing pillows that comply with the final rule. Most of these comments asserted that the use of substitute products instead of compliant nursing pillows will be due to the rule's firmness requirement (specifically, mattress-like firmness), the infant containment requirement, or both. Commenters attribute the reason for consumers using substitute products to comfort levels for the infant, caregiver, or both; difficulty of use; heavier weight and transport difficulty; laundering issues; and reduced amount of support surface for one or more infants. One consumer suggested that CPSC consult an expert on nursing products and user experience and design the products to adequately address those concerns. Kids in Danger expressed support for the requirements in the NPR, stating that they will lead to safer products without a negative impact on the use of the product as a nursing pillow.

*Response:* CPSC acknowledges that some consumers already choose to use products other than nursing pillows, such as bed pillows or rolled up towels, to support infants during breastfeeding. In fact, some websites that promote breastfeeding indicate that consumers often already use these other products, rather than dedicated nursing pillows, for breastfeeding and find nursing pillows to be unnecessary. The CPSIA requires CPSC to promulgate safety standards for all categories of durable infant and toddler products, even if consumers also use alternatives to those products. Ensuring that nursing pillows prevent hazards that could result in serious injury or death to infants, however, both complies with this Congressional directive and is likely to encourage safety-conscious caregivers to use nursing pillows that meet a mandatory safety standard instead of unregulated alternatives that may pose hazards for infants.

The incident data show that the primary hazard associated with nursing pillows is the use of these products for lounging and sleeping, not breastfeeding, and the design of most nursing pillows on the market lends themselves to lounging and sleeping. Nursing pillows that are soft and can envelop and support an infant for lounging are likely to continue to be used in this way if the Commission does not finalize this safety standard. The CPSIA requires that the Commission act to prevent these hazards.

Regarding the firmness and infant containment requirements, some nursing pillows on the market already have firmness and caregiver opening dimensions that would meet the requirements of the rule, and consumers have purchased and successfully used these products.[13] Staff is not aware of widespread reports or complaints of these products being less comfortable or more difficult to use in comparison to other products without these features. Moreover, contrary to comments arguing that the firmness requirements will result in heavier products that are more difficult to transport, one of the nursing pillows on the market that meets the final rule's firmness requirement is one of the lightest nursing pillows examined by staff.[14]

Further, while the infant containment provision would reduce the amount of the nursing pillow that wraps around the caregiver for some existing products and could reduce the overall available infant support surface, infants generally do not take up the entire infant support surface of existing nursing pillows during use, and as noted above, consumers are successfully using products that already would meet the infant containment provision.

4. Impact on Breastfeeding

*Comments:* Many commenters, including 71 consumers, one anonymous individual, Perspectives Enterprises, the Boppy Company, a Boppy consultant, and BFIDSA, discussed the possible impact of the rule's requirements on breastfeeding. Most of these comments assert that the NPR failed to consider data around the safety, utility, and intended purpose of nursing pillows, and the required changes to nursing pillows will reduce the availability of nursing pillows and have a negative effect on breastfeeding and its associated benefits. One of the commenters, a Congressional representative, asserted that these requirements fundamentally alter the function of the product and effectively prohibit the use of nursing supports for breastfeeding mothers. Commenters reasoned that this is due to reduced comfort for the infant, caregiver, or both; reduced ease of use; increased weight and difficulty in transporting; and difficulty laundering the product. Some comments from consumers also expressed concerns about rule-compliant nursing pillows having to use crib mattress material or being less adjustable to the caregiver's body shape.

*Response:* None of the comments provide data to support the claim that the requirements in the proposed rule would adversely affect the effectiveness or prevalence of breastfeeding. To the contrary, ensuring that nursing pillows are compliant with a safety standard that prevents known hazards resulting in injury or death could encourage

[13] Analysis by staff of CPSC's Directorate for Economic Analysis (EC) finds that one of the nursing pillows currently on the market that meets the final rule's firmness requirement is a Top 10 bestseller on *Amazon.com* and sells more than 18,000 units per month on Amazon alone.

[14] One nursing pillow that Boise State University (Mannen et al., 2022) found to meet the firmness requirement weighed 0.48 kg (1.06 lb.). This was the lightest of all examined nursing pillows, which weighed up to 1.84 kg. Even the next lightest nursing pillow was nearly twice the weight, at 0.88 kg (1.94 lb.).

caregivers to use compliant nursing pillows, due to concerns for infant safety. According to CPSC staff's testing, some nursing pillows on the market already have infant support surfaces with a level of firmness that is consistent with the level specified in the proposed rule and have caregiver openings that would meet the proposed infant containment provision. These findings indicate that such requirements are unlikely to decrease the utility of nursing pillows for breastfeeding, particularly because nursing pillows with these already-compliant features tend to be single-function products that are designed specifically for this activity. Furthermore, nursing pillows that do *not* comply with the rule's infant containment provision are less likely to fit a caregiver to enable nursing; their small openings generally appear designed and intended to fit and support a small infant for lounging.

The rule does not require nursing pillow manufacturers to use crib mattress material. The rule establishes a firmness standard but does not dictate the product's material or construction. The Commission is also not aware of widespread reports or complaints of existing nursing products that have increased firmness and are less capable of containing an infant being less adjustable or fitting poorly in comparison to other nursing pillows.

5. Product Misuse and Education

*Comments:* CPSC received comments from 20 consumers, 13 anonymous individuals, Perspective Enterprises, Kids In Danger, a product safety consultant, and JPMA, expressing concerns with consumers' alleged misuse of nursing pillows, disregard for warnings, or allegedly inattentive/neglectful/irresponsible parenting. Many of these commenters suggested increased and consistent education, educational campaigns, or safety alert/guidelines about safe sleep, appropriate nursing pillow use, and similar topics, and either implied or explicitly stated that changes to the products are not needed. Several commenters, however, pointed out that nursing pillows already have warnings that directly address sleep and other misuse patterns. A childbirth and nursing educator commented that while education is important, it is not enough to address the hazards. One commenter, Kids in Danger, recommended that more education should be combined with adoption of the requirements in the NPR.

*Response:* The Commission agrees that using nursing pillows for sleep or naps is hazardous and that education about safe sleep and the safe use of nursing pillows is important and useful. However, the Commission also agrees with the comment that states that education alone is not enough to address the hazards associated with nursing pillows. As noted in the comments, virtually all nursing pillows on the market already warn against using the products for sleep, which is a foreseeable use pattern given that infants are likely to fall asleep or to be put to sleep on products intended for lounging or rest, and many nursing pillows either are or have been marketed for infant lounging.

The improved product warnings and instructional requirements in the final rule should increase the likelihood that affected consumers will be better informed about the dangers of using nursing pillows for sleep and may reduce unsafe use of nursing pillows. However, providing warnings and instructions about hazards is less effective at eliminating or reducing exposure to hazards than either designing a hazard out of a product or guarding the consumer from a hazard. Indeed, the commenters' recognition that consumers are disregarding existing warnings confirms the limited effectiveness of warnings in addressing this issue and supports the need for performance requirements. Educational campaigns or programs might offer more opportunities to present hazard information in varied ways and in greater detail than traditional warnings, but these programs suffer from similar limitations and cannot be expected to eliminate hazardous use.

*B. Performance Requirements*

1. Small Parts Requirement

*Comment:* An anonymous commenter stated that the rule should specify that the foam cores of nursing pillows must pass small parts testing, because they are accessible on some products currently on the market, once the zipper is opened.

*Response:* All nursing pillows are subject to the small parts testing, 16 CFR 1242.3(b), which requires that there shall be no small parts before testing or liberated as a result of testing. The Commission agrees that products filled with foam and a covering secured with a zipper would allow access to the foam filling, if the zipper were opened, and CPSC staff is aware of nonfatal choking incidents involving infants placing accessible filling into their mouths. This potential hazard is addressed by the rule's tension test requirement for nursing pillow components that are accessible to an infant, which includes a zipper pull. Any part, including filling, that is liberated thereafter is subject to the small parts requirement. The rule also includes a firmness test procedure that requires the product to be laundered according to the manufacturer's instruction. Any part, including filling, that is liberated as a result of this test will also be subject to the small parts testing requirement.

CSPC, however, is not aware of any incident reports where an infant has accessed a foam core of a nursing pillow by opening the zipper. Thus, adding a specific requirement to address the scenario described by the commenter is not supported by the data at this time. CPSC will continue to monitor incidents after the rule becomes effective.

2. Infant Restraint Prohibition

*Comments:* Comments from three consumers, a Boppy consultant, the American Academy of Pediatrics (AAP), Kids in Danger, a product safety consultant, Consumer Reports, the Consumer Federation of America and the National Center for Health Research (CFA/NCHR), and Safe Kids Worldwide agreed that infant restraints and harnesses should not be permitted. In contrast, a comment from China's WTO/TBT National Notification & Enquiry Center and China's National Center of Standards Evaluation, Notification and Comment Center on TBT of the State Administration for Market Regulation (collectively, SAMR) expressed support for infant restraints and stated that these features are intended to fasten infants in a position to facilitate breastfeeding and to reduce the risks of suffocation and falls, among other risks. This commenter further added that products with infant restraints include warnings against leaving a child unattended during use. This comment also included a recommendation to further research the risk of falls for nursing pillows with restraints compared to those without restraints.

*Response:* The Commission will retain the prohibition against infant restraints in the final rule. There is no evidence provided to support that breastfeeding caregivers require such features for support of the infant. Caregivers actively hold and position infants while breastfeeding, and fall-related incidents of which the Commission is aware tend to involve unattended infants who were left propped or lounging in the product. Consumers may interpret the presence of an infant restraint to imply that such unattended use is acceptable.

3. Seam Strength Requirement

*Comments:* Commenters from the AAP, a Boppy consultant, and a product safety consultant generally supported the seam strength requirement. One consumer, a lactation consultant, commented that she is not aware of any problems with seams.

*Response:* Reported incident data include infants gaining access to the filling within nursing pillow products because of seam openings. Therefore, the Commission is finalizing the proposed seam strength requirement in this rule.

4. Caregiver Attachment Strength Requirement

*Comment:* Public comments from the AAP and Consumer Reports generally supported the requirement for caregiver attachment strength. Consumer Reports, however, stated that it was unclear how buckle- or clasp-free attachments—for example, those that rely on ties—would be assessed or if those attachment methods are prohibited.

*Response:* The caregiver attachment strength requirement was not intended to be applied only to buckles and clasps. The definition ''caregiver attachment'' states that it ''may comprise components including, but not limited to, straps, buckles, or latches.'' Therefore, ties are included among the components that comprise a caregiver attachment. However, to clarify that fasteners of all types are subject to the caregiver attachment strength requirement, the Commission is revising the Caregiver Attachment Strength Test Method to add ''other fastener,'' in addition to buckle and clasps, to better describe the range of possible elements of a caregiver attachment.

5. Firmness Requirement

*Comments:* Nine consumers, one anonymous individual, a Congressional representative, and Perspectives Enterprises commented that the firmness requirement, alone or possibly when combined with the infant containment requirement, will reduce or eliminate the effectiveness of the product for breastfeeding and will possibly discourage caregivers from using compliant products. Perspectives Enterprises claimed that firm nursing pillows are not as popular as softer ones. Comments from three consumers and a product safety consultant stated that the changes will drive consumers to substitute products, such as adult pillows, or to the secondhand market, possibly increasing the risks to infants. One comment from an anonymous individual questioned whether there is any research on the negative effects of a firmer surface and whether it is possible that current products have made breastfeeding safer overall.

Comments from 13 consumers, one anonymous individual, a product safety consultant, and Perspectives Enterprises stated that greater firmness will reduce the comfort of nursing pillows for the infant, caregiver, or both. Nine consumers, a product safety consultant, and Perspectives Enterprises expressed concerns about mattress-like firmness, with some comments stating that nursing pillows need to have pillow-like softness or that they should be soft enough to accommodate and adjust to different caregiver body sizes and shapes.

The AAP, Kids in Danger, Consumer Reports, CFA/NCHR, Perspectives Enterprises, and a consumer supported the proposed rule's requirement for mattress-like firmness, primarily because the requirement will effectively eliminate or reduce the likelihood of an infant's face conforming to the product's surface and, when combined with the infant containment requirement, will lessen the likelihood the product will be used as a lounger or sleep surface.

Comments from a testing lab representative, a safety engineer, JPMA, the Boppy Company, the ERGO Baby Carrier, Inc., and BFIDSA recommended revisions to the firmness test method, including:

- Adopting the recommended test method for firmness that was being developed by the ASTM Infant Bedding subcommittee at the time of the comment period;
- Changing the firmness probe figure to address missing information on the probe diameter, the type of material, and dimensional units, and to remove the term ''recommended'' from the specified probe length; this comment recommends changing the figure to mirror Figure 11 in ASTM F833—21;
- Using the probe figure from the firmness test method being developed by the ASTM Infant Bedding subcommittee; and
- Specifying that the final firmness measurement should be taken after the measured force stabilizes, which should be defined as when the force does not change by 0.1 N in 30 seconds, and that multiple firmness measurements should be taken at each test location.

Comments from a safety engineer, JPMA, the Boppy Company, the ERGO Baby Carrier, Inc., and BFIDSA expressed concerns about the accuracy of the firmness test method and the test locations proposed in the NPR, with most recommending that the rule should specify that when choosing a test location, the edge of the test probe shall not extend beyond the edge of the product. The ERGO Baby Carrier, Inc. further recommended that the test method should specify the most pertinent parts of concern for the nursing pillow, as there may be some areas where the product tapers to a smaller dimension that is not firm but nevertheless does not present a suffocation risk.

*Response:* Comments regarding the impact of the firmness requirement on breastfeeding and use of substitute products are addressed earlier, in sections V.A.3 and 4. Regarding comments about the relative popularity of softer nursing pillows, soft bedding poses a known suffocation risk to infants while firmer products consistent with the rule do not have suffocation incidents. Therefore, the argument for softer products is contradictory to the rule's intent to reduce such hazards for infants.[15]

Regarding the recommendation to adopt the firmness test method being developed by the ASTM Subcommittee F15.19 on Infant Bedding, the ASTM draft test method has not yet been finalized or published and it is unclear whether and when publication will occur. Staff, however, has participated in the development of this test method and continues to participate in related ASTM task group meetings.

Regarding the recommendation to reference Figure 11 of ASTM F833 in the final rule, this figure is not appropriate for the firmness test method in the final rule because it is associated with an occupant retention requirement, not a firmness requirement.

The specific recommended changes to the firmness probe figure, to add units of measure, set an overall length, and specify probe material composition and surface finish, are warranted and will improve the consistency of probe construction among testing laboratories. Accordingly, the Commission is revising the figure in the final rule as suggested by commenters. These changes will not affect the substantive outcome of firmness testing.

The comments recommending changes to the firmness test method to take the final firmness measurement only after the force has stabilized would result in an improvement to the

[15] In addition, many comments express general concern about nursing pillows having to be as ''hard'' as crib mattresses. Yet, the final rule's firmness requirement, which requires that the force to displace the test probe 1 inch be greater than 10 N, represents the *low* end of crib mattress firmness. The overall average of all tested crib mattresses during the development of this requirement was greater than 15 N.

reliability and repeatability of the test. Accordingly, the Commission is revising the firmness requirement test method by adding language to specify that the final force is based on the measurement not changing more than 0.1 N in successive 30 second periods.

It does not follow, however, that performing multiple firmness tests at the same locations, as suggested by some comments, would be beneficial. If a firmness test is repeated at the same specified location, the product surface will be compressed, and the forces required to reach the 1.00 in (25.4 cm) deflection in the subsequent tests will likely result in different, most likely higher, forces. The commenter who recommended this change, a safety engineer, does not describe how multiple results in a single location will be used to determine compliance. As proposed in the NPR, the final rule requires that the test locations are placed 3 inches apart to reduce the effect of previous tests.

The Commission agrees with the comments expressing concern about the accuracy of the test method and the testing locations where the edge of the test probe extends beyond the edge of the product. Testing with a probe that extends beyond the edge of the product would be analogous to an infant's face being only partially in contact with the product surface. Such a scenario is unlikely to result in the infant's face being enveloped by the product, and therefore is unlikely to represent a suffocation scenario. In addition, testing at an unsupported edge could result in a (false) test failure due to the deflection measurement including the edge bending away. Therefore, the final rule limits test locations to those in which the profile of the head probe is fully within the confines of the product surface. However, it is possible that some nursing pillows could be of a size or shape that would require the edge of the probe to extend beyond the edge of the product to perform firmness testing. Thus, the final rule specifies that if the design or size of the product is such that the edge of the probe must extend beyond the product, then the probe must be centered over as much of the test surface as possible. Additionally, the proposed rule did not explicitly state to zero the force gauge before the probe is advanced onto the product. This step is good laboratory practice to follow and is implied by the low force needed when setting the deflection to 0.0 inches. However, to ensure the accuracy of the test results as the probe is moved from location to location, the final rule now explicitly states to zero the force gauge after the probe has been oriented and before the probe is advanced onto the product.

