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RIN 1601–AB16

Civil Monetary Penalty Adjustments for Inflation

AGENCY: Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: In this final rule, DHS adjusts for inflation its civil monetary penalties for 2025, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Executive Office of the President (EOP) Office of Management and Budget (OMB) guidance. The new penalty amounts will be effective for penalties assessed after January 2, 2025, whose associated violations occurred after November 2, 2015.

DATES: This rule is effective on January 2, 2025.

FOR FURTHER INFORMATION CONTACT: Hillary Hunnings, Attorney-Advisor, 202–282–9043, *hillary.hunnings@hq.dhs.gov.*

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I. Statutory and Regulatory Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, sec. 701 (Nov. 2, 2015)) (2015 Act).[1] The 2015 Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) to further improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act required agencies to: (1) adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through issuance of an interim final rule (IFR) and (2) make subsequent annual adjustments for inflation.[2] Through the ''catch-up'' adjustment, agencies were required to adjust the amounts of civil monetary penalties to more accurately reflect inflation rates.[3]

For the subsequent annual adjustments, the 2015 Act requires agencies to increase the penalty amounts by a cost-of-living adjustment.[4] The 2015 Act directs OMB to provide guidance to agencies each year to assist agencies in making the annual adjustments.[5] The 2015 Act requires agencies to make the annual adjustments no later than January 15 of each year and to publish the adjustments in the **Federal Register**.[6]

Pursuant to the 2015 Act, DHS undertook a review of the civil penalties that DHS and its components administer.[7] On July 1, 2016, DHS published an IFR adjusting the maximum civil monetary penalties with an initial ''catch-up'' adjustment, as required by the 2015 Act.[8] DHS calculated the adjusted penalties based upon nondiscretionary provisions in the 2015 Act and upon guidance that OMB issued to agencies on February 24, 2016.[9] The adjusted penalties were effective for civil penalties assessed after August 1, 2016 (the effective date of the IFR), whose associated violations occurred after November 2, 2015 (the date of enactment of the 2015 Act).[10] In 2017 and in every year since, DHS published a final rule making the annual inflation adjustment.[11]

II. Overview of the Final Rule

This final rule makes the 2025 annual inflation adjustments to civil monetary penalties pursuant to the 2015 Act and pursuant to guidance OMB issued to agencies on December 17, 2024.[12] The penalty amounts in this final rule will be effective for penalties assessed after January 2, 2025 where the associated violation occurred after November 2, 2015. Consistent with OMB guidance, the 2015 Act does not retrospectively change previously assessed penalties that the agency is actively collecting or has collected.

We discuss civil penalties by DHS component in Section III below. For each component identified in Section III, below, we briefly describe the relevant civil penalty (or penalties), and we provide a table showing the increase in the penalties for 2025. In the table for

[1] The 2015 Act was part of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015) (codified as amended at 28 U.S.C. 2461 note).

[2] Public Law 114–74 sec. 701(b)(1)(D)(b)(1)–(2).

[3] Public Law 114–74 sec. 701(b)(1)(D)(b)(1)(A)–(B).

[4] Public Law 114–74 sec. 701(b)(1)(D)(b)(2).

[5] Public Law 114–74 sec. 701(b)(2)(4)(a).

[6] Public Law 114–74 sec. 701(b)(1)(A)(a).

[7] The 2015 Act applies to all agency civil penalties except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) and the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*). *See* sec. 4(a)(1) of the 2015 Act. In the case of DHS, several civil penalties that are assessed by U.S. Customs and Border Protection (CBP) and the U.S. Coast Guard (USCG) fall under the Tariff Act of 1930, and therefore DHS did not adjust those civil penalties in this rulemaking.

[8] 81 FR 42987 (July 1, 2016).

[9] *Id.;* Office of Mgmt. & Budget, Exec. Office of The President, M–16–06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Table A: 2016 Civil Monetary Penalty Catch-Up Adjustment Multiplier by Calendar Year, (Feb. 24, 2016) (*https://www.whitehouse.gov/omb/information-for-agencies/memoranda/#memoranda-2016*).

[10] 81 FR at 42987 (July 1, 2016).

[11] 82 FR 8571 (Jan. 27, 2017); 83 FR 13826 (Apr. 2, 2018); 84 FR 13499 (Apr. 5, 2019); 85 FR 36469 (June 17, 2020); 86 FR 57532 (Oct. 18, 2021); 87 FR 1317 (Jan. 11, 2022); 88 FR 2175 (Jan. 13, 2023); 89 FR 53849 (June 28, 2024).

[12] Office of Mgmt. and Budget, Exec. Office of the President, M–25–02, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 17, 2024) (*https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf*).

each component, we show (1) the penalty name, (2) the penalty statutory and or regulatory citation, (3) the penalty amount as adjusted in the 2024 final rule, (4) the cost-of-living adjustment multiplier for 2025 that OMB provided in its December 17, 2024, guidance, and (5) the new 2025 adjusted penalty. The 2015 Act instructs agencies to round penalties to the nearest multiple of $1.[13] For a more complete discussion of the method used for calculating the initial ''catch-up'' inflation adjustments and a component-by-component breakdown to the nature of the civil penalties and relevant legal authorities, please see the IFR preamble at 81 FR 42987–43000.

Finally, in issuing this final rule, it is DHS's intention that the rule's penalty provisions be considered severable from one another to the greatest extent possible. For example, if a court of competent jurisdiction were to hold that a particular penalty amount could not be applied as adjusted for inflation to particular persons or in particular circumstances, DHS would intend for the court to leave the remainder of the rule in place with respect to all other penalties as adjusted for inflation and covered persons and circumstances.

III. Adjustments by Component

In the following sections, we briefly describe the civil penalties that DHS and its components, the Cybersecurity and Infrastructure Security Agency (CISA), the U.S. Customs and Border Protection (CBP), the U.S. Immigration and Customs Enforcement (ICE), the U.S. Coast Guard (USCG), and the Transportation Security Administration (TSA), assess. Other components not mentioned do not impose any civil monetary penalties for 2025. At the end of each section, we include tables that list the individual adjustments for each penalty.

A. Cybersecurity and Infrastructure Security Agency

The Cybersecurity and Infrastructure Security Agency (CISA) administers the Chemical Facility Anti-Terrorism Standards (CFATS). CFATS is a program that regulates the security of chemical facilities that, in the discretion of the Secretary, present high levels of security risk. DHS established the CFATS program in 2007 pursuant to section 550 of the Department of Homeland Security Appropriations Act of 2007 (Pub. L. 109–295).[14] Pursuant to section 5 of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (Pub. L. 113–254, as amended by Pub. L. 116–150; 6 U.S.C. 621 note), authorization had been granted for CFATS until July 27, 2023. Congress did not act to reauthorize the program in time and, as such, the authorization expired on July 28, 2023. Therefore, regulations written pursuant to CFATS authority are not currently active. While regulatory text for the CFATS regulation, including a civil penalty, is located in part 27 of title 6 of the Code of Federal Regulations (CFR), the text is inactive due to the lapse in authority. For that reason, we are not adjusting the maximum civil penalty amount that CISA may assess at this time.

B. U.S. Customs and Border Protection

The U.S. Customs and Border Protection (CBP) assesses civil monetary penalties under various titles of the United States Code (U.S.C.) and the CFR. These include penalties for certain violations of title 8 of the CFR regarding the Immigration and Nationality Act of 1952 (Pub. L. 82–414, as amended) (INA). The INA contains provisions that impose penalties on persons, including carriers and noncitizens, who violate specified provisions of the INA. The relevant penalty provisions appear in numerous sections of the INA; however, CBP has enumerated these penalties in regulation in one location—8 CFR 280.53. For a complete list of the INA sections for which penalties are assessed, in addition to a brief description of each violation, see the 2016 IFR preamble at 81 FR 42989–42990. For a complete list and brief description of the non-INA civil monetary penalties assessed by CBP subject to adjustment and a discussion of the history of the DHS and CBP adjustments to the non-INA penalties, see the 2019 annual inflation adjustment final rule preamble at 84 FR 13499, 13500 (April 5, 2019).

Table 1 shows the 2025 adjustment for the penalties that CBP administers.