6. Infant Containment Provision

*Comments:* Comments from the AAP, Kids In Danger, Consumer Reports, CFA/NCHR, and Safe Kids Worldwide supported the infant containment requirements, stating that the changes based on this requirement will discourage the use of these products for non-nursing purposes such as lounging or sleeping.

Three consumers, a product safety consultant, and Perspective Enterprises stated that the infant containment requirements will negatively impact the effectiveness of breastfeeding and deter the product's use for nursing, driving consumers to use substitute products.

Comments from two consumers, a product safety consultant, the Boppy Company, and BFIDSA expressed concerns about the reduced lateral support resulting from the infant containment requirement, including claims that it will reduce the product's ability to support multiple infants, that the requirement is not supported by data, and that the requirement was not included among the recommendations in the Boise State University (BSU) report to CPSC on infant pillows (Mannen et al., 2022).

Two consumers and Perspective Enterprises expressed concerns about the infant containment provision's effect on caregiver fit, particularly for larger caregivers.

A consumer and the ERGO Baby Carrier, Inc. sought clarifications for the infant containment requirements, including distinguishing between a caregiver opening and a caregiver attachment in products where the transition between the two might be ambiguous, and identifying the recovery time between testing a product with a caregiver attachment secured and unsecured. Lastly, the ERGO Baby Carrier, Inc. commented that the minimum-length setting requirement for the caregiver attachment is not supported by incident data and that if the caregiver attachment is removable, the test should be performed without it.

*Response:* The Commission agrees with commenters who support an infant containment provision that will discourage the use of nursing pillows for sleep and lounging. Comments regarding the impact of the infant containment provision on breastfeeding and use of substitute products were addressed earlier, in sections V.A.3 and 4.

Regarding concerns about reduced lateral support making nursing pillows unable to accommodate multiple infants for simultaneous breastfeeding, just as with solo infants, the potential loss of this feature is outweighed by the safety benefits of not providing lateral support that would enable young infants to be propped up in these products for lounging or sleep. Moreover, to CPSC staff's knowledge, all nursing pillows currently on the market that are designed solely for nursing or feeding would meet the infant containment provision in the final rule. The fact that the BSU report did not specifically consider a requirement for reduced lateral support for infants, and therefore did not include such a requirement among its recommendations, is not a valid reason to refrain from making this safety improvement.

The Commission disagrees with comments expressing concern about the infant containment provision's effect on caregiver fit, particularly for larger mothers. As noted in the staff briefing package supporting the NPR,[16] many nursing pillows currently on the market have openings whose size and shape seem designed with the specific intention of supporting a small infant, not primarily to fit a caregiver's body, with opening sizes smaller than the waist size of even the likely smallest-waisted adult user of these products. The infant containment provision would require caregiver opening sizes that more closely match the expected shape and size of a caregiver's body. Moreover, as that briefing package also noted, adult anthropometric data demonstrate that a nursing pillow that meets the infant containment provision would still allow the sides, or ''arms,'' of the worn product to extend more than half of the caregiver's full abdominal depth, even among caregivers with the largest abdominal depths.

Regarding the test method for assessing infant containment, the Commission agrees that for certain products that have a more gradual transition between the infant support surface and the caregiver attachment, as described by the commenter, there could be confusion about what qualifies as part of the caregiver attachment. Accordingly, the Commission is amending the definition of ''caregiver attachment'' in the final rule to mean, ''a portion of the product that is not an infant support surface and is intended to secure the nursing pillow to the caregiver. A caregiver attachment may comprise components including, but not limited to, straps, buckles, or latches.'' This revised definition explicitly excludes any part of the product that functions as an infant support surface.

[16] *See* Staff's NPR Briefing Package, 62–63.

The Commission is retaining the rule provision that provides for testing for infant containment with the caregiver attachment adjusted to its minimum length. Assessing infant containment after adjusting the caregiver attachment to its minimum length determines whether a nursing pillow with a caregiver attachment would allow the caregiver opening to be adjusted to an opening size that is useful to prop an infant who is not feeding. The requirement is intended to prevent this known hazardous use of nursing pillows.

The Commission agrees with the comment stating that the infant containment test method should require a recovery time between the steps where the caregiver attachment is secured at the minimum allowable length and tested with the 9-inch probe, and where the attachment is then unsecured and the test repeated. Securing a caregiver attachment typically draws together the sides of the caregiver opening, which may leave the opening temporarily deformed after the caregiver attachment is released, resulting in a caregiver opening that is temporarily smaller. To address this, the final rule reverses the order of the steps in the Infant Containment test method, so the product is tested first with the caregiver attachment unsecured, and then with the caregiver attachment secured at its minimum length. By applying this revised sequence to the test method, a waiting period is not needed between the two tests, because the unsecured test does not affect the secured test. The Commission also revised the accompanying figure to account for the revised sequence and to more clearly illustrate passing and failing nursing pillows, both with and without caregiver attachments.

7. Air Flow Requirement

*Comment:* A product safety consultant, the AAP, Consumer Reports, and Safe Kids Worldwide provided comments that addressed the airflow requirement that the Commission considered, but did not include, in the proposed rule. All of these commenters, except for Safe Kids Worldwide, agreed with the Commission's decision not to include an airflow requirement, stating that such a requirement is unnecessary or inappropriate. Safe Kids Worldwide appeared to believe that such an airflow requirement was included in the proposed rule. The AAP recommended that the Commission continue to monitor incidents and to consider adding an airflow requirement in the future, if necessary.

*Response:* Consistent with the NPR and the comments, the Commission does not include an airflow requirement in the final rule.

8. Angular Requirement

*Comments:* Comments from a product safety consultant, the Boppy Company, and BFIDSA agreed with the Commission's decision not to include an angular requirement (*i.e.,* requiring nursing pillows to have sharper edges or corners, rather than cylindrical sides) in the proposed rule. These commenters stated that an angular requirement would make nursing pillows uncomfortable for nursing, that it is unclear what would be an appropriate test method to assess the hazard and to determine compliance with such a requirement, and that the requirement is unnecessary and redundant for safety, as the suffocation risk is addressed by the other performance requirements in the rule. Kids in Danger recommended that the Commission consider adding an angular requirement in the future if propping or similar lounging-related uses continue.

Two commenters, AAP and Consumer Reports, stated that an angular requirement should be added to the rule because it is necessary to convey to caregivers that the products are not suitable for uses other than nursing or feeding. CFA/NCHR also recommended adding an angular requirement, stating that the requirement will ensure there is no reasonable way to prop up or lounge a baby on the product.

*Response:* CPSC continues to have concerns about appropriate pass-fail criteria for an angular requirement and the potential risks associated with such a requirement, which include the risk of positional asphyxia by neck hyperflexion or hyperextension if the nursing pillow is used as a support cushion for lounging, particularly because many nursing pillows on the market that are intended solely for nursing, which have not been involved in fatalities, are not ''angular.'' In addition, the final rule's infant containment provision is likely to achieve the goal of discouraging infant lounging by limiting the amount of lateral support these products provide to an infant. Thus, the Commission agrees with the comments supporting the NPR's proposal not to include such a requirement at this time.

*C. Marking and Labeling Requirements*

1. General

*Comments:* Eight comments, from three consumers, the AAP, Kids in Danger, Consumer Reports, CFA/NCHR, and Safe Kids Worldwide, generally support the product warning and labeling requirements in the proposed rule, with three specifically supporting the warning permanence requirement intended to prevent free-hanging labels. A consumer and SBA's Office of Advocacy took the view that warning requirements alone are sufficient to address the hazards and performance requirements are not necessary.

*Response:* Providing warnings and instructions about hazards is less effective at eliminating or reducing exposure to hazards than either designing the hazard out of a product or guarding the consumer from the hazard. Virtually all nursing pillows on the market already warn against using the products for sleep, yet consumers continue to use the products in this way. Thus, although improved warnings can help, the Commission disagrees with the comments stating that warnings alone should be sufficient to address nursing pillow hazards.

2. Warning Content

*Comments:* Perspective Enterprises and BFIDSA objected to the proposed warning's initial sentence about sleep and naps, stating that the sentence is unnecessarily alarming, with BFIDSA stating that the sentence should be changed to be consistent with other juvenile product standards that typically describe a hazard causing ''serious injury or death.'' This latter comment also disagreed with use of the terms ''turn'' and ''scoot'' in the warning, stating that they are unnecessary, and stated that nursing pillows can be used safely for naps in the lap of a caregiver, under direct supervision and supported by the caregiver's arms. A product safety consultant and a consumer suggested an alternative, briefer warning to improve the likelihood that it will capture attention and will be read by consumers. These two comments recommend limiting the text of the warning, after ''WARNING,'' to the following: ''Do not use for infant sleep. Baby can move during sleep and suffocate against nursing pillow.'' The consumer stated that the smaller size of the resulting warning would allow it to fit entirely in a conspicuous location and stated that the warning could include a reference for additional guidance, if needed. Lastly, CFA/NCHR recommended the addition of non-English language warnings and instructions, as well as diagrams that can be easily understood, regardless of language.

*Response:* The Commission disagrees with the comments claiming that the

proposed rule's initial warning statement, ''USING THIS PRODUCT FOR INFANT SLEEP OR NAPS CAN KILL,'' is unnecessarily alarming. The use of nursing pillows for sleep is the most common fatal hazard pattern for these products, even though warnings about the potential for death by suffocation if the products are used for sleep are prevalent on nursing pillows. The continued use of these products for sleep despite these warnings indicates that current messaging is not sufficient. The comments' primary concern with the initial warning statement appears to be the use of the phrase, ''CAN KILL,'' and the ASTM Nursing Pillows subcommittee received similar comments from ASTM F15 members, with some claiming that ''kill'' implies intentional violence and is not appropriate for a juvenile product. The Commission does not agree with these claims. However, in the final rule, the Commission is replacing ''CAN KILL'' because consumers may interpret this language as referencing something hypothetical that may not happen to their child. Instead, the Commission is finalizing the following statement that more concretely states the hazard: ''BABIES HAVE DIED USING NURSING PILLOWS FOR SLEEP OR LOUNGING.''

Like the original initial statement, this revised statement immediately communicates to consumers the actual and potential deadly consequences of using nursing pillows for sleep, which is the primary use pattern that has resulted in fatalities with these products. However, the revised wording also identifies the dangers of using the product for lounging and places emphasis on the fact that deaths *have occurred* when the product is used for sleeping and lounging, and thus communicates that the stated hazard is not merely hypothetical. Mentioning actual deaths should increase the perceived threat or hazardousness of the situation, which has been shown to motivate precautionary intent and behavior (Riley, 2006; Tannenbaum et al., 2015).

The Commission disagrees with the comment suggesting that the statement be reworded to say that using the product for sleep can cause ''serious injury or death.'' Although use of this phrase would be consistent with other juvenile product standards, the common use of this phrase elsewhere is likely to undercut its effectiveness in capturing attention and motivating warning compliance, compared to the language in the NPR and the final rule.

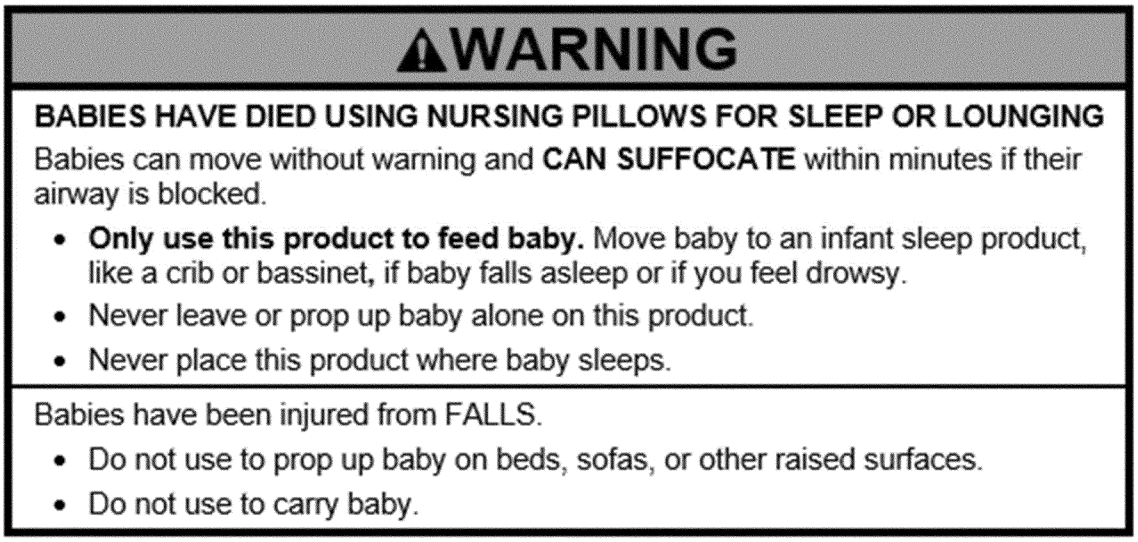
The Commission disagrees with the comments proposing very brief warning content that only tells consumers not to use the product for infant sleep and that the baby can move during sleep and suffocate against the nursing pillows. This omits important hazard information about, for example, consumers leaving the infant unattended in the product for reasons other than sleep (*e.g.,* lounging, propping); consumers using the product where the infant sleeps (*e.g.,* cribs, bassinets); and falls from elevated surfaces.

Nevertheless, the Commission does concur that revisions to the warning content could eliminate redundancy and potentially unnecessary information, thereby reducing the overall length of the warning without reducing the warning's effectiveness. The warning language in the final rule replaces ''turn, scoot, or roll over'' with ''move'' and ''in only a few minutes'' with ''within minutes.'' The Commission also revises the warning label to better reflect that nursing pillows are intended solely for feeding. Specifically, in the final rule the warning statement ''Use only with an awake baby'' will be revised to ''Only use this product to feed baby.''

To be more clear and actionable, the Commission also changes subsequent warning statements from ''a firm, flat sleep surface'' to ''an infant sleep product,'' and from ''Never use in sleep products like cribs, bassinets or play yards,'' to ''Never place this product where baby sleeps.'' Furthermore, the Commission is removing warning statements that communicate redundant messages, which include: ''Use only with an awake baby''; ''KEEP baby in arm's reach during use''; and ''Stop using if you feel yourself falling asleep.'' Lastly, for brevity and to emphasize a specific use that has led to falls, the Commission is revising ''Never carry or move product with baby in it,'' to ''Do not use to carry baby.''

In addition to the changes outlined above, the final rule provides for the addition of a border, or line, to separate the sleep- and suffocation-related warning language from the fall-related language. Grouping the warning text into separate, conceptually related sections in this way will allow consumers to more easily differentiate between the two distinct hazards, facilitating the search and acquisition of information (Tullis, 1997 as cited in Wogalter & Vigilante, 2006). In addition, this change visually communicates to consumers the limited information that must be processed on each topic, so consumers are not overwhelmed by a single mass of text that might otherwise dissuade them from reading.

Thus, the Commission is adopting the following warning for the final rule:




The Commission recognizes the potential usefulness of providing warnings and instructions in multiple languages, and many nursing pillow manufacturers already do so. At this time, the Commission will not impose a mandatory requirement that departs from the traditional approach of only English-language warnings; however, manufacturers may add additional languages on the warnings to best reach their customers. In addition, the Commission is not aware of any pictograms or similar graphics that would effectively communicate the primary hazard or the appropriate avoidance behaviors to most consumers. Some graphics thought to be obvious are poorly understood and even can give rise to interpretations that are opposite of the intended meaning (cf. Johnson, 2006; Wogalter, Silver, Leonard, & Zaikina, 2006).

3. Warning Format

*Comments:* CPSC received comments from a product safety consultant and a consumer discussing the warning format. Both commenters recommend replacing the orange-and-black ''WARNING'' signal word panel with the word ''STOP!'' The product safety consultant suggested that this will address consumer habituation to warnings that have become nearly identical in appearance and format.