TABLE 1—U.S. CUSTOMS AND BORDER PROTECTION CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Penalties for non-compliance with arrival and departure manifest requirements for passengers, crewmembers, or occupants transported on commercial vessels or aircraft arriving to or departing from the United States.	8 U.S.C. 1221(g); 8 CFR 280.53(b)(1) (INA section 231(g)).	$1,696	1.02598	$1,740.
Penalties for non-compliance with landing requirements at designated ports of entry for aircraft transporting aliens.	8 U.S.C. 1224; 8 CFR 280.53(b)(2) (INA section 234).	$4,610	1.02598	$4,730.
Penalties for failure to depart voluntarily	8 U.S.C. 1229c(d); 8 CFR 280.53(b)(3) (INA section 240B(d)).	$1,942–$9,718	1.02598	$1,992–$9,970.
Penalties for violations of removal orders relating to aliens transported on vessels or aircraft under section 241(d) of the INA, or for costs associated with removal under section 241(e) of the INA.	8 U.S.C. 1253(c)(1)(A); 8 CFR 280.53(b)(4) (INA section 243(c)(1)(A)).	$3,887	1.02598	$3,988.
Penalties for failure to remove alien stowaways under section 241(d)(2) of the INA.	8 U.S.C. 1253(c)(1)(B); 8 CFR 280.53(b)(5) (INA section 243(c)(1)(B)).	$9,718	1.02598	$9,970.

[13] Public Law 114–74 sec. 701(b)(2)(A).

[14] Section 550 has since been superseded by the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (Pub. L. 113–254). The new legislation codified the statutory authority for the CFATS program within Title XXI of the Homeland Security Act of 2002, as amended. *See* 6 U.S.C. 621 *et seq.* Public Law 113–254 authorized the CFATS program from January 18, 2015, to January 17, 2019. Public Law 116–150 extends the CFATS program authorization to July 27, 2023.

TABLE 1—U.S. CUSTOMS AND BORDER PROTECTION CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Penalties for failure to report an illegal landing or desertion of alien crewmen, and for each alien not reported on arrival or departure manifest or lists required in accordance with section 251 of the INA.	8 U.S.C. 1281(d); 8 CFR 280.53(b)(6) (INA section 251(d)).	$460 for each alien	1.02598	$472 for each alien.
Penalties for use of alien crewmen for longshore work in violation of section 251(d) of the INA.	8 U.S.C. 1281(d); 8 CFR 280.53(b)(6) (INA section 251(d)).	$11,524	1.02598	$11,823.
Penalties for failure to control, detain, or remove alien crewmen.	8 U.S.C. 1284(a); 8 CFR 280.53(b)(7) (INA section 254(a)).	$1,152–$6,913	1.02598	$1,182–$7,093.
Penalties for employment on passenger vessels of aliens afflicted with certain disabilities.	8 U.S.C. 1285; 8 CFR 280.53(b)(8) (INA section 255).	$2,304	1.02598	$2,364.
Penalties for discharge of alien crewmen	8 U.S.C. 1286; 8 CFR 280.53(b)(9) (INA section 256).	$3,457–$6,913	1.02598	$3,547–$7,093.
Penalties for bringing into the United States alien crewmen with intent to evade immigration laws.	8 U.S.C. 1287; 8 CFR 280.53(b)(10) (INA section 257).	$23,048	1.02598	$23,647.
Penalties for failure to prevent the unauthorized landing of aliens.	8 U.S.C. 1321(a); 8 CFR 280.53(b)(11) (INA section 271(a)).	$6,913	1.02598	$7,093.
Penalties for bringing to the United States aliens subject to denial of admission on a health-related ground.	8 U.S.C. 1322(a); 8 CFR 280.53(b)(12) (INA section 272(a)).	$6,913	1.02598	$7,093.
Penalties for bringing to the United States aliens without required documentation.	8 U.S.C. 1323(b); 8 CFR 280.53(b)(13) (INA section 273(b)).	$6,913	1.02598	$7,093.
Penalties for failure to depart	8 U.S.C. 1324d; 8 CFR 280.53(b)(14) (INA section 274D).	$973	1.02598	$998.
Penalties for improper entry	8 U.S.C. 1325(b); 8 CFR 280.53(b)(15) (INA section 275(b)).	$97–$487	1.02598	$100–$500.
Penalty for dealing in or using empty stamped imported liquor containers.	19 U.S.C. 469	$645	1.02598	$662.**
Penalty for employing a vessel in a trade without a required Certificate of Documentation.	19 U.S.C. 1706a; 19 CFR 4.80(i)	$1,617	1.02598	$1,659.
Penalty for transporting passengers coastwise for hire by certain vessels (known as Bowaters vessels) that do not meet specified conditions.	46 U.S.C. 12118(f)(3)	$645	1.02598	$662.**
Penalty for transporting passengers between coastwise points in the United States by a non-coastwise qualified vessel.	46 U.S.C. 55103(b); 19 CFR 4.80(b)(2).	$971	1.02598	$996.
Penalty for towing a vessel between coastwise points in the United States by a non-coastwise qualified vessel.	46 U.S.C. 55111(c); 19 CFR 4.92	$1,132–$3,558 plus $193 per ton.	1.02598	$1,161–$3,650 plus $198 per ton.