*Response:* The warning format requirements in the proposed rule are based in part on the recommendations of the ASTM Ad Hoc Language task group (Ad Hoc TG), which developed its warning format recommendations specifically to address concerns raised by ASTM F15 members about the lack of consistency in warning requirements across ASTM juvenile product standards.[17] Ad Hoc TG's recommended requirements are further based on the requirements of ANSI Z535.4–11 which are the benchmark against which warning labels are evaluated for adequacy. Research generally shows that the individual elements or components of the ANSI Z535 format (*e.g.,* signal word, color) can be effective in improving noticeability, perceived hazard, and intended compliance.[18]

Changing the appearance of a warning can be helpful in reducing the potential for habituation, and the specific revisions proposed in the comments might accomplish this goal during initial exposures to the warning while conveying a similar level of hazardousness as the warning format specified in the proposed rule.[19] However, CPSC is unaware of any nursing pillows with prominent warnings affixed to the product in a conspicuous location similar to what the final rule requires; rather, most product warnings on these products appear to be on free-hanging, easily removable tags. Even if consumers generally are habituating to the appearance of ANSI Z535-style warnings, caregivers are unlikely to be dismissive of brief, conspicuous warnings on products intended for infants and are likely to read and process at least the initial sentence of the warning, ''BABIES HAVE DIED USING NURSING PILLOWS FOR SLEEP OR LOUNGING,'' which immediately communicates to consumers the deadly consequences of using nursing pillows for sleep and is likely to motivate further reading by the caregiver.[20] The reduced length of the warnings required by the final rule, compared to the NPR, further increases the likelihood that consumers will read the warning. The Commission thus will not change the format requirements of the warning for the final rule.

4. Warning Placement

*Comments:* The AAP, Perspective Enterprises, a product safety consultant, Consumer Reports, and CFA/NCHR discussed issues related to the placement of the warning on the product. The AAP, Consumer Reports, and CFA/NCHR support the proposed rule's ''conspicuous'' requirement and definition. Perspective Enterprises stated that based on the proposed ''conspicuous'' definition, there will have to be multiple warning labels on products that can be used in various positions. A product safety consultant

[17] In 2015, more than 30 ASTM members—representatives that included juvenile product manufacturers, independent consultants who participate in ASTM, consumer groups, and other supply-chain stakeholders—sent a letter to CPSC's then-Chairman Kaye, expressing concern with inconsistent warning formats across the standards and seeking consensus-based, consistent warnings. See *https://cdn.ymaws.com/www.jpma.org/resource/collection/DAD0B69F-A001-4829-931E-1131DAF39D79/Warning%20Labels%20Final.pdf.*

[18] *See* Staff's NPR Briefing Package, 72–73.

[19] The alternative signal word proposed by the comment, ''STOP,'' has been studied and the perceived hazardousness of this term compared to ''WARNING'' is mixed; the perceived hazard levels of these two terms generally appear to be similar (Wogalter & Silver, 1995). It conceivable, though, that using ''STOP,'' particularly if printed in red, could be at least as effective as an ANSI Z535-style ''WARNING'' signal word panel in communicating the hazardousness of the scenario described in the nursing pillow warning.

[20] In their discussion of warning research related to attention capture and maintenance, Wogalter and Vigilante (2006) acknowledge the potential for standardized warning formats to lead to habituation but still recommend maximizing attention to visual warnings by, among other things, including ''features that add prominence such as a signal word panel containing a signal word, color, and an alert symbol'' (p. 261).

recommended that the warning be positioned in the ''crook'' or the center of the nursing pillow, where the caregiver is inclined to prop up the infant, as this will be visible regardless of the pillow position at the time of the critical decision of where to place the infant.

CPSC also received comments from two anonymous individuals, Kids In Danger, a product safety consultant, and a consumer discussing the placement of warnings or other markings on nursing pillow slipcovers. The comments indicated: warnings already exist on nursing pillows and their covers; covers could have printed instructions and diagrams; warnings should be included on any slipcovers for the product, whether sold with the product or separate, and in particular aftermarket slipcover manufacturers should be required to label just like nursing pillow manufacturers; warnings are needed on slipcovers because slipcovers can block the visibility of the warning on the nursing pillow itself; and a smaller warning label could fit entirely in conspicuous locations on both the pillow product and any covers. The Boppy Company and BFIDSA noted that a slipcover could obscure a permanent warning on the pillow, but did not explicitly state that a warning should be required on slipcovers.

*Response:* The Commission agrees that a revised definition of ''conspicuous'' is appropriate for the final rule. The proposed rule defined this term as, ''visible, when the nursing pillow is in each manufacturer's recommended use position, to a person while placing an infant into or onto the nursing pillow.'' Staff worked with the ASTM Nursing Pillows subcommittee to develop this definition; however, since then, the subcommittee has expressed concerns about the definition, similar to those in the public comments. *See* staff's log of the February 1, 2024, meeting of the F15.16 Infant Feeding Supports subcommittee.[21] The definition used in the proposed rule could require multiple warning labels on certain products; for example, products with multiple infant support surfaces would likely require multiple, identical warnings.[22]

The primary messages in the product warning relate to use of the product for sleep or lounging, and incidents involving the use of nursing pillows in these ways consistently involve consumers propping or placing the infant in the caregiver opening. Thus, requiring the warning to be visible when the consumer is facing, or placing an infant into, the caregiver opening places the warning where the consumer is likely to be looking while placing an infant into or onto the product for lounging. However, some products that fall under the scope of the final rule might not have a caregiver opening, and the ASTM Infant Feeding Supports Scope task group shared the same concern. (See staff's log of the March 19, 2024, meeting of the F15.16 Infant Feeding Supports Scope task group.)[23] Based on these considerations, the Commission concludes that a preferred approach would be to require the warning to be visible to the caregiver while placing the nursing pillow onto themselves. This would mean the warning would be in a readily visible location and would allow products with a caregiver opening to have a single warning in this location, even if there are multiple infant support surfaces. Accordingly, the Commission is revising the definition of conspicuous to be the following: ''visible to the caregiver while placing the product in the manufacturer's recommended use position on or against the caregiver's body.''

Regarding the placement of warnings or other markings on nursing pillow slipcovers, slipcovers sold on or together with the nursing pillow are within the scope of the rule. The Commission shares commenters' concerns about slipcovers that are sold separately from the nursing pillow covering the otherwise conspicuous warnings on rule-compliant nursing pillows and encourages slipcover makers to adopt the rule's warning label for their products even if not legally required, and ASTM to form a working group to develop a voluntary standard for slipcovers that are sold separately.

5. Additional Warnings

*Comment:* One commenter, Kids in Danger, suggested that the Commission also consider an additional, removable warning with strong messaging about safe sleep and the danger posed by leaving a child in the product unattended or sleeping, that consumers must handle (*i.e.,* remove) to use the product. This message could be repeated on the product itself for future users.

*Response:* Considering that the final rule already includes a requirement for a permanent, prominent, strongly worded warning that will be visible to both new and future product users, the Commission concludes that a removable warning or label about safety sleep and the use of nursing pillows for sleep, as recommended by this commenter, is not warranted at this time.

*D. Stockpiling Concern*

*Comment:* Comments from the AAP and CFA/NCHR advised CPSC to take measures to avoid a sell-off of inventory for products that would be noncompliant after the effective date.

*Response:* Commenters who expressed a concern about potential selling off of inventory did not provide specific information as to actual stockpiling of nursing pillows that will be noncompliant under the final rule. Pursuant to 15 U.S.C. 2058(g)(1), the rule requires all products manufactured after the effective date to comply with the standard.

*E. Procedure and Constitutional Issues*

1. Statutory Authority

*Comments:* The Boppy Company, JPMA, and BFIDSA commented that the Commission is required to examine and assess the effectiveness of voluntary standards, and the Boppy Company and BFIDSA stated that the Commission can only promulgate a section 104 rule where a voluntary standard already exists.

*Response:* Under section 104 of the CPSIA, there is no statutory prerequisite requiring an existing voluntary standard in order for the Commission to promulgate a safety standard for a durable infant or toddler product. 15 U.S.C. 2056a(b)(2); *Finnbin, LLC* v. *Consumer Prod. Safety Comm'n,* 45 F.4th 127, 134 (D.C. Cir. 2022). In this instance, however, CPSC examined and assessed the effectiveness of the voluntary standard, ASTM F3669, as discussed in section IV of this preamble.

2. Regulatory Procedure

*Comments:* CPSC received three comments from JPMA, the Boppy Company, and BFIDSA that disagreed that nursing pillows are durable infant products subject to section 104 of the CPSIA. The comments argued that the product is primarily intended to support adult caregivers and is not for use by infants, whose contact is incidental. Commenters also asserted that nursing pillows are soft textile products that are used for a year or less. Lastly, the Boppy

[21] *https://www.cpsc.gov/s3fs-public/ASTM-F1516-Infant-Feeding-Supports-Subcommittee-Meeting-Log.pdf.*

[22] For example, CPSC is aware of a nursing pillow consisting of a stack of multiple petal-shaped pillows attached to a central tubular pillow. Based on the ''conspicuous'' definition in the proposed rule, such a product would likely require a warning on nearly every adjustable pillow.

[23] *https://www.cpsc.gov/s3fs-public/2024-03-19-ASTMF15-16Infant-Feeding-Supports-Scope-Task-Group-Meeting-Log.pdf.*

Company and BFIDSA stated that nursing pillows are unlike other feeding support items and products under the original list of durable infant or toddler products in section 104 because they are soft, textile products, rather than hard, rigid, plastic, or wooden products. They also contended that while nursing pillows may be resold or ''handed down,'' the same can be true of nondurable goods like infant clothing.

*Response:* Nursing pillows meet the statutory requirement for ''durable infant or toddler products'' in section 104(f)(1) of the CPSIA because they are intended for use, and may be reasonably expected to be used, by children under the age of 5 years and routinely have a life span of several years with multiple children. Specifically, CPSC staff's assessment indicates that nursing pillows are commonly purchased in ''used'' condition on marketplaces such as eBay, often at prices approaching half their original sale price, in addition to commonly being used by the original owner to nurse or feed additional siblings after being used for the first infant. Replacement covers are available for nursing pillows, which further confirms the extended service life of the pillow and differentiates nursing pillows from non-durable items such as infant clothing.

The Commission has previously added to the statutory list of durable infant or toddler products by including other products for young infants, such as changing products and infant bouncers, that also have a market for secondary use. As the Commission explained in 2009, ''[b]ecause the statute has a broad definition of a durable infant or toddler product but also includes 12 specific product categories, additional items can and should be included in the definition.'' *Requirements for Consumer Registration of Durable Infant or Toddler Products,* 74 FR 68668, 68669 (Dec. 29, 2009). Nursing pillows are intended for use by very young breast-fed and bottle-fed infants. The product is primarily designed to be used by infants to allow them to be nursed or fed successfully and comfortably by a caregiver. Contrary to commenters' suggestion, the fact that caregivers also interact with nursing pillows and find the products useful does not negate their use by and benefit for the infant. Infant carriers, for example, are worn by caregivers and have utility for them, but are on the statutory list of durable infant products. 15 U.S.C. 2056a(f)(2)(H).

3. Data

*Comments:* In response to the NPR, JPMA, the Boppy Company, and BFIDSA expressed concerns about the availability of incident data supporting the rule.

In response to the NOA, after CPSC made the data available, JPMA and the Boppy Company commented that the data was not causative and that incidents involved misuse of the product in unsafe environments despite warnings. JPMA specifically commented that focus should be on increasing consumer awareness of safe sleep and the safe use of nursing pillows, rather than re-engineering and reducing the utility of nursing pillows.

Also, the Boppy Company objected to references within the incident reports to the nursing pillow being the ''first product'' associated with these incidents.

One consumer commenting on the NOA stated that the incident data demonstrated the need for adopting the proposed safety standard to reduce the identified risks.

*Response:* In the NOA, CPSC announced the availability of incident data relied upon for the NPR. The data made available to the public for their review and comments included in-depth investigations (IDIs) and incident reports providing materials such as death certificates and information from medical examiners, consumers, and manufacturers. CPSC also released a list of NEISS data that included incidents and injuries treated in U.S. hospital emergency departments.

The Commission disagrees with the suggestion that the proposed rule is not based on causative data. As noted in staff's NPR briefing package, at least 32 of the 154 fatalities associated with nursing pillows during the timeframe examined involved an infant who was found with their face into the nursing pillow, and an additional 13 fatalities involved an infant found in contact with the nursing pillow, with their neck hyper-flexed and the head pressed against their chest or the neck hyperextended and the head tilted backward over the top of the product. Unsafe uses for lounging or sleep are foreseeable, regardless of the presence of warnings against using these products for sleep, given that many of these products previously were marketed and seemingly intended for infant propping and lounging, and infants who are lounging or resting on the product are likely to fall asleep. The final rule's primary performance requirements are intended to address these known hazard patterns; for example, and as discussed in the NPR, firmness reduces the potential for the product to conform to an infant's face, which addresses incidents of infants being found deceased with their face into the nursing pillow, while the infant containment provision reduces the likelihood that consumer can and will use the product for infant lounging or sleep. There are nursing pillows currently on the market that are intended solely for nursing that meet these requirements, and CPSC is not aware of any fatalities associated with these single-function, nursing-only products.

The Commission's response to public comments stating that the focus should be on increasing consumer awareness of safe sleep and the safe use of nursing pillows, rather than re-engineering nursing pillows, is provided above.

Lastly, in response to the comment about references within the incident reports to the nursing pillow being the ''first product'' associated with these incidents, the commenter is misinterpreting the use of this term. In-depth investigation reports list the products that are associated with the incident, and these products may be identified as the ''first product'' and ''second product.'' Investigators generally give priority to products that were involved in the incident for which CPSC has manufacturer information, as opposed to products for which CPSC does not have such information, particularly if the manufacturer has a U.S. presence. The terms ''first product'' and ''second product'' do not necessarily communicate the degree to which the product in question is the cause of the incident.

3. Constitutional Issues

*Comments:* CPSC received comments from the Boppy Company and BFIDSA that contended the proposed rule is unconstitutional because it violates the non-delegation doctrine and the Separation of Powers and Appointments Clause of the U.S. Constitution.

*Response:* The final rule is promulgated under the Danny Keysar Child Product Safety Notification Act, section 104 of CPSIA, which directs the Commission to promulgate consumer product safety standards for durable infant or toddler products. CPSC is finalizing a safety standard for nursing pillows pursuant to this detailed statutory instruction.

CPSC is an independent agency and its Commissioners do not exercise Executive power, consistent with the Supreme Court's holding in *Humphrey's Executor* v. *United States,* 295 U.S. 602 (1935). Federal Courts of Appeals have recently rejected Constitutional arguments like the ones made by the commenters here. *Consumers' Rsch.* v. *Consumer Prod. Safety Comm'n,* 91

F.4th 342 (5th Cir. 2024), petition for cert. filed, (*Consumers' Rsch.* v. *Consumer Prod. Safety Comm'n,* No. 23–1323 (petition for cert. filed on July 18, 2024)), *and Leachco, Inc.* v. *Consumer Prod. Safety Comm'n,* 103 F4th 748 (10th Cir. 2024), petition for cert. filed, (*Leachco, Inc.* v. *Consumer Prod. Safety Comm'n,* No. 22–7060 (petition for cert. filed on Aug. 9, 2024)).

## VI. Mandatory Standard for Nursing Pillows

As required in section 104 of the CPSIA, the final safety standard for nursing pillows establishes mandatory performance and labeling requirements for nursing pillows to address the risks of death and injury associated with infant suffocations, entrapments, and falls. Below we summarize the requirements in the final safety standard, including changes from the NPR.

### *A. Scope*

The final rule defines nursing pillow as any product intended, marketed, or designed to position and support an infant close to a caregiver's body while breastfeeding or bottle feeding, including any removable covers, or slipcovers, sold on or together with such a product. These products rest upon, wrap around, or are worn by a caregiver in a seated or reclined position. As explained in section V.A.1, in response to public comments, the Commission is clarifying that slipcovers sold on or together with a nursing pillow are a part of a nursing pillow, as defined, and are therefore included within the scope of the rule. The Commission, therefore, is amending the nursing pillow definition to include clarifying language. Expressly including slipcovers within the definition and scope of the final rule further reduces the risk of injury associated with nursing pillows by requiring slipcovers that are part of the nursing pillow to include the conspicuous product warning that will inform consumers about the primary hazards with nursing pillows. The definition of ''nursing pillow'' is similar to the definition in ASTM F3669—24. However, as discussed in section IV, the ASTM voluntary standard does not specifically address slipcovers in its definition. The Commission encourages all slipcover manufacturers to ensure that their products align with the requirements of this safety standard to further reduce the risk of death and injury associated with nursing pillows and encourages ASTM to form a working group to develop a voluntary standard for slipcovers.