* Office of Mgmt. and Budget, Exec. Office of the President, M–25–02, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 17, 2024) (*https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf*).
** No applicable conforming edit to regulatory text.

C. U.S. Immigration and Customs Enforcement

U.S. Immigration and Customs Enforcement (ICE) assesses civil monetary penalties for certain employment-related violations arising from the INA. ICE's civil penalties are located in title 8 of the CFR.

There are three different sections in the INA that impose civil monetary penalties for violations of the laws that relate to employment actions: sections 274A, 274B, and 274C. ICE has primary enforcement responsibilities for two of these civil penalty provisions (sections 274A and 274C), and the Department of Justice (DOJ) has enforcement responsibilities for one of these civil penalty provisions (section 274B). The INA, in sections 274A and 274C, provides for imposition of civil penalties for various specified unlawful acts pertaining to the employment eligibility verification process (Form I–9, Employment Eligibility Verification), the employment of unauthorized noncitizens, and document fraud.

Because both DHS and DOJ implement the three employment-related penalty sections in the INA, both Departments' implementing regulations reflect the civil penalty amounts. For a complete description of the civil money penalties assessed and a discussion of DHS's and DOJ's efforts to update the penalties in years past, see the IFR preamble at 81 FR 42991. Table 2 shows the 2025 adjustment for the penalties that ICE administers.[15]

[15] Table 3 also includes two civil penalties that are also listed as penalties administered by CBP. These are penalties for failure to depart voluntarily, INA section 240B(d), and failure to depart after a final order of removal, INA section 274D. Both CBP and ICE may administer these penalties, but as ICE is the DHS component primarily responsible for assessing and collecting them, they are also listed among the penalties ICE administers.

TABLE 2—U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier*	New penalty as adjusted by this final rule
Civil penalties for failure to depart voluntarily, INA section 240B(d).	8 U.S.C. 1229c(d); 8 CFR 280.53(b)(3).	$1,942–$9,718	1.02598	$1,992–$9,970.
Civil penalties for violation of INA sections 274C(a)(1)–(a)(4), penalty for first offense.	8 CFR 270.3(b)(1)(ii)(A)	$575–$4,610	1.02598	$590–$4,730.
Civil penalties for violation of INA sections 274C(a)(5)–(a)(6), penalty for first offense.	8 CFR 270.3(b)(1)(ii)(B)	$487–$3,887	1.02598	$500–$3,988.
Civil penalties for violation of INA sections 274C(a)(1)–(a)(4), penalty for subsequent offenses.	8 CFR 270.3(b)(1)(ii)(C)	$4,610–$11,524	1.02598	$4,730–$11,823.
Civil penalties for violation of INA sections 274C(a)(5)–(a)(6), penalty for subsequent offenses.	8 CFR 270.3(b)(1)(ii)(D)	$3,887–$9,718	1.02598	$3,988–$9,970.
Violation/prohibition of indemnity bonds	8 CFR 274a.8(b)	$2,789	1.02598	$2,861.
Civil penalties for knowingly hiring, recruiting, referral, or retention of unauthorized aliens—Penalty for first offense (per unauthorized alien).	8 CFR 274a.10(b)(1)(ii)(A)	$698–$5,579	1.02598	$716–$5,724.
Penalty for second offense (per unauthorized alien).	8 CFR 274a.10(b)(1)(ii)(B)	$5,579–$13,946	1.02598	$5,724–$14,308.
Penalty for third or subsequent offense (per unauthorized alien).	8 CFR 274a.10(b)(1)(ii)(C)	$8,369–$27,894	1.02598	$8,586–$28,619.
Civil penalties for I–9 paperwork violations	8 CFR 274a.10(b)(2)	$281–$2,789	1.02598	$288–$2,861.
Civil penalties for failure to depart, INA section 274D.	8 U.S.C. 1324d; 8 CFR 280.53(b)(14).	$973	1.02598	$998.

*Office of Mgmt. and Budget, Exec. Office of the President, M–25–02, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 17, 2024) (*https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf*).

D. U.S. Coast Guard

The Coast Guard is authorized to assess the following penalties involving maritime safety and security and environmental stewardship that are critical to the continued success of Coast Guard missions. Various statutes in titles 14, 16, 19, 33, 42, 46, and 49 of the U.S.C. authorize these penalties. Titles 33 and 46 authorize the vast majority of these penalties as these statutes deal with navigation, navigable waters, and shipping. For a more detailed discussion of the civil monetary penalties assessed by the Coast Guard, see the 2016 IFR preamble at 81 FR 42992.

The Coast Guard has identified the penalties it administers and adjusted those penalties for inflation in a table located in the CFR—specifically, Table 1 in 33 CFR 27.3. Table 1 in 33 CFR 27.3 identifies the statutes that provide the Coast Guard with civil monetary penalty authority and sets out the inflation-adjusted maximum penalty that the Coast Guard may impose pursuant to each statutory provision. Table 1 in 33 CFR 27.3 provides the current maximum penalty for violations that occurred after November 2, 2015. The applicable civil monetary penalty amounts for violations occurring on or before November 2, 2015, are set forth in previously published regulations amending 33 CFR part 27. To find the applicable penalty amount for a violation that occurred on or before November 2, 2015, look to the prior versions of the CFR that pertain to the date on which the violation occurred. Table 3 below shows the 2025 adjustment for the penalties that the Coast Guard administers.

TABLE 3—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier*	New penalty as adjusted by this final rule
Saving Life and Property	14 U.S.C. 521(c)	$12,958	1.02598	$13,295.
Saving Life and Property; Intentional Interference with Broadcast.	14 U.S.C. 521(e)	$1,330	1.02598	$1,365.
Confidentiality of Medical Quality Assurance Records (first offense).	14 U.S.C. 936(i); 33 CFR 27.3	$6,508	1.02598	$6,677.
Confidentiality of Medical Quality Assurance Records (subsequent offenses).	14 U.S.C. 936(i); 33 CFR 27.3	$43,394	1.02598	$44,521.
Obstruction of Revenue Officers by Masters of Vessels.	19 U.S.C. 70; 33 CFR 27.3	$9,704	1.02598	$9,956.
Obstruction of Revenue Officers by Masters of Vessels—Minimum Penalty.	19 U.S.C. 70; 33 CFR 27.3	$2,264	1.02598	$2,323.
Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge.	19 U.S.C. 1581(d)	$5,000**	N/A	$5,000.**
Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge-Minimum Penalty.	19 U.S.C. 1581(d)	$1,000**	N/A	$1,000.**
Anchorage Ground/Harbor Regulations General.	33 U.S.C. 471; 33 CFR 27.3	$14,069	1.02598	$14,435.
Anchorage Ground/Harbor Regulations St. Mary's River.	33 U.S.C. 474; 33 CFR 27.3	$971	1.02598	$996.
Bridges/Failure to Comply with Regulations	33 U.S.C. 495(b); 33 CFR 27.3	$35,516	1.02598	$36,439.
Bridges/Drawbridges	33 U.S.C. 499(c); 33 CFR 27.3	$35,516	1.02598	$36,439.
Bridges/Failure to Alter Bridge Obstructing Navigation.	33 U.S.C. 502(c); 33 CFR 27.3	$35,516	1.02598	$36,439.
Bridges/Maintenance and Operation	33 U.S.C. 533(b); 33 CFR 27.3	$35,516	1.02598	$36,439.