The final rule does not include the additional language used in the non-mandatory ''Discussion'' portion of the ASTM voluntary standard's definition of ''nursing pillow,'' which states that the products are ''typically stuffed, filled or molded foam.'' That language is intended to exclude sling carriers from the definition's scope without explicitly exempting these products and is unnecessary given the specific exclusions discussed below.

In the NPR, the definition of ''nursing pillow'' excluded maternity pillows, as defined in § 1242.2, and sling carriers, as defined in 16 CFR part 1228. In the final rule, in response to public comments discussed in section V, CPSC is retaining these exclusions and also adding an exclusion for soft infant and toddler carriers, as defined in 16 CFR part 1226, because there is an existing mandatory rule that addresses the hazards associated with those products. As discussed in section IV, ASTM F3669—24 does not define or exempt maternity pillows.

### *B. General Requirements*

The final safety standard for nursing pillows includes many of the general requirements included in ASTM F3669—24 to address the potential hazards associated with lead in paints; small parts; sharp edges or points; and the removal of components that are accessible to infants; however, as discussed in section IV, the voluntary standard's Tension Test (7.7.4) in the Removal of Components test method does not specify the tension test adapter clamp that may be used if the gap between the back of the component and the base material is 0.04 inches or more, as is done in the final rule. Although the use of such a clamp is optional, providing this information is helpful to the tester. Like ASTM F3669—24, the final rule also includes requirements that assess the permanence of warning labels, whether paper, non-paper, or applied directly to the surface of the product, and require warning labels that are attached with seams to remain in contact with the fabric around the entire perimeter of the label when the product is in all manufacturer-recommended use positions. Thus, the final rule includes general requirements that are substantially the same as those in the ASTM voluntary standard.

The final rule, however, does not include the ASTM voluntary standard's general requirements for toy accessories that are attached to, removable from, or sold with a nursing pillow, and for nursing pillows that can be converted into another product or that have features for which a consumer safety specification exists to comply with the applicable requirements of all applicable standards. The Commission did not propose these two additional general requirements at the NPR stage, and therefore, these requirements were not subject to public notice and comment procedures of the APA. As a result, consistent with procedural requirements for rulemaking, the final rule does not include these provisions at this time.

### *C. Performance Requirements*

#### 1. Infant Restraint Prohibition

To address a potential entanglement hazard, the final rule prohibits nursing pillows from including an infant restraint system. This requirement is substantially the same as Infant Restraint requirement (section 6.1) in ASTM F3669—24. Proper use of a nursing pillow involves actively attending to the infant during use for feeding, and the presence of restraints could suggest to consumers that infants properly can be left unattended on the product.

#### 2. Seam Strength

The seams of the nursing pillows secure the filling material that, if released, can be swallowed by the infant. The Commission is aware of incidents involving seams opening and incidents in which infants accessed, and in one case choked on, filling materials. To address potential injuries associated with seam failures, the final rule adopts the NPR's requirement that nursing pillows not fail at any seams or points of attachment when subjected to a seam strength test similar to the tension test applied to toys intended for children up to 18 months old under ASTM F963, *Standard Consumer Safety Specification for Toy Safety* (the toy standard),[24] but tested at a higher tension force of 15 pounds rather than 10 pounds. However the final rule corrects a unit conversion error in the proposed rule, which incorrectly identified 0.5 pounds as equivalent to 1.1 N, rather than 2.2 N. The corrected requirement of the rule is substantially the same as the Seam Strength requirement (section 6.6) in ASTM F3669—24.

#### 3. Caregiver Attachment Strength

To address the potential for infant falls if the buckled belts, straps, or other features intended to secure the product to the caregiver fail, the final rule includes a requirement and test method for the strength of caregiver

[24] Incorporated by reference in 16 CFR part 1250, *Safety Standard Mandating ASTM F963 for Toys.*

attachments. Specifically, the final rule requires that each element of the caregiver attachment system (*e.g.,* strap, buckle) that is included on nursing pillows be required to withstand a static load of 20 pounds. The test method also has been revised slightly for the final rule to clarify that the requirements apply to all fasteners, not just buckles or clasps. This requirement is substantially the same as the Caregiver Attachment Strength requirement (section 6.7) in ASTM F3669—24; however, the definition of ''caregiver attachment'' in the voluntary standard is more limited in scope by referring to the caregiver attachment as a ''device or other mechanism'' rather than more broadly as a ''portion of the product.'' Thus, the definition included in the final rule is more stringent than the voluntary standard and further reduce the risk of injury associated with the use of nursing pillows.

4. Firmness

To reduce the likelihood that the nursing pillow will conform to an infant's face and suffocate the child, the final rule includes a firmness requirement that applies to each nursing pillow's infant support surface, as well as the inner wall of the nursing pillow's caregiver opening (*e.g.,* the wall within the crescent-like opening). The firmness requirement and test method are based on the recommendations of the BSU Final Report, with modifications including a requirement to test the inner wall of the opening. The test applies a 3-inch diameter hemispheric probe, which is similar in size and shape to an infant's face, to three test locations on each surface: one at the location of maximum thickness and two others at locations most likely to fail. To avoid passing pillows with soft areas, and to minimize any influence that conducting the test can have on the firmness of foam near the test location, these test locations must be at least 3 inches apart. In addition, addressing public comments, the final rule specifies that the locations must be selected so the edge of the probe does not extend beyond the edge of the product—unless the design or size of the product is such that the edge of the probe must extend beyond the product, in which case, the probe must be centered over as much of the test surface as possible—and the force gauge must be set to zero before the probe is advanced onto the test surface on the product.

To meet the firmness requirement, the force required to displace the probe 1 inch into each test location must exceed 10 N (about 2.25 pounds), which results in product firmness that is comparable to the minimum firmness of crib mattresses. In response to public comments, the final rule revises the test method to specify that the final force measurement at each test location is taken only after the force measurement has stabilized, meaning that it has not changed more than 0.1 N over 30 seconds. After laundering the product according to the manufacturer's instructions, the infant support surface and inner wall firmness tests are repeated. The final rule requirement is substantially the same as the three firmness requirements in ASTM F3669—24 (section 6.2 Infant Support Surface Firmness, 6.3 Inner Wall Firmness, and 6.4 Product Conditioning Firmness). However, as discussed in section IV, the ASTM firmness test method specifies that if the design of the product does not allow for testing three locations that are 3 inches apart, then firmness testing is performed on three separate available locations. The firmness test method in ASTM 3669—24 also includes additional figures not included in the proposed rule to illustrate the firmness probe and relevant aspects of the test method. Although not within the scope of the current proceeding as defined by the NPR, the Commission could assess the potential safety implications of these differences in a future proceeding to consider incorporating the ASTM voluntary standard by reference.

As discussed in section IV, the voluntary standard also defines certain terms that are used in the Firmness test method differently than the final rule. For example, ASTM F3669—24 defines ''infant support surface'' in a more limited way, by specifying that the infant support surface is necessarily ''horizontal.'' Thus, the definition included in the final rule is more stringent than the voluntary standard and further reduces the risk of injury associated with nursing pillows. The voluntary standard also defines ''caregiver opening'' differently than the proposed rule and adds a new definition for ''inner wall,'' which is not included in the final rule. The voluntary standard's definition of inner wall implies that it includes any surface of the nursing pillow intended to fit against the caregiver's torso during use, even if that surface is part of a caregiver attachment. This contradicts the final rule's definition of caregiver opening, which excludes caregiver attachments.

5. Infant Containment

To reduce the hazards associated with a nursing pillow opening that could be used for lounging or sleeping, the final rule requires nursing pillow openings to be of a size that is more appropriate for an adult user, rather than an infant, and limiting the amount of lateral support for young infants who might be placed within the nursing pillow opening. In case the infant is placed in the opening, this requirement will reduce the potential for an infant's head to become entrapped in the nursing pillow's opening or for the product to restrict a young infant's head movements.

As shown in Figure 3, a 9-inch probe is used to ensure that the product opening is wider than the probe and that the probe can be moved outward from inside the nursing pillow without contacting its surface.

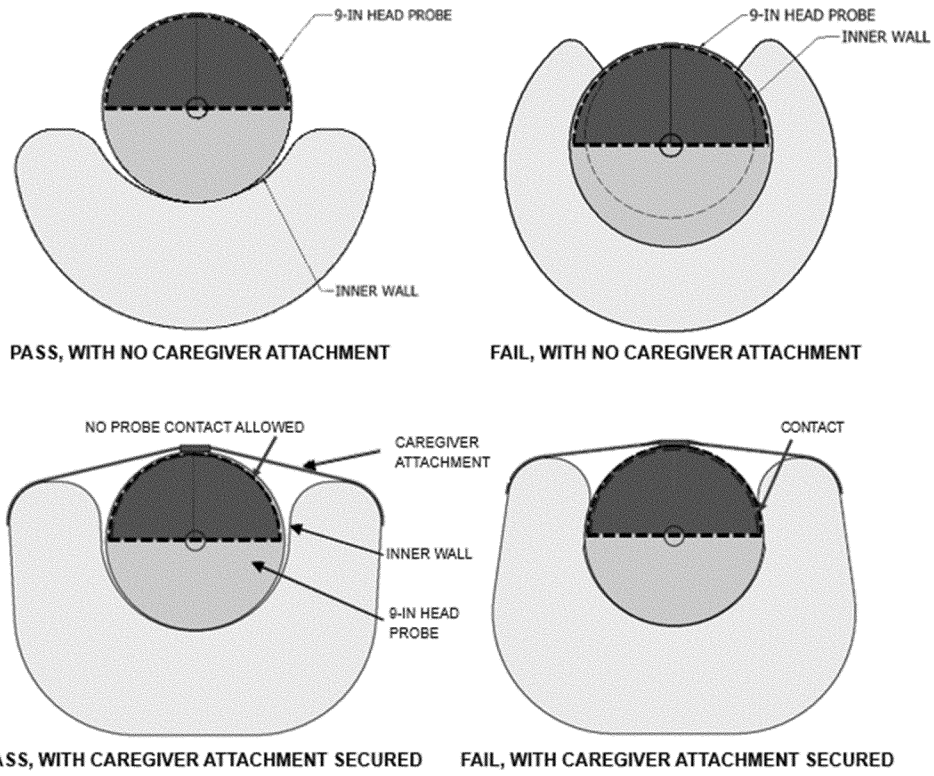



**Figure 3: Illustration of nursing pillows with and without a caregiver attachment that pass (left) and fail (right) CPSC's infant containment provision.**

If the nursing pillow has a caregiver attachment, during testing the attachment is unlatched, or otherwise unsecured, and moved away from the caregiver opening. To perform the test, the 9-inch probe is placed against the innermost surface of the caregiver opening. The inner wall of the caregiver opening cannot contact the outer half of the probe and the probe must extend beyond a line projected across the outside limits of the caregiver opening. The probe is then slid horizontally out of the caregiver opening, and the outer half of the probe cannot contact the inner wall of the caregiver opening. Contact with a caregiver attachment is not included in these assessments. Then, if the nursing pillow has a caregiver attachment, the caregiver attachment is adjusted to its minimum length and secured, and the same tests are repeated. In the NPR, testing would initially be performed with the caregiver attachment secured and then repeated with the attachment unsecured. However, to allow the product to return to its original shape, as recommended in public comments, the order of testing is reversed for the final rule. The final rule also includes a revised figure—the one shown in Figure 3—to clarify some of the pass-fail criteria for different nursing pillows. The requirement in the final rule is substantially the same as the Infant Containment requirement (section 6.5) in ASTM F3669—24, although the illustrative figures differ.

*E. Warning and Instructional Requirements*

As a secondary safety mechanism that provides consumers important information about the hazards associated with nursing pillows and appropriate behaviors to avoid those hazards, the final rule includes requirements for on-product warnings that address the primary hazards associated with nursing pillows, with revisions to address public comments related to warning content and length. The changes include the following:

- Revising the initial sentence from, ''USING THIS PRODUCT FOR INFANT SLEEP OR NAPS CAN KILL,'' to, ''BABIES HAVE DIED USING NURSING PILLOWS FOR SLEEP OR LOUNGING.''
- Stating explicitly that nursing pillows should be used for feeding only.
- Revising some language for brevity; for example, changing ''turn, scoot, or roll over'' to ''move;'' changing ''in only a few minutes'' to ''within minutes;'' and changing ''Never carry or move product with baby in it'' to ''Do not use to carry baby.''
- Deleting some statements that communicate redundant messages, for example removing the statements ''Use only with an awake baby,'' ''Keep baby in arm's reach during use,'' and ''Keep baby's face visible and airway clear.''

In addition, the example warning has been reformatted to include a line, or border, to separate the sleep/suffocation-related warning content from the fall-related content.

Figure 5 shows the warning statements and format that would be required on all nursing pillows:

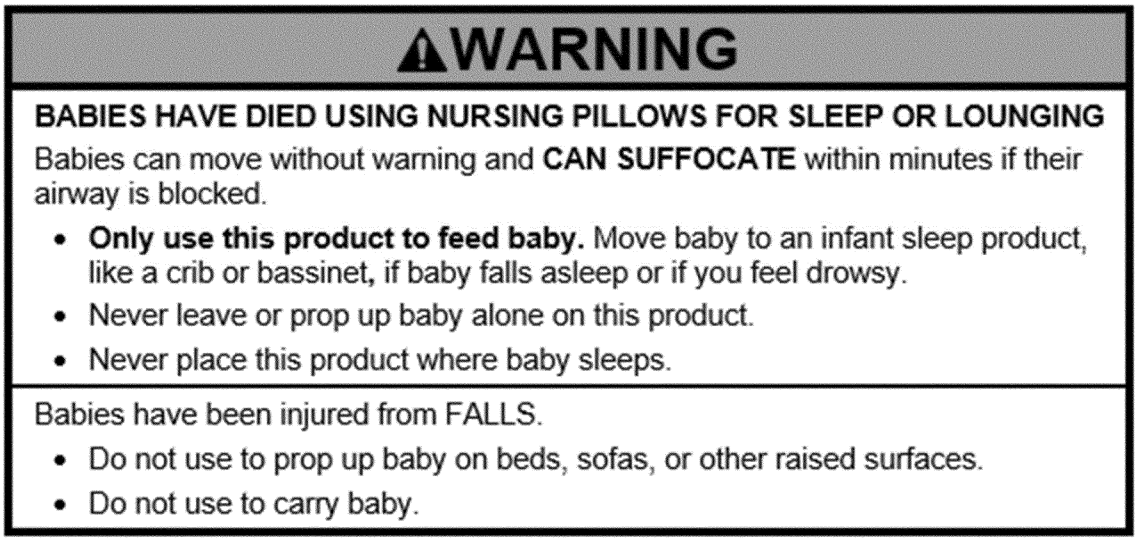



**Figure 5: Warning Statement Required on All Nursing Pillows**

The warning content and format requirements in the final rule are nearly identical to those in section 8 of ASTM F3669—24. The key difference is that the warning in the final rule includes the statement, ''Move baby to an infant sleep product, like a crib or bassinet, if baby falls asleep or if you feel drowsy,'' at the end of the first bullet. This statement, which is similar to content in the NPR's proposed rule warning, is needed (1) to reinforce the safe-sleep message that consumers should move the baby to a product intended for infant, like a crib or bassinet, if the baby falls asleep during or after feeding, and (2) to remind consumers to stop using the product if the consumer feels themselves falling asleep, which is a scenario associated with three infant fatalities. Thus, the warning required in the final rule is more stringent than the voluntary standard and will further reduce the risk of injury associated with the use of nursing pillows.

The final rule also includes a revision to the definition of ''conspicuous'' to address public comments expressing concerns that the original definition used in the NPR, ''visible, when the nursing pillow is in each manufacturer's recommended use position, to a person while placing an infant into or onto the nursing pillow,'' would require multiple identical warning labels on products with multiple infant support surfaces. The final rule defines ''conspicuous'' to mean ''visible to the caregiver while placing the product in the manufacturer's recommended use position on or against the caregiver's body.'' This definition is substantially the same as the definition included in ASTM F3669—24.