TABLE 3—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier*	New penalty as adjusted by this final rule
Bridge to Bridge Communication; Master, Person in Charge or Pilot.	33 U.S.C. 1208(a); 33 CFR 27.3	$2,587	1.02598	$2,654.
Bridge to Bridge Communication; Vessel	33 U.S.C. 1208(b); 33 CFR 27.3	$2,587	1.02598	$2,654.
Oil/Hazardous Substances: Discharges (Class I per violation).	33 U.S.C. 1321(b)(6)(B)(i); 33 CFR 27.3.	$23,048	1.02598	$23,647.
Oil/Hazardous Substances: Discharges (Class I total under paragraph).	33 U.S.C. 1321(b)(6)(B)(i); 33 CFR 27.3.	$57,617	1.02598	$59,114.
Oil/Hazardous Substances: Discharges (Class II per day of violation).	33 U.S.C. 1321(b)(6)(B)(ii); 33 CFR 27.3.	$23,048	1.02598	$23,647.
Oil/Hazardous Substances: Discharges (Class II total under paragraph).	33 U.S.C. 1321(b)(6)(B)(ii); 33 CFR 27.3.	$288,080	1.02598	$295,564.
Oil/Hazardous Substances: Discharges (per day of violation) Judicial Assessment.	33 U.S.C. 1321(b)(7)(A); 33 CFR 27.3.	$57,617	1.02598	$59,114.
Oil/Hazardous Substances: Discharges (per barrel of oil or unit discharged) Judicial Assessment.	33 U.S.C. 1321(b)(7)(A); 33 CFR 27.3.	$2,305	1.02598	$2,365.
Oil/Hazardous Substances: Failure to Carry Out Removal/Comply With Order (Judicial Assessment).	33 U.S.C. 1321(b)(7)(B); 33 CFR 27.3.	$57,617	1.02598	$59,114.
Oil/Hazardous Substances: Failure to Comply with Regulation Issued Under 1321(j) (Judicial Assessment).	33 U.S.C. 1321(b)(7)(C); 33 CFR 27.3.	$57,617	1.02598	$59,114.
Oil/Hazardous Substances: Discharges, Gross Negligence (per barrel of oil or unit discharged) Judicial Assessment.	33 U.S.C. 1321(b)(7)(D); 33 CFR 27.3.	$6,913	1.02598	$7,093.
Oil/Hazardous Substances: Discharges, Gross Negligence—Minimum Penalty (Judicial Assessment).	33 U.S.C. 1321(b)(7)(D); 33 CFR 27.3.	$230,464	1.02598	$236,451.
Marine Sanitation Devices; Operating	33 U.S.C. 1322(j); 33 CFR 27.3	$9,704	1.02598	$9,956.
Marine Sanitation Devices; Sale or Manufacture.	33 U.S.C. 1322(j); 33 CFR 27.3	$25,871	1.02598	$26,543.
International Navigation Rules; Operator	33 U.S.C. 1608(a); 33 CFR 27.3	$18,139	1.02598	$18,610.
International Navigation Rules; Vessel	33 U.S.C. 1608(b); 33 CFR 27.3	$18,139	1.02598	$18,610.
Pollution from Ships; General	33 U.S.C. 1908(b)(1); 33 CFR 27.3	$90,702	1.02598	$93,058.
Pollution from Ships; False Statement	33 U.S.C. 1908(b)(2); 33 CFR 27.3	$18,139	1.02598	$18,610.
Inland Navigation Rules; Operator	33 U.S.C. 2072(a); 33 CFR 27.3	$18,139	1.02598	$18,610.
Inland Navigation Rules; Vessel	33 U.S.C. 2072(b); 33 CFR 27.3	$18,139	1.02598	$18,610.
Shore Protection; General	33 U.S.C. 2609(a); 33 CFR 27.3	$63,991	1.02598	$65,653.
Shore Protection; Operating Without Permit ..	33 U.S.C. 2609(b); 33 CFR 27.3	$25,597	1.02598	$26,262.