The final rule incorporates by reference the National Electrical Manufacturers Association's (NEMA's) ANSI Z535.4–2011(R2017), American National Standard for Product Safety Signs and Labels (ANSI Z535.4–2011), which is the primary U.S. voluntary standard pertaining to the design, application, use, and placement of product safety signs and labels. ANSI Z535.4–2011 includes the following warning format requirements: sections 6.1–6.4, which include requirements related to safety alert symbol use, signal word selection, and warning panel format, arrangement, and shape; sections 7.2–7.6.3, which include color requirements for each panel; and section 8.1, which addresses letter style.

The final rule also incorporates ASTM D3359–23, Standard Test Methods for Rating Adhesion by Tape Test, which covers procedures for assessing the adhesion of relatively ductile coating films to metallic substrates by applying and removing pressure-sensitive tape over cuts made in the film. Many ASTM juvenile product standards use one of the procedures in this standard to assess the permanency of warnings that are applied directly to the surface of a product.

In addition to on-product warnings, the final rule includes basic warning requirements for the packaging that accompanies nursing pillows, largely based on the ASTM Ad Hoc Language task group's recommended requirements for package warnings. The requirements include warning statements about not using the product for sleep or in sleep products such as cribs, bassinets, or play yards; information about the manufacturer's recommended weight, height, age, or developmental stage; and a prohibition against other warnings, statements, or graphics that indicate or imply that an infant can be left in the product without an adult caregiver present. The package warnings also are required to have formatting similar to the on-product warnings. Section 8.6 of ASTM F3669—24 includes the same requirements.

The final rule also includes requirements for the instructional literature to include all on-product warnings and to instruct consumers to read all instructions before using the product, to keep the instructions for future use, and not to use the product if it is damaged or broken. Like the package requirements, the instructions must provide information about the manufacturer's recommended weight, height, age, or developmental stage, at a minimum. Section 9 of ASTM F3669—24 also includes these instructional literature requirements.

*F. Severability*

If any requirements in the final rule are stayed or determined to be invalid by a court, the Commission intends that the remaining requirements in the rule will continue in effect and finds that the individual requirements in the rule each independently promote the safety of infants. This applies to all provisions adopted as part of the safety standard for nursing pillows under section 104 of the CPSIA, to reflect the Commission's intent that part 1242 be given its greatest effect.

## VII. Amendment to 16 CFR Part 1112 To Include NOR for Nursing Pillows

The CPSA establishes requirements for product certification and testing. Products subject to a consumer product

safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Certification of children's products subject to a children's product safety rule must be based on testing conducted by a CPSC-accepted third party conformity assessment body. *Id.* 2063(a)(2). The Commission must publish an NOR for the accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which a children's product is subject. *Id.* 2063(a)(3). The final rule establishing the *Safety Standard for Nursing Pillows,* to be codified as 16 CFR part 1242, is a children's product safety rule that requires the issuance of an NOR.

The Commission published a final rule, *Requirements Pertaining to Third Party Conformity Assessment Bodies,* 78 FR 15836 (March 12, 2013), which is codified at 16 CFR part 1112. Part 1112 became effective on June 10, 2013, and establishes requirements for accreditation of third-party conformity assessment bodies (or laboratories) to test for conformance with a children's product safety rule in accordance with section 14(a)(2) of the CPSA. Part 1112 also lists the NORs that the CPSC has published. 16 CFR 1112.15. All new NORs for new children's product safety rules, such as the nursing pillow standard, require an amendment to part 1112. Accordingly, in the NPR, the Commission proposed to amend part 1112 to add part 1242, *Safety Standard for Nursing Pillows,* in the list of NORs.

Laboratories applying for acceptance as a CPSC-accepted third party conformity assessment body to test to the new standard for nursing pillows are required to meet the third party conformity assessment body accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, the laboratory can apply to the CPSC to have 16 CFR part 1242, *Safety Standard for Nursing Pillows,* included in the laboratory's scope of accreditation of CPSC safety rules listed on the CPSC website at: *www.cpsc.gov/labsearch.*

## VIII. Amendment to Definitions in Product Registration Rule

The statutory definition of ''durable infant or toddler product'' in section 104(f) applies to all of section 104 of the CPSIA. In addition to requiring the Commission to issue safety standards for durable infant or toddler products, section 104 of the CPSIA also directed the Commission to issue a rule requiring that manufacturers of durable infant or toddler products establish a program for consumer registration of those products. 15 U.S.C. 2056a(d).

In 2009, the Commission issued a rule implementing the consumer registration requirement. 74 FR 68668 (Dec. 29, 2009) (establishing 16 CFR part 1130). As the CPSIA directs, the consumer registration rule requires each manufacturer of a durable infant or toddler product to provide a postage-paid consumer registration form with each product; keep records of consumers who register their products with the manufacturer; and permanently place the manufacturer's name and certain other identifying information on the product.

When issuing the consumer registration rule, the Commission identified six additional products as durable infant or toddler products: children's folding chairs; changing tables; infant bouncers; infant bathtubs; bed rails; and infant slings. *Id.* at 68669. *See* 16 CFR 1130.2. The Commission explained that the specified statutory categories were not exclusive, and that the Commission is charged with identifying the product categories that are covered. ''Because the statute has a broad definition of a durable infant or toddler product but also includes 12 specific product categories,'' the Commission noted, ''additional items can and should be included in the definition, but should also be specifically listed in the rule.'' *Id.* at 68669.

In the NPR, the Commission proposed to amend part 1130 to include ''Nursing pillows,'' as defined, as durable infant or toddler products. The Commission proposed to include nursing pillows as a category of ''durable infant or toddler product'' for purposes of CPSIA section 104 because they: (1) are intended for use, and may be reasonably expected to be used, by children under the age of 5 years; (2) are products similar to the other feeding support products listed in section 104(f)(2), such as high chairs, booster chairs, and hook-on chairs; and (3) are commonly available for resale or ''handed down'' for use by other children over a period of years. 88 FR 65865, 65877. The Commission received comments on this proposal, which are addressed in section V of this preamble. After considering the comments, the Commission now finalizes the amendment to part 1130 to add ''Nursing pillows'' to the list of durable infant or toddler products.

## IX. Incorporation by Reference

Sections 1242.6(d)(4) and 1242.7(d) of the final rule provide that each nursing pillow must comply with applicable provisions of ANSI Z535.4–11. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. For a final rule, agencies must discuss in the preamble to the rule the way in which materials that the agency incorporates by reference are reasonably available to interested persons, and how interested parties can obtain the materials. Additionally, the preamble to the rule must summarize the material. 1 CFR 51.5(b).

In accordance with regulations of the OFR's requirements, section VI of this preamble summarizes ANSI Z535.4–2011 and ASTM D3359–23, which the Commission is incorporating by reference. ANSI Z535.4–2011 and ASTM D3359–23 are copyrighted. Before the effective date of this rule, you can view a copy of these standards at:

- *https://ibr.ansi.org/Standards/nema.aspx* for ANSI Z535.4–2011, and
- *https://astm-my.sharepoint.com/:w:/g/personal/mpezzella_astm_org/ES8zruHHM5tJmEuwfwlzj3IBLRgSRMUlwHQTnt2Eg-f__Q?rtime=sUx8dRbu3Eg* for ASTM D3359–23.

Once the rule becomes effective, the standards can be viewed free of charge as a read-only document at:

- *https://ibr.ansi.org/Standards/nema.aspx* for ANSI Z535.4–2011, and
- *https://www.astm.org/products-services/reading-room.html* for ASTM D3359–23.

To download or print the standard, interested persons may purchase a copy of the standards from:

- ASTM International (ASTM), 100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428–2959; phone: (800) 262–1373; website: *www.astm.org* for ASTM D3359–23 Standard Test Methods for Rating Adhesion by Tape Test, approved February 1, 2023,
- National Electrical Manufacturers Association (NEMA), 1300 17th St. N, Arlington, VA 22209; phone: (703) 841–3200; website: *www.nema.org* for ANSI Z535.4–2011(R2017), American National Standard for Product Safety Signs and Labels, ANSI-approved October 20, 2017. This standard is also available from ANSI via its website, *https://www.ansi.org,* or by mail from ANSI, 25 West 43rd Street, 4th Floor, New York, NY 10036, USA, telephone: (212) 642–4900.

Alternatively, interested parties can inspect a copy of the standard at CPSC's Office of the Secretary by contacting Alberta E. Mills, Commission Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479; email: *cpsc-os@cpsc.gov.*

**X. Effective Date**

The Administrative Procedure Act (APA) generally requires that the effective date of a rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). The Commission proposed an effective date of 180 days after publication of the final rule. Commenters both supported and opposed the 180-day effective date. The AAP, Consumer Reports, and CFA/NCHR supported the 180-day effective date, with two commenters who recommended that CPSC adopt the rule expeditiously, or as early as feasible.

Four comments, from PM&J, LLC; JPMA; the Boppy Company; and BFIDSA, recommend a later effective date of 1 year. The commenters stated that as a result of the rule nursing pillows will need extensive product redesign and will need to meet registration card requirements. They suggested that the additional time is needed to review, understand, and apply the requirements, to design the product to meet the requirements, to perform prototyping and sampling, to perform preproduction testing to ensure compliance, and to perform final random inspections and lab testing, and a shorter timeframe could result in a gap in product availability in the market that would result in people using substitute products.

SAMR noted that Section 1242.1 of the proposed rule specifies an effective date of March 25, 2024, and suggests that CPSC specify at least 6 months after publication of the final rule, rather than a specific date.

The Commission agrees with the comments in support of the 180 day or 6-month effective date to urgently address the hazards associated with nursing pillows. The request to delay the effective date to one year is not supported by any specific information as to why the redesign and testing process for a nursing pillow would require 1 year rather than 6 months. Instead, the justification for 1 year is based on the precedent of the registration card rule published in 2009. Some products on the market already meet most of the requirements in the final rule, as discussed in the NPR briefing package,[25] and the testing process is relatively simple and can be completed using minimal equipment by the testing labs. The commenter who stated that manufacturers need ''additional time'' to develop compliant products did not provide any details as to why 6 months would not be sufficient. That commenter specifically mentions that it could take a full month for final product inspections and testing to the new rule, but that does not explain why 6 months is not sufficient to comply.

The comments also do not provide any specifics as to the extent to which the effort required is more or less than the 200 hours of labor estimated in the NPR. For one person working alone, 200 hours represents 5 weeks of full-time effort. Comments do not provide any specific data as to why the level of effort to redesign and distribute a nursing pillow would require 1 year to complete. Delaying the rule by an additional 6 months would delay the benefits of hazard reduction by 6 months, therefore, the Commission does not adopt a later effective date.

The portion of the proposed rule stating that the effective date of the rule is March 25, 2024, was in error. The commenter expressing concern about this date is correct that the final rule should specify an effective date of 6 months after publication of the final rule, rather than a date before the final rule is even published.

After considering the comments, the Commission now finalizes the rule with a 180-day effective date, because this amount of time is typical for rules issued under section 104 of the CPSIA and commenters have not justified a different period. Six months is also the period that JPMA typically allows for products in their certification program to shift to a new standard once that new standard is published. Therefore, juvenile product manufacturers are accustomed to adjusting to new standards within this time. A 180-day effective date should also be sufficient for manufacturers to comply with this rule because the requirements do not demand significant preparation by testing laboratories. For example, no new complex testing instruments or devices would be required to test nursing pillows for compliance with the final rule.

**XI. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA); 5 U.S.C. 601–612, requires that agencies review a proposed rule's potential economic impact on small U.S. entities, including small businesses. Section 604 of the RFA generally requires that agencies make a final regulatory flexibility analysis (FRFA) available when a final rule is published. A FRFA must describe the impact of the rule on small entities and identify significant alternatives that accomplish the statutory objectives and minimize any significant economic impact of the proposed rule on small entities. It must also describe issues raised by public comments, and by the U.S. Small Business Administration's Office of Advocacy (SBA's Office of Advocacy) on the Initial Regulatory Flexibility Analysis (IRFA) that was prepared for the proposed rule and any changes to the final rule made in response to those comments. CPSC staff prepared an IRFA for this rulemaking that was included in the NPR and the staff's briefing package to the Commission for the NPR.[26] For the final rule, an FRFA is provided below.

*A. Need for and Objectives of This Rule*

The objective of the final rule is to reduce the risk of injury and death associated with nursing pillows. A detailed analysis of the objectives and statutory basis for the rule is set forth in section I of the preamble. As discussed in sections VI, VII, and VIII of this preamble, the rule sets mandatory requirements for nursing pillows to address the suffocation, entrapment, and fall hazards associated with these products, adds nursing pillows to the list of products for which a registration card is required, and adds nursing pillows to the list of durable infant products for which a NOR is required.

*B. Issues Raised by Public Comments Concerning Impact on Small Entities; Changes in Response to Those Comments*

Comments from the SBA's Office of Advocacy and Unrattled, LLC addressed small business impacts. A small business, Unrattled, LLC, commented that the amount of time and money associated with redesigning, remanufacturing, and relaunching could cause them to go out of business. The commenter did not provide any data to support this assertion. The comment requested a ''6 months or more'' timeframe for compliance. The NPR included and the final rule provides 180 days or 6 months for compliance. The other comment was from the SBA's Office of Advocacy and this comment is addressed below. There were no other public comments in response to the IRFA.

[25] *See* Staff's NPR Briefing Package at Tab B.

[26] *See* Staff's NPR Briefing Package at Tab E.

*C. Issues Raised by the Staff of the Small Business Administration's Chief Counsel for the Office of Advocacy; Changes in Response to Those Comments*

The SBA's Office of Advocacy did not file public comments but shared small business concerns with CPSC that the safety standard will drastically increase the cost of labor, materials, and testing associated with nursing pillows.[27] This is consistent with the analysis in the IRFA that the burden would be significant for a substantial number of small entities. SBA's Office of Advocacy provided specific estimates that the use of firmer pillow filling would cost 22 to 30 percent more than a baseline, and that newly designed products would require 38 percent more fabric. SBA's Office of Advocacy also estimated that sewing the new designs would be more difficult, increasing labor costs by 10 to 15 percent. The Commission is not making any changes to burden estimates based on this input because SBA Advocacy did not provide data for their specific estimates, denying CPSC the opportunity to validate these claims. The final rule is a performance-based standard, not a design standard. Moreover, SBA's Office of Advocacy did not provide a source for their estimates, did not include a specific amount of estimated burden, and did not include a baseline for their estimates of increased percentages.

SBA's Office of Advocacy also commented that the cost of the rule should be annualized over a ten-year period that is discounted at 7 percent. CPSC, however, is not obligated by the RFA to provide such a calculation for the cost of a rule, and does not do so for this rule, where, consistent with SBA Office of Advocacy's fundamental position, CPSC has independently concluded that this rule would have a significant impact to a substantial number of small businesses.

In addition, SBA's Office of Advocacy suggested the regulatory alternatives of requiring only a warning label with no performance requirements and delaying implementation of the final rule to reduce the burden on small entities. The IRFA for the NPR discussed delaying implementation to wait for the ASTM standard. The specific alternatives recommended by SBA's Office of Advocacy are considered below, in section XII, G.

*D. Small Entities To Which the Rule Would Apply*

Small entities subject to this rule include small businesses that supply nursing pillows to the U.S. market, which includes manufacturers and importers. The SBA size standard for what constitutes a ''small'' business is typically 500 to 750 employees, depending on the North American Industry Classification Series (NAICS) category.[28] Manufacturers and importers of nursing pillows may fall into a diverse range of NAICS categories, depending on their primary line of business, which is typically in a broader category of children's products or other consumer goods.

CPSC staff identified 22 small U.S. manufacturers that design nursing pillows in the U.S. and ship from a U.S. address, although production may be in a foreign country.[29] In addition, staff identified six small U.S. importers [30] that do not appear to have U.S. design staff but do ship from a U.S. address. Staff also identified more than 500 U.S. small crafters that ship from the United States.

The final rule clarifies that slipcovers sold on or together with the nursing pillow are subject to the requirements of the safety standard. Manufacturers of nursing pillows and the nursing pillow covers they sell with their nursing pillows are the same entities that were included in the IRFA of the NPR and are included in this FRFA for the final rule.

The final rule does not apply to manufacturers or suppliers of aftermarket nursing pillow covers by a third-party manufacturer (*i.e.,* not the nursing pillow manufacturer). There could be an indirect impact on these companies if nursing pillow manufacturers change the size or shape of nursing pillows to comply with the rule and thereby require changes to aftermarket slipcover designs. There are hundreds of these suppliers, the majority of which are small businesses.

The final rule also does not apply to any small U.S. retailers. As specified in 16 CFR part 1109, retailers may rely on a certificate of compliance provided by their suppliers.

*E. Compliance, Reporting, Paperwork, and Recordkeeping Requirements of the Rule*

Suppliers will be required to meet the performance, warning label, consumer registration card, and user instruction requirements of the rule, and conduct third-party testing to demonstrate compliance. A detailed discussion of mandatory requirements is set forth in section VII of the preamble. Section III of this preamble describes the products subject to this final rule.

1. Costs Associated With Modifying Products

Most of the nursing pillows on the market will require modification, which will result in most of the costs to be incurred in the first year as a result of redesigning the product to meet the requirements in the final rule. With an estimated 1,000 models to be redesigned across all firms who sell to the U.S., the total cost of redesign to the industry in the first year could be as high as $15 million. This cost is slightly higher than the estimate in the IRFA because the labor rates have been updated to reflect the most current Bureau of Labor Statistics (BLS) data.

The effort required for a one-time redesign is estimated to require 200 hours of professional staff (*i.e.,* designers and testers) time per model, including in-house testing of the prototypes and development of labels, customer registration forms, and instruction materials. Using the BLS Employer Costs of Employee Compensation as of March 2024,[31] the estimated cost per model is $13,648, at a current cost for professional labor of $68.24 per hour, rounded for the purpose of analysis to $14,000 per model. Materials costs for prototyping are estimated to be minimal, likely under $1,000, given that nursing pillows typically are made of fabric and stuffing materials. Therefore, the total cost of redesign, including redesigning slipcovers, is approximately $15,000 per model ($14,000 for labor and $1,000 for materials).

Although some manufacturers may offer a wide selection of fabric

[27] CPSC received comments from SBA's Office of Advocacy via email; they are included on the public docket for the NPR: *https://www.regulations.gov/comment/CPSC-2023-0037-0428.*

[28] The size standards are based on the number of employees or the annual revenue of the firm, and there is a specific size standard for each 6-digit North American Industry Classification Series (NAICS) category. The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. For more information, see *https://www.census.gov/naics/.* Some programs use 6-digit NAICS codes, which provide more specific information than programs that use more general 3- or 4-digit NAICS codes.

[29] Based on staff's assessment of prominent online and brick and mortar retail stores for nursing pillows in the Spring of 2023.

[30] See, in 13 CFR 121.103, SBA's regulations for considering foreign and domestic affiliated companies in determining the size standard that applies to a particular company. The determinations differ by program and corporate structure.

[31] *https://www.bls.gov/news.release/archives/ecec_06182024.htm.* Table 2. Total Compensation for ''Professional and related.'' These costs reflect the employers' cost for salaries, wages, and benefits for civilian workers.

coverings, most manufacturers offer three or fewer physically different models with different dimensions or features that might impact compliance. Thus, the high-end cost estimate of redesign per manufacturer is, based on three different models, $45,000. In most cases, particularly for small companies, the cost is likely less because most companies usually have one or at most two physically distinct models. Manufacturers that sell into the U.S. market have mostly outsourced production to foreign countries, but generally still design their products in North America. Therefore, the estimate for the cost of redesign reflects U.S. labor and materials costs for prototype designs.[32] In addition, even though importers do not directly pay for the cost of redesign, the cost of redesign is likely reflected in the wholesale price.

The clarification in the final rule that slipcovers sold on or together with the nursing pillow are within the scope of the rule does not change or add to the burden estimate per company or the number of small entities impacted by the rule, because the impact on these entities for these requirements, as noted above, was included in the NPR and the final rule.

Changes to labeling and instructions will be necessary on nursing pillows, including their slipcovers. Generally, costs associated with marking and labeling, as well as providing instructional materials, are low on a per-unit basis. The final rule provides the text and graphics for the required labels and instructions. Therefore, specialized expertise in graphic design will not be required to develop the warnings and instructions.

The reporting and recordkeeping requirements in this rule will be new for all suppliers. The labeling and instruction requirements constitute a ''paperwork'' burden under the Paperwork Reduction Act (PRA). See section XIII for a detailed discussion. The ongoing cost of the new labels, registration forms, and instruction manuals is estimated at about $1 per item for materials. The initial cost for labor of developing the labels and instruction manuals is included in the cost of redesigning models to comply with this rule. CPSC's Office of the Small Business Ombudsman provides additional online resources for small businesses to assist with the recordkeeping requirements.[33]

Suppliers must also provide product registration cards. CPSC's public website provides instructions and examples for how to develop the certificates of compliance and product registration cards.[34]

2. Third-Party Testing Costs

The final rule will require all manufacturers and importers of nursing pillows to meet additional third-party testing requirements under section 14 of the CPSA. As specified in 16 CFR part 1109, entities that are not manufacturers of children's products, such as importers and wholesalers, may rely on the certificate of compliance provided by others. It is reasonable to anticipate that while foreign manufacturers may bear most of the initial cost of testing, due to the prevalence of overseas manufacturing for this product sector, those manufacturers would pass on at least some of the cost of testing for compliance to U.S.-based importers and wholesalers.

Third-party testing costs for nursing pillows under the final rule are estimated at $500 to $1,000 per model. The annual cost of samples for testing is estimated at around $150, bringing the overall annual cost to an estimated $650 to $1,150 per model. However, some small-volume suppliers would likely be able to raise retail prices to cover at least some of their testing costs. For example, a crafter selling 200 nursing pillows a year could cover the entire testing cost by raising the price by $3.25.

3. Summary of Impacts

Generally, based on SBA's Office of Advocacy's guidelines, CPSC considers impacts that exceed 1 percent of a firm's revenue to be potentially significant. Staff determined that an average of $45,000 is a conservative estimate of the redesign cost per manufacturer. Therefore, any firms with revenue less than $4.5 million in revenue (about 90,000 units at an average price of $50 per unit) could incur a significant impact, because their redesign costs could exceed 1 percent of their revenue. For small firms with just one product, the redesign cost would be $15,000, and their revenue threshold would be $1.5 million. Staff estimates that 14 U.S. firms exceed the threshold and therefore the rule would not have a significant impact: nine of these firms offer their products in brick and mortar stores, and five sell their products online only. Of these 14 firms, nine are small U.S. businesses. There are, however, more than 1,000 suppliers to the U.S. market—with annual sales for the whole industry estimated at 1.34 million units—nearly all of which fall below the threshold of 90,000 units sold per year. For this reason, the costs of redesign are likely to be significant for a substantial number of small firms, particularly small home crafters.[35]

Firms may be able to reduce the impact of the redesign costs by raising the retail price of nursing pillows by a few dollars, which may reduce the impact of the rule for small businesses. Since warning labels, registration forms, and instruction manuals could add up to $1 to the cost of the product, firms may decide to pass this on to the consumer. In addition, if companies decide to pass the ongoing cost of testing onto consumers, the additional retail price increase of perhaps $1, added to the additional $1 cost of the warning labels and instruction manuals, would total $2, or 4 percent of the price of a $50 item. The overall market for nursing pillows is relatively inelastic, meaning that an increase or decrease in price will not have a proportional increase or decrease in demand, because many parents perceive a nursing pillow as a necessity and are therefore likely willing to pay an increased price.

As noted above, the retail price increase to cover redesign costs could be relatively minor, even for relatively small-volume suppliers. For example, a firm supplying 5,000 nursing pillows per year could cover the entire cost of redesign by raising the price by $3. Small-volume hand crafters, however, may not have enough sales to cover the expense of redesign and testing, while small-volume importers may not be able to find compliant suppliers. But again, even relatively small-volume suppliers may be able to reduce the impact of the rule by raising prices to cover costs of testing and redesign. A retail price increase of less than $5 could cover all the testing costs and a substantial

[32] See the following: The Pros and Cons of Outsourcing: A Look at American Clothing Manufacturers | by clothing manufacturers | Medium; Outsourcing Manufacturing in the Fashion Industry: Pros & Cons for Small Businesses—ApparelMagic; Outsourcing Clothing Manufacturing: Challenges and Solutions Strategy—Uphance, available at: *https://usaclothingmanufacturers.medium.com/the-pros-and-cons-of-outsourcing-a-look-at-american-clothing-manufacturers-8a772b00302c and https://www.uphance.com/blog/outsourcing-fashion-manufacturing/.*

[33] For instance, see: *https://www.cpsc.gov/Business--Manufacturing/Small-Business-Resources.*

[34] For instance, see: *https://www.cpsc.gov/Business--Manufacturing/Testing-Certification/Childrens-Product-Certificate* and *https://www.cpsc.gov/Business--Manufacturing/Business-Education/Durable-Infant-or-Toddler-Products/FAQs-Durable-Infant-or-Toddler-Product-Consumer-Registration.*

[35] Several hundred foreign direct shippers, including small home crafter businesses, will also likely be impacted, but the RFA requires analysis of the impact on U.S. small businesses.

portion of the redesign costs, even for a very small supplier.

Since most nursing pillows will need to be redesigned, as described above, large businesses may also have to raise their prices to cover compliance costs, which means that small businesses would not necessarily be less competitive if they also had to raise their prices to cover compliance costs. Some public commenters stated that the current nursing pillow market will not be able to support any retail price increases; however, the commenters did not provide any data to support this assertion.

In addition, the best-selling nursing pillows are from companies, including small U.S. companies, that have sufficient sales volume to spread the cost of compliance over thousands of units and are unlikely to exit the market. It is likely that the products currently in stores, and the best-selling online-only products, would still be available, with modest redesigns.

Consumers may not experience a significant loss of consumer utility as some small-volume sellers exit online marketplaces, since the selection in brick-and-mortar stores is already limited to the products of only nine companies. Also, many of the best-selling products online are from the same group of firms that sell in stores, which include small businesses. It is likely that the products currently in stores, and the best-selling online-only products, will still be available, with modest redesigns. However, there may be some loss in sales of specific products because of the requirements of the final rule, if the redesigned products are less appealing to consumers.

*F. Other Federal Rules That May Duplicate, Overlap, or Conflict With the Final Rule*

CPSC has not identified any other federal rules that duplicate, overlap, or conflict with the final rule.

*G. Alternatives Considered To Reduce the Impact on Small Entities*

The Commission considered the following alternatives to minimize the significant economic impact on small businesses.

1. Not Establishing a Safety Standard

The Commission considered not establishing a safety standard for nursing pillows. Although this alternative would result in no regulatory impact on small businesses, deaths and injuries from the use of nursing pillows would likely continue to occur at similar rates as those observed between 2010 and 2022. Therefore, the Commission is issuing a final rule to establish a safety standard for nursing pillows to reduce the likelihood of injuries and deaths from the use of nursing pillows, as required by CPSIA section 104.

2. Different Effective Date

The Commission is establishing a 180-day effective date after publication of the final rule in the **Federal Register** for the reasons discussed in section X. In the NPR, the Commission rejected adopting an effective date earlier than 180 days because of concerns that it would have increased the burden on small businesses and could have resulted in temporary shortages of nursing pillows due to testing laboratory capabilities.

Some public comments on the NPR requested a later effective date of one year to allow suppliers more time to comply, to redesign and to ship the product. The commenters, however, did not provide any specific data (such as amount of labor needed for redesign or current shipping times from foreign manufacturers) on why it would take more than 6 months to redesign and distribute a pillow. Other public comments received recommended effective dates of 180 days or 6 months as proposed in the NPR. Therefore, the Commission does not have a basis to delay implementation of the rule beyond 6 months, especially inasmuch it could result in additional injuries and deaths.

3. ''Angular'' Performance Requirement

In the NPR, the Commission requested comments on whether to include an ''angular'' performance requirement in the safety standard for nursing pillows, discussed above in section V. Some commenters supported this requirement; however, none provided specific data to support such a requirement. SBA's Office of Advocacy commented that this alternative might increase the burden on small businesses, without effectively reducing the hazard and agreed with the Commission's preliminary decision to not include the requirement in the NPR. As discussed above, the Commission is not including such a requirement in the final rule, thereby eliminating a potential burden on small businesses.

4. Warning Label Requirement Only

In response to comments by SBA's Office of Advocacy and a consumer, the Commission considered the impact of only requiring warning labels in the safety standard of nursing pillows. Warning about hazards is less effective at eliminating or reducing exposure to hazards than either designing the hazard out of a product or guarding the consumer from the hazard; therefore, the use of warnings is lower in the hazard control hierarchy than the other two approaches.[36] This alternative would reduce the burden on small entities. However, because it would also reduce benefits of the regulation leading to additional deaths of infants, the Commission is not adopting the alternative to only require warning labels.

*H. Impact on Testing Labs*

Section 14 of the CPSA requires that all products that are subject to a children's product safety rule must be tested by a third-party conformity assessment body that has been accredited by CPSC. One of the roles of these third- party conformity assessment bodies is to test products for compliance with applicable children's product safety rules. Testing laboratories that want to conduct testing must meet the NOR for third-party conformity testing. See 16 CFR part 1112.

The Commission does not expect a significant adverse impact on any testing laboratories as a result of this rule. Laboratories will not need to acquire complex or costly testing instruments or devices to test nursing pillows for compliance, and laboratories will decide for themselves whether to offer testing services for nursing pillow compliance.

## XII. Environmental Considerations

Certain categories of CPSC actions normally have ''little or no potential for affecting the human environment'' and therefore do not require an environmental assessment or an environmental impact statement. Safety standards providing requirements for consumer products come under this categorical exclusion. 16 CFR 1021.5(c)(1). The final rule for nursing pillows falls within the categorical exclusion.

## XIII. Paperwork Reduction Act

This final rule for nursing pillows contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth:

- Title for the collection of information;
- Summary of the collection of information;

[36] *See* Staff's NPR Briefing Package at Tab C.

- Brief description of the need for the information and the proposed use of the information;
- Description of the likely respondents and proposed frequency of response to the collection of information;
- Estimate of the burden that shall result from the collection of information; and
- Notice that comments may be submitted to the OMB.

The preamble to the NPR discussed the information collection burden of the proposed rule and specifically requested comments on the accuracy of our estimates. 85 FR 67927–28. The OMB assigned control number 3041–0197 for this information collection. CPSC did not receive any comment regarding the information collection burden of the proposal in the NPR. In accordance with PRA requirements, the Commission provides the following information:

*Title:* Safety Standard for Nursing Pillows.

*Description:* The final rule requires each nursing pillow within the scope of the rule to meet the rule's new performance and labeling requirements. It also requires suppliers to conduct third party testing to demonstrate compliance and provide the specified warning label and instructions. These requirements fall within the definition of a ''collection of information,'' as defined in 44 U.S.C. 3502(3).

*Description of Respondents:* Persons who manufacture or import nursing pillows.

*Estimated Burden:* We estimate the burden of this collection of information as follows:

TABLE 7—ESTIMATED ANNUAL REPORTING BURDEN

| Burden type | Number of respondents | Frequency of responses | Total annual responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Labeling and instructions | 844 | 1 | 844 | 2 | 1,688 |

While some products currently have labels, all products would have to meet the specific labeling requirements and instructions specified in the rule, which provides the text and graphics for the required labels and instructions. Specialized expertise in graphics design would not be required to develop the warnings and instructions. Most reporting and recordkeeping requirements in this rule would be new for all suppliers.

CPSC estimates there are 844 entities that would respond to this collection annually.[37] We estimate that the time required to create and modify labeling and instructions is about 2 hours per response. Therefore, the estimated burden associated with this collection is 844 responses × 1 response per year × 2 hours per response = 1,688 hours annually.

We estimate the hourly compensation for the time required to respond to the collection is $41.76.[38] Therefore, the estimated annual labor cost of the collection is $70,491 ($41.76 per hour × 1,688 hours = $70,490.88). Based on this analysis, the mandatory safety standard for nursing pillows will impose an additional burden to industry of 1,688 hours at a total cost of $70,491. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), CPSC has submitted the information collection requirements of this final rule to the OMB.

## XIV. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as ''consumer product safety standards.'' Therefore, once this final rule is issued, the rule will preempt state laws in accordance with section 26(a) of the CPSA.

## XV. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a ''major rule.'' Pursuant to the CRA, OIRA designated this rule as not a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

## XVI. References


Daniel A. Johnson, Practical *Aspects of Graphics Related to Safety Instructions and Warnings, in* Handbook of Warnings 463–476 (Michael S. Wogalter ed., 2006).