Oil Pollution Liability and Compensation	33 U.S.C. 2716a(a); 33 CFR 27.3 ..	$57,617	1.02598	$59,114.
Clean Hulls; Civil Enforcement	33 U.S.C. 3852(a)(1)(A); 33 CFR 27.3.	$52,753	1.02598	$54,124.
Clean Hulls—related to false statements	33 U.S.C. 3852(a)(1)(A); 33 CFR 27.3.	$70,337	1.02598	$72,164.
Clean Hulls—Recreational Vessel	33 U.S.C. 3852(c); 33 CFR 27.3	$7,034	1.02598	$7,217.
Hazardous Substances, Releases, Liability, Compensation (Class I).	42 U.S.C. 9609(a); 33 CFR 27.3	$69,733	1.02598	$71,545.
Hazardous Substances, Releases, Liability, Compensation (Class II).	42 U.S.C. 9609(b); 33 CFR 27.3	$69,733	1.02598	$71,545.
Hazardous Substances, Releases, Liability, Compensation (Class II subsequent offense).	42 U.S.C. 9609(b); 33 CFR 27.3	$209,202	1.02598	$214,637.
Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment).	42 U.S.C. 9609(c); 33 CFR 27.3	$69,733	1.02598	$71,545.
Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment subsequent offense).	42 U.S.C. 9609(c); 33 CFR 27.3	$209,202	1.02598	$214,637.
Safe Containers for International Cargo	46 U.S.C. 80509; 33 CFR 27.3	$7,622	1.02598	$7,820.
Suspension of Passenger Service	46 U.S.C. 70305; 33 CFR 27.3	$76,230	1.02598	$78,210.
Vessel Inspection or Examination Fees	46 U.S.C. 2110(e); 33 CFR 27.3	$11,524	1.02598	$11,823.
Alcohol and Dangerous Drug Testing	46 U.S.C. 2115; 33 CFR 27.3	$9,380	1.02598	$9,624.
Negligent Operations: Recreational Vessels ..	46 U.S.C. 2302(a); 33 CFR 27.3	$8,485	1.02598	8,705.
Negligent Operations: Other Vessels	46 U.S.C. 2302(a); 33 CFR 27.3	$42,425	1.02598	$43,527.
Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug.	46 U.S.C. 2302(c)(1); 33 CFR 27.3	$9,380	1.02598	$9,624.
Vessel Reporting Requirements: Owner, Charterer, Managing Operator, or Agent.	46 U.S.C. 2306(a)(4); 33 CFR 27.3	$14,608	1.02598	$14,988.
Vessel Reporting Requirements: Master	46 U.S.C. 2306(b)(2); 33 CFR 27.3	$2,922	1.02598	$2,998.
Immersion Suits	46 U.S.C. 3102(c)(1); 33 CFR 27.3	$14,608	1.02598	$14,988.
Master Key Control System	46 U.S.C. 3106(d)	$1,032	1.02598	$1,059.
Inspection Permit	46 U.S.C. 3302(i)(5); 33 CFR 27.3	$3,047	1.02598	$3,126.
Vessel Inspection; General	46 U.S.C. 3318(a); 33 CFR 27.3	$14,608	1.02598	$14,988.
Vessel Inspection; Nautical School Vessel	46 U.S.C. 3318(g); 33 CFR 27.3	$14,608	1.02598	$14,988.
Vessel Inspection; Failure to Give Notice in accordance with (IAW) 3304(b).	46 U.S.C. 3318(h); 33 CFR 27.3	$2,922	1.02598	$2,998.
Vessel Inspection; Failure to Give Notice IAW 3309(c).	46 U.S.C. 3318(i); 33 CFR 27.3	$2,922	1.02598	$2,998.
Vessel Inspection; Vessel ≥1600 Gross Tons	46 U.S.C. 3318(j)(1); 33 CFR 27.3	$29,221	1.02598	$29,980.
Vessel Inspection; Vessel <1600 Gross Tons (GT).	46 U.S.C. 3318(j)(1); 33 CFR 27.3	$5,844	1.02598	$5,996.