Michael J. Kalsher et al., *Reconsidering the Role of Design Standards in Developing Effective Safety Labeling: Monolithic Recipes or Collections of Separable Features?,* 61(6) Human Factors, 920–952 (2019).

Kenneth R. Laughery, Sr. & Danielle Paige Smith, *Explicit Information in Warnings, in* Handbook of Warnings 419–428 (Michael S. Wogalter ed., 2006).

Mary F. Lesch. *Consumer Product Warnings: Research and Recommendations, in* Handbook of Warnings 137–146 (Michael S. Wogalter ed., 2006).

Erin M. Mannen, U.S. Consumer Prod. Safety Comm'n, Pillows Product Characterization and Testing (2022). Available: *https://www.cpsc.gov/content/Pillows-Product-Characterization-and-Testing.*

Donna M. Riley, *Beliefs, Attitudes, and Motivation, in* Handbook of warnings 289–300 (Michael S. Wogalter ed., 2006).

Melanie B. Tannenbaum et al., *Appealing to Fear: A meta-analysis of fear appeal effectiveness and theories,* 141(6) Psychological Bulletin, 1178–1204 (2015).

Michael S. Wogalter & N. Clayton Silver, *Warning signal words: Connoted strength and understandability by children, elders, and non-native English speakers,* 38(11) Ergonomics, 2188–2206 (1995).

Michael S. Wogalter et al., *Warning Symbols, in* Handbook of Warnings 159–176 (Michael S. Wogalter ed., 2006).


[37] Although the total number of nursing pillow suppliers to the United States is estimated to be more than 1,000, only a portion of those suppliers will respond to the collection each year based on when they introduce new product models or redesign previous models.

[38] U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2024, Table 4, total compensation for all sales and office workers in goods-producing private industries: *https://www.bls.gov/news.release/archives/ecec_06182024.htm.*

Michael S. Wogalter, *Attention Switch and Maintenance, in* Handbook of Warnings 245–265 (Michael S. Wogalter ed., 2006).

**List of Subjects**

*16 CFR Part 1112*

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third party conformity assessment body.

*16 CFR Part 1130*

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

*16 CFR Part 1242*

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, Nursing, Pillows, and Toys.

For the reasons discussed in the preamble, the Commission proposes to amend title 16, chapter II, of the Code of Federal Regulations as follows:

## PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

**Authority:** 15 U.S.C. 2063.

■ 2. Amend § 1112.15 by adding paragraph (b)(56) to read as follows:

**§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule and/or test method?**

* * * * *

(b) * * *

(56) 16 CFR part 1242, Safety Standard for Nursing Pillows.

* * * * *

## PART 1130—REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

■ 3. The authority citation for part 1130 continues to read as follows:

**Authority:** 15 U.S.C. 2056a(d), 2065(b).

■ 4. Amend § 1130.2 by:

■ a. Removing the semicolons at the ends of paragraphs (a)(1) through (16) and adding periods in their place;

■ b. Removing ''; and'' at the end of paragraph (a)(17) and adding a period in its place; and

■ c. Adding paragraph (a)(19).

The addition reads as follows:

**§ 1130.2 Definitions.**

* * * * *

(a) * * *

(19) Nursing pillows.

* * * * *

■ 5. Add part 1242 to read as follows:

## PART 1242—SAFETY STANDARD FOR NURSING PILLOWS

Sec.



**Authority:** 15 U.S.C. 2056a

**§ 1242.1 Scope, purpose, application, and exemptions.**

(a) *Scope and purpose.* This part, a consumer product safety standard, prescribes requirements intended to reduce the risk of death and injury from hazards associated with nursing pillows, as defined in § 1242.2.

(b) *Application.* Except as provided in paragraph (c) of this section, all nursing pillows that are manufactured after April 23, 2025, are subject to the requirements of this part.

(c) *Exemptions.* The following products are exempt from this part:

(1) Maternity pillows, as defined in § 1242.2,

(2) Sling carriers, as defined in 16 CFR part 1228, and

(3) Soft infant and toddler carriers, as defined in 16 CFR part 1226.

**§ 1242.2 Definitions.**

*Caregiver attachment* means a portion of the product that is not an infant support surface and is intended to secure the nursing pillow to the caregiver. A caregiver attachment may comprise components including, but not limited to, straps, buckles, or latches.

*Caregiver opening* means the surface of the nursing pillow, excluding the caregiver attachment, intended to fit against the caregiver's torso during use. This surface is typically, but not necessarily, crescent-like in shape.

*Conspicuous* means visible to the caregiver while placing the product in the manufacturer's recommended use position on or against the caregiver's body.

*Infant restraint system* means a portion of a product intended to secure or hold an infant in place on the product. These typically take the form of straps or harnesses that are secured by the caregiver.

*Infant support surface* means the manufacturer's intended support surface for the infant during nursing or feeding.

*Maternity pillow,* also known as a pregnancy pillow, means a large body pillow intended, marketed, and designed to provide support to a pregnant adult's body during sleep or while lying down.

*Nursing pillow* means any product intended, marketed, or designed to position and support an infant close to a caregiver's body while breastfeeding or bottle feeding, including any removable covers, or slipcovers, sold on or together with such a product. These products rest upon, wrap around, or are worn by a caregiver in a seated or reclined position.

*Safety alert symbol* means a symbol consisting of an exclamation mark surrounded by an equilateral triangle, or an equilateral triangle with a contrasting superimposed exclamation mark. The safety alert symbol precedes the signal word ''WARNING,'' or other signal word, in the signal word panel of a warning.

**§ 1242.3 General requirements.**

(a) *Lead in paints.* All paint and surface coatings on the product shall comply with the requirements of 16 CFR part 1303.

(b) *Small parts.* There shall be no small parts, as determined by 16 CFR part 1501, before testing or liberated as a result of testing.

(c) *Hazardous sharp edges or points.* There shall be no hazardous sharp points or edges, as determined by 16 CFR 1500.48 and 1500.49, before or after testing.

(d) *Removal of components.* When tested in accordance with § 1242.5(b), any removal of components that are accessible to an infant while in the product or from any position around the product shall not present a small part, sharp point, or sharp edge as required in paragraphs (b) and (c) of this section.

(e) *Permanency of labels and warnings.* (1) Warning labels (whether paper or non-paper) shall be permanent when tested in accordance with § 1242.5(c)(1) through (3).

(2) Warning statements applied directly onto the surface of the product by hot stamping, heat transfer, printing, wood burning, etc. shall be permanent when tested in accordance with § 1242.5(c)(4).

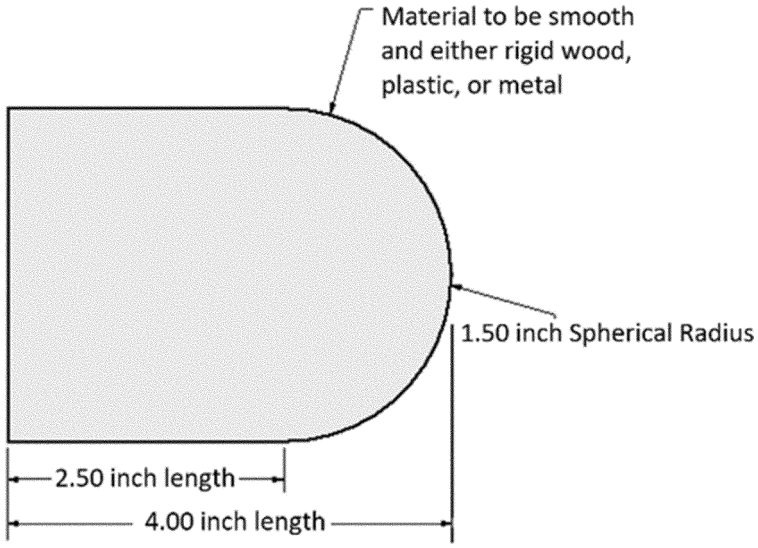
(3) Non-paper labels shall not liberate small parts when tested in accordance with § 1242.5(c)(5).

(4) Warning labels that are attached to the fabric of nursing pillows with seams shall remain in contact with the fabric around the entire perimeter of the label, when the product is in all manufacturer-recommended use positions, when tested in accordance with § 1242.5(c)(3).

**§ 1242.4 Performance requirements.**

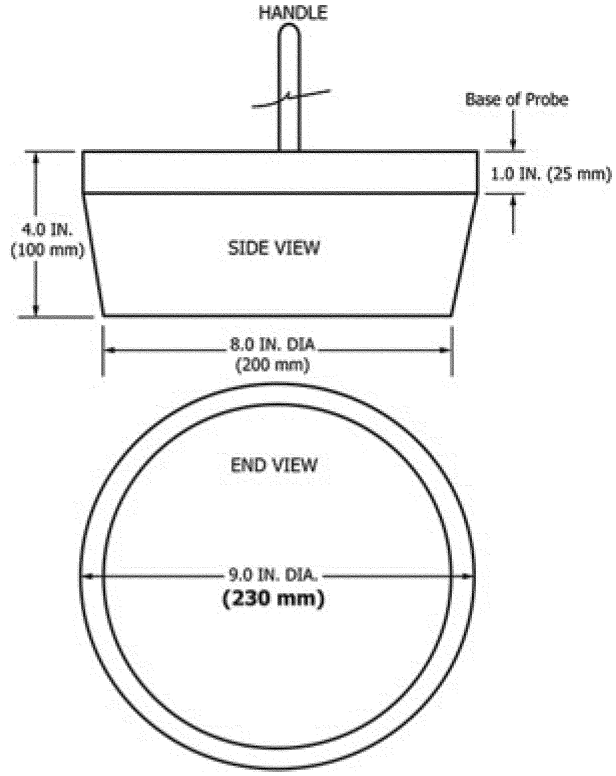
(a) *Firmness.* When tested in accordance with § 1242.5(d), (e) and (f), the force required for a 1.00-in. (2.54 cm) displacement of the 3-inch (76.2 mm) diameter hemispheric probe (figure 1 to this paragraph (a)—3-in. head probe) at any measurement location shall be greater than 10.0 N (2.24 lb).

**Figure 1 to Paragraph (a)—3-in Head Probe**




(b) *Infant containment.* When tested in accordance with § 1242.5(g), the surfaces within the caregiver opening of the product shall not contact the 9-inch (230 mm) diameter head probe (figure 2 to this paragraph (b)—9-in. head probe) such that the probe is constrained within the caregiver opening and, when placed according to § 1242.5(g)(6), the probe must extend past the caregiver opening.

**Figure 2 to Paragraph (b)—9-in. Head Probe**



(c) *Infant restraints.* Nursing pillows shall not include any infant restraint system.

(d) *Seam strength.* When tested in accordance with § 1242.5(h), fabric/mesh seams and points of attachment shall not fail such that a small part, sharp point, or sharp edge is presented, as required in § 1242.3(b) and (c).

(e) *Caregiver attachment strength.* When tested in accordance with § 1242.5(i), material seams, points of attachment, and attachment components shall not fail, and shall create no hazardous conditions, such as small parts or sharp edges, as required in § 1242.3(b) and (c).

### § 1242.5 Test methods.

(a) *Test conditions.* (1) Condition the product for 48 hours at 23 °C +/− 2 °C (73.4 °F +/− 3.6 °F) and a relative humidity of 50% +/− 5%.

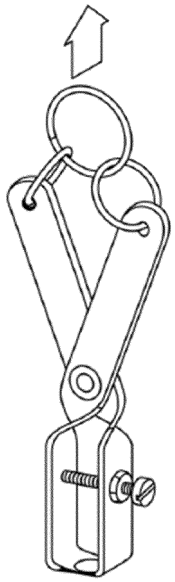
(2) Secure the firmness fixture to a test base such that the 3-in. head probe (figure 1 to § 1242.4(a)) does not deflect more than 0.01 in. (0.025 cm) under a 10 N (2.2 lb) load applied in each orientation required in the test methods.

(b) *Removal of components test method*—(1) *Equipment.* For torque and tension tests, any suitable device may be used to grasp the component, provided that it does not interfere with the attachment elements that are stressed during the tests.

(2) *Torque test.* Gradually apply a 4 lb-in. (0.4 N-m) torque over 5 seconds (s.) in a clockwise rotation to 180 degrees or until 4 lb-in. has been reached. Maintain for 10 s. Release and allow component to return to relaxed state. Repeat the torque test in a counterclockwise rotation.

(3) *Tension test.* For components that can reasonably be grasped between thumb and forefinger, or teeth, apply a 15 lb (67 N) force over 5 s., in a direction to remove the component. Maintain for 10 s. A clamp such as shown in figure 1 to this paragraph (b)(3) may be used if the gap between the back of the component and the base material is 0.04 in. (0.1 cm) or more.

**Figure 1 to Paragraph (b)(3)—Tension Test Adapter Clamp**



(c)*Permanency of labels and warnings.* (1) A paper label (excluding labels attached by a seam) shall be considered permanent if, during an attempt to remove it without the aid of tools or solvents, it cannot be removed, it tears into pieces upon removal, or such action damages the surface to which it is attached.

(2) A non-paper label (excluding labels attached by a seam) shall be considered permanent if, during an attempt to remove it without the aid of tools or solvents, it cannot be removed or such action damages the surface to which it is attached.

(3) A warning label attached by a seam shall be considered permanent if it does not detach when subjected to a 15-lbf (67–N) pull force applied in the direction most likely to cause failure using a ¾-in. (1.9 cm) diameter clamp surface. Gradually apply the force within a period of 5 s. and maintain for an additional 10 s.

(4) Adhesion Test for Warnings Applied Directly onto the Surface of the Product:

(i) Apply the tape test defined in Test Method B of ASTM D3359–23 (incorporated by reference, see § 1242.8), eliminating parallel cuts.

(ii) Perform this test once in each different location where warnings are applied.

(iii) The warning statements will be considered permanent if the printing in the area tested is still legible and attached after being subjected to this test.

(5) A non-paper label, during an attempt to remove it without the aid of tools or solvents, shall not fit entirely within the small parts cylinder defined in 16 CFR part 1501 if it can be removed.

(d) *Infant support surface firmness test method.* Perform the following steps to determine the infant support surface firmness of the product as received from the manufacturer.

(1) Conduct tests at three locations on the surface to be tested, with 3 in. (7.62 cm) or more separation: maximum thickness perpendicular to the test surface and two other locations most likely to fail. When selecting these locations, the edge of the probe shall not extend beyond the edge of the product. If the design or size of the product is such that the edge of the probe must extend beyond the edge of the product, the probe shall be centered over as much of the test surface as possible.

(2) Lay the product, with the infant support surface facing up, on a test base that is horizontal, flat, firm, and smooth.

(3) Prevent movement of the product in a manner that does not affect the force or deflection measurement of the product surface under test. Provide no additional support beneath the product.

(4) Orient the axis of the 3-in. head probe (figure 1 to § 1242.4(a)) perpendicular to the test surface and aligned with a force gauge and parallel to a distance measurement device or gauge. Zero the force gauge.

(5) Using a lead screw or similar device to control movement along a single direction, advance the probe onto the product and set the deflection to 0.0 in. when a force of 0.1 N (0.02 lb) is reached.

(6) Continue to advance the head probe into the product at a rate not to exceed 0.1 inch per second and pause when the force exceeds 10.0 N (2.24 lb), or the deflection is equal to 1.00 in. (2.54 cm).

(7) Monitor the force and wait for it to stabilize, meaning the force has not changed more than 0.1 N (0.02 lb) for at least 30 s. If, after the force stabilizes, the deflection is less than 1.00 in. and the force is 10.0 N or less, repeat paragraphs (d)(6) and (7) of this section.

(8) Record the final force and deflection amounts.

(9) Repeat the infant support surface firmness tests on any other infant support surface and in all manufacturer-intended configurations that could affect the infant support surface, such as the folding or layering of parts of the product.

(e) *Inner wall firmness test method.* For nursing pillows with a caregiver opening, perform the steps in paragraphs (d)(1) through (8) of this section on the inner wall of the caregiver opening, and perform the following, to determine the inner wall

firmness as received from the manufacturer. Repeat the inner wall firmness tests in all manufacturer-intended configurations that could affect the inner wall firmness.

(f) *Product conditioning firmness test method.* Following the firmness testing in paragraphs (d) and (e) of this section, perform the following steps to determine the product firmness after conditioning.

(1) Launder and dry the product according to the manufacturer's instructions.

(2) Repeat paragraph (d) of this section.

(3) Repeat paragraph (e) of this section.

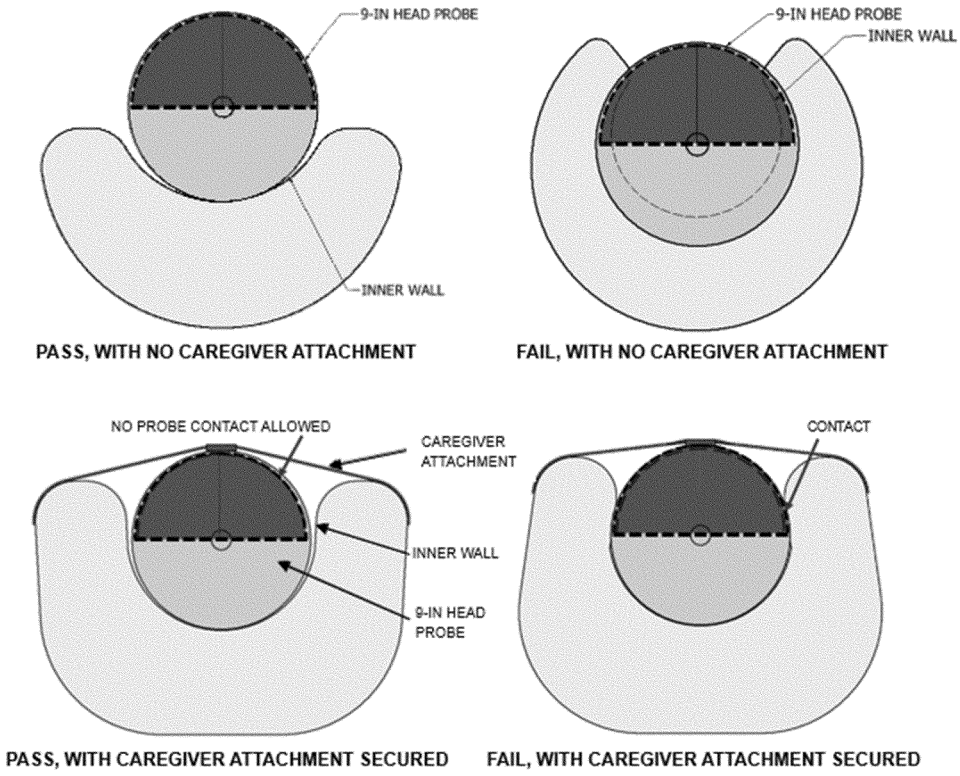
(g) *Infant containment test method.* (1) Lay the product, with the infant support surface facing up, on a test base that is horizontal, flat, firm, and smooth.

(2) For nursing pillows with a caregiver attachment, unsecure and move the caregiver attachment away from the caregiver opening.

(3) Place the 9-in. head probe (figure 2 to § 1242.4(b)) inside the caregiver opening such that the flat bottom of the probe rests on the test surface and the probe's perimeter contacts the innermost surface of the caregiver opening.

(4) If the inner wall of the caregiver opening contacts the outwardly facing portions of the probe, or the inner wall interferes with placing the probe down, the caregiver opening is considered to constrain the probe. *See* figure 2 to this paragraph (g)(4). Do not include in the assessment any contact with a caregiver attachment.

**Figure 2 to Paragraph (g)(4)—Infant Containment, Example**



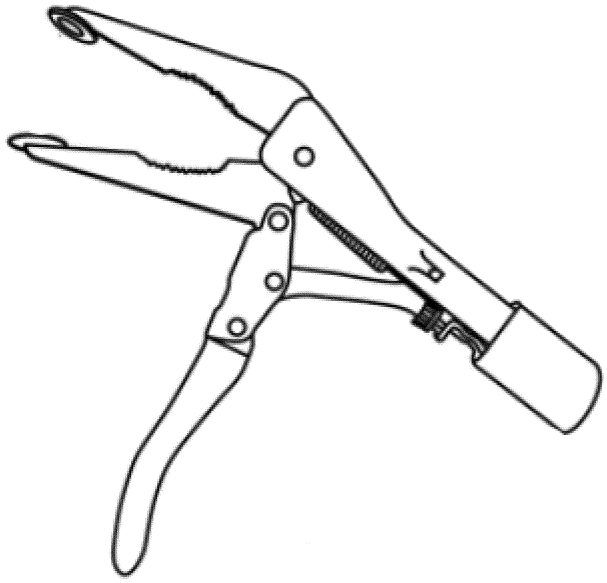

(5) With the probe at the position contacting the innermost surface within the caregiver opening, determine if any portion of the probe extends beyond a line projected across the outside limits of the caregiver opening.

(6) Slide the probe horizontally out of the caregiver opening to the outside of the nursing pillow. Determine if the probe is constrained by the inner wall of the caregiver opening contacting the outwardly facing portions of the probe. *See* figure 2 to paragraph (g)(4) of this section. Do not include in the assessment any contact with a caregiver attachment.

(7) For nursing pillows with a caregiver attachment, adjust and secure the caregiver attachment to the minimum length allowed by the product and repeat paragraphs (g)(3) through (g)(5).

(h) *Seam strength test method.* (1) Equipment shall include clamps with 0.75 in. (1.9 cm) diameter clamping surfaces capable of holding fabric and with a means to attach a force gauge. Figure 3 to this paragraph (h)(1), or equivalent. The force gauge must have an accuracy of +/−0.5 lb (2.2 N).

**Figure 3 to Paragraph (h)(1)—Seam Clamp**



(2) Clamp the fabric of the nursing pillow on each side of the seam under test with the 0.75 in. clamping surfaces placed not less than 0.5 in. (1.2 cm) from the seam.

(3) Apply a tension of 15 lb (67 N) evenly over 5 s. and maintain for an additional 10 s.

(4) Repeat the test on every distinct seam and every 6 in. (15 cm) along each seam.

(i) *Caregiver attachment strength test method.* (1) Any suitable clamping devices with means to attach a force gauge with accuracy of 0.5 lb (1.2 N) may be used. The clamping surfaces shall grasp across the entire width of the strap or attachment element.

(2) Support the nursing pillow to resist the pull forces and release the buckle, clasp, or other fastener of the caregiver attachment.

(3) Clamp one side of the attachment or strap of the nursing pillow not less than 0.5 in. (1.2 cm) from the attachment to the nursing pillow.

(4) Apply a tension of 20 lb (89 N) evenly over 5 s. and maintain for an additional 10 s.

(5) Repeat the test on the other side of the attachment or strap.

(6) Join the buckle, clasp, or other fastener of the attachment or straps.

(7) Clamp both sides of the attachment or straps across the buckle, clasp, or other fastener, one on each side and not less than 0.5 in. (1.2 cm) from the fastener.

(8) Apply a tension of 20 lb (89 N) evenly over 5 s. and maintain for an additional 10 s.

### § 1242.6 Marking and labeling.

(a) Each product and its retail package shall be marked or labeled clearly and legibly to indicate the following:

(1) The name, place of business (city, state, and mailing address, including zip code), and telephone number of the manufacturer, distributor, or seller.

(2) A code mark or other means that identifies the date (month and year as a minimum) of manufacture.

(3) The marking or labeling in paragraphs (a)(1) and (2) of this section are not required on the retail package if they are on the product and are visible in their entirety through the retail package. When no retail packaging is used to enclose the product, the information provided on the product shall be used for determining compliance paragraphs (a)(1) and (2). Cartons and other materials used exclusively for shipping the product are not considered retail packaging.

(b) The marking and labeling on the product shall be permanent.

(c) Any upholstery labeling required by law shall not be used to meet the requirements of this section.

(d) Warning design for product:

(1) The warnings shall be easy to read and understand and be in the English language at a minimum.

(2) Any marking or labeling provided in addition to those required by this section shall not contradict or confuse the meaning of the required information or be otherwise misleading to the consumer.

(3) The warnings shall be conspicuous and permanent.

(4) The warnings shall conform to sections 6.1 through 6.4, 7.2 through 7.63, and 8.1 of ANSI Z535.4–2011, (incorporated by reference, see § 1242.8), with the following changes.

(i) In sections 6.2.2, 7.3, 7.5, and 8.1.2, replace ''should'' with ''shall.''

(ii) In section 7.6.3, replace ''should (when feasible)'' with ''shall.''

(iii) Strike the word ''safety'' when used immediately before a color (for example, replace ''safety white'' with ''white'').

**Note 1 to paragraph (d)(4).** For reference, ANSI Z535.1, *American National Standard for Safety Colors,* provides a system for specifying safety colors. *See* note 1 to § 1242.8(b) for ANSI contact information.

(5) The safety alert symbol and the signal word ''WARNING'' shall be at least 0.2 in. (5 mm) high. The remainder of the text shall be in characters whose upper case shall be at least 0.1 in. (2.5 mm), except where otherwise specified.

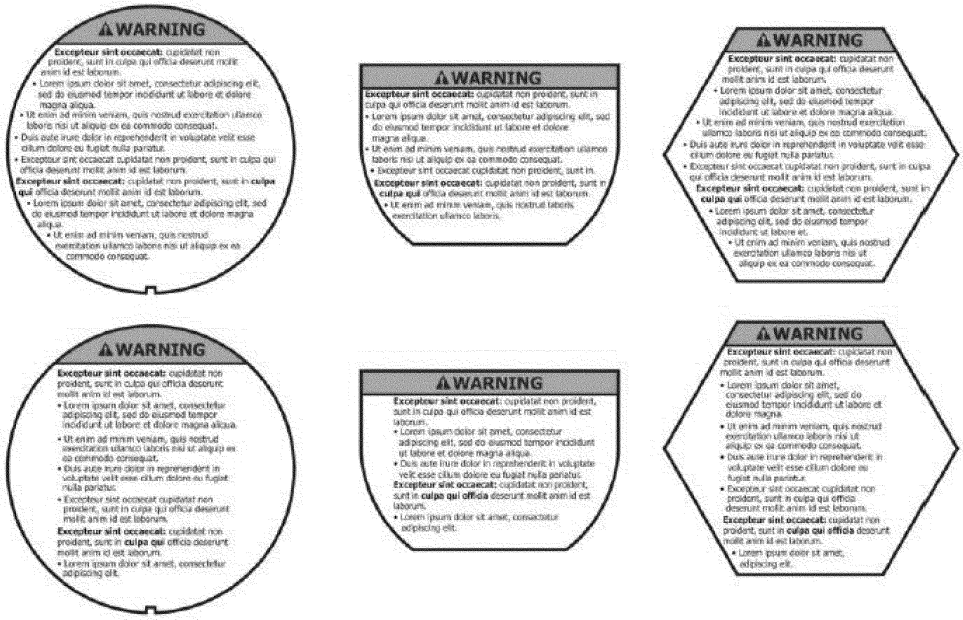
**Note 2 to paragraph (d)(5).** For improved warning readability, avoid typefaces with large height-to-width ratios, which are commonly identified as ''condensed,'' ''compressed,'' ''narrow,'' or similar.

(6) The message panel shall meet the following text layout requirements.

(i) The text shall be left-aligned, ragged-right for all but one-line text messages, which can be left-aligned or centered.

**Note 3 to paragraph (d)(6)(i).** Left-aligned means that the text is aligned along the left margin, and in the case of multiple columns of text, along the left side of each individual column. *See* figure 1 to this paragraph (d)(6)(i) for examples of left-aligned text.

**Figure 1 to Paragraph (d)(6)(i)—Examples of Left-Aligned Text**




**Note 4 to figure 1 to paragraph (d)(6)(i).** The text shown for these warnings is filler text, known as lorem ipsum, commonly used to demonstrate graphic elements.

(ii) The text in each column should be arranged in list or outline format, with precautionary (hazard avoidance) statements preceded by bullet points. Multiple precautionary statements shall be separated by bullet points if paragraph formatting is used.

(7) An example warning in the format described in this section is shown in figure 2 to this paragraph (d)(7).

**Figure 2 to Paragraph (d)(7)—Example of Warning**

**⚠WARNING**

**BABIES HAVE DIED USING NURSING PILLOWS FOR SLEEP OR LOUNGING**

Babies can move without warning and **CAN SUFFOCATE** within minutes if their airway is blocked.

- **Only use this product to feed baby.** Move baby to an infant sleep product, like a crib or bassinet, if baby falls asleep or if you feel drowsy.
- Never leave or prop up baby alone on this product.
- Never place this product where baby sleeps.

Babies have been injured from FALLS.

- Do not use to prop up baby on beds, sofas, or other raised surfaces.
- Do not use to carry baby.

(e) *Warning statements.* Each product shall have warning statements. The text must address the warnings as shown in figure 2 to paragraph (d)(7) of this section.

**Note 5 to paragraph (e).** ''Address'' means that verbiage other than what is shown can be used as long as the meaning is the same or information that is product-specific is presented.

(f) *Package warnings.* (1) The warnings and statements are not required on the retail package if they are on the product and are visible in their entirety through the retail package. Cartons and other materials used exclusively for shipping the product are not considered retail packaging.

(2) Each product's package shall have warning statements to address the following, at a minimum, as specified in paragraphs (d)(1) and (2) and (4) through (6) of this section:

(i) Do not use for sleep.

(ii) Do not use in sleep products like cribs, bassinets, or play yards.

(3) Each product's retail package shall address the manufacturer's recommended weight, height, age, or

developmental stage or combination thereof of the infant.

(4) Warnings, statements, or graphic pictorials on the product and package shall not indicate or imply that the infant may be left in the product without an adult caregiver in attendance.

### § 1242.7 Instructional literature.

(a) Instructions shall be provided with the product and shall be easy to read and understand and shall be in the English language at a minimum. These instructions shall include information on assembly, maintenance, cleaning, and use, where applicable.

(b) The instructions shall include all warnings specified in § 1242.6(e).

(c) The instructions shall address the following additional warnings:

(1) Read all instructions before using this product.

(2) Keep instructions for future use.

(3) Do not use this product if it is damaged or broken.

(4) Instructions shall indicate the manufacturer's recommended maximum weight, height, age, developmental level, or combination thereof, of the infant for whom the nursing pillow is intended. If this product is not intended for use by a child for a specific reason, the instructions shall so state this limitation.

(d) The cautions and warnings in the instructions shall meet the requirements specified in § 1242.6(d)(4) through (6) of this section, except that sections 6.4 and 7.2 through 7.6.3 of ANSI Z535.4—2011, need not be applied. However, the signal word and safety alert symbol shall contrast with the background of the signal word panel, and the cautions and warnings shall contrast with the background of the instructional literature.

**Note 1 to paragraph (d).** For example, the signal word, safety alert symbol, and the warnings may be black letters on a white background, white letters on a black background, navy blue letters on an off-white background, or some other high-contrast combination.

(e) Any instructions provided in addition to those required by this section shall not contradict or confuse the meaning of the required information or be otherwise misleading to the consumer.

**Note 2 to paragraph (e).** For additional guidance on the design of warnings for instructional literature, please refer to ANSI Z535.6, *American National Standard: Product Safety Information in Product Manuals,* Instructions, and Other Collateral Materials. *See* note 1 to § 1242.8(b) for ANSI contact information.

### § 1242.8 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR)material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, phone (301) 504–7479, email: *cpsc-os@cpsc.gov.* For information on the availability of this material at NARA, go to: *www.archives.gov/federal-register/cfr/ibr-locations.* or email *fr.inspection@nara.gov.* The material may be obtained from the following sources:

(a) ASTM International (ASTM), 100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428–2959; phone: (800) 262–1373; website: *www.astm.org.*

(1) ASTM D3359–23 Standard Test Methods for Rating Adhesion by Tape Test, approved February 1, 2023; § 1242.5(c).

(2) [Reserved]

(b) National Electrical Manufacturers Association (NEMA), 1300 17th St. N, Arlington, VA 22209; phone: (703) 841–3200; website: *www.nema.org.*

(1) ANSI Z535.4–2011(R2017), American National Standard for Product Safety Signs and Labels, ANSI-approved October 20, 2017 (ANSI Z535.4–2011); §§ 1242.6(d).

(2) [Reserved]

**Note 1 to paragraph (b).** NEMA standards are also available from ANSI, which provides a free, read-only copy of the standard at *https://ibr.ansi.org/Standards/nema.aspx.* American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036, USA, telephone: (212) 642–4900, *www.ansi.org.*

### § 1242.9 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

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