TABLE 3—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier*	New penalty as adjusted by this final rule
Vessel Inspection; Failure to Comply with 3311(b).	46 U.S.C. 3318(k); 33 CFR 27.3	$29,221	1.02598	$29,980.
Vessel Inspection; Violation of 3318(b)–3318(f).	46 U.S.C. 3318(l); 33 CFR 27.3	$14,608	1.02598	$14,988.
List/count of Passengers	46 U.S.C. 3502(e); 33 CFR 27.3	$304	1.02598	$312.
Notification to Passengers	46 U.S.C. 3504(c); 33 CFR 27.3	$30,461	1.02598	$31,252.
Notification to Passengers; Sale of Tickets ...	46 U.S.C. 3504(c); 33 CFR 27.3	$1,522	1.02598	$1,562.
Copies of Laws on Passenger Vessels; Master.	46 U.S.C. 3506; 33 CFR 27.3	$609	1.02598	$625.
Passenger Vessel Security and Safety; Daily Penalty & Maximum Penalty.	46 U.S.C. 3507(h)(1)(A)	Daily $25,810/Maximum $51,621.	1.02598	Daily $26,481/Maximum $52,962.
Passenger Vessel Security and Safety; Crewmembers Crime Scene Preservation Training; Maximum Penalty.	46 U.S.C. 3508(d)	$51,621	1.02598	$52,962.
Liquid Bulk/Dangerous Cargo	46 U.S.C. 3718(a)(1); 33 CFR 27.3	$76,155	1.02598	$78,134.
Uninspected Vessels	46 U.S.C. 4106; 33 CFR 27.3	$12,799	1.02598	$13,132.
Recreational Vessels (maximum for related series of violations).	46 U.S.C. 4311(b)(1); 33 CFR 27.3	$402,920	1.02598	$413,388.
Recreational Vessels; Violation of 4307(a)	46 U.S.C. 4311(b)(1); 33 CFR 27.3	$8,058	1.02598	$8,267.
Engine Cut-Off Switches; Violation of 4312(b), First Offense.	46 U.S.C. 4311(c)	$103	1.02598	$106.
Engine Cut-Off Switches; Violation of 4312(b), Second Offense.	46 U.S.C. 4311(c)	$258	1.02598	$265.
Engine Cut-Off Switches; Violation of 4312(b), Subsequent to Second Offense.	46 U.S.C. 4311(c)	$516	1.02598	$529.
Recreational vessels	46 U.S.C. 4311(d); 33 CFR 27.3	$3,047	1.02598	$3,126.
Uninspected Commercial Fishing Industry Vessels.	46 U.S.C. 4507; 33 CFR 27.3	$12,799	1.02598	$13,132.
Abandonment of Barges	46 U.S.C. 4703; 33 CFR 27.3	$2,168	1.02598	$2,224.
Load Lines	46 U.S.C. 5116(a); 33 CFR 27.3	$13,946	1.02598	$14,308.
Load Lines; Violation of 5112(a)	46 U.S.C. 5116(b); 33 CFR 27.3	$27,894	1.02598	$28,619.
Load Lines; Violation of 5112(b)	46 U.S.C. 5116(c); 33 CFR 27.3	$13,946	1.02598	$14,308.
Reporting Marine Casualties	46 U.S.C. 6103(a); 33 CFR 27.3	$48,586	1.02598	$49,848.
Reporting Marine Casualties; Violation of 6104.	46 U.S.C. 6103(b); 33 CFR 27.3	$12,799	1.02598	$13,132.
Manning of Inspected Vessels; Failure to Report Deficiency in Vessel Complement.	46 U.S.C. 8101(e); 33 CFR 27.3	$2,305	1.02598	$2,365.
Manning of Inspected Vessels	46 U.S.C. 8101(f); 33 CFR 27.3	$23,048	1.02598	$23,647.
Manning of Inspected Vessels; Employing or Serving in Capacity not Licensed by U.S. Coast Guard (USCG).	46 U.S.C. 8101(g); 33 CFR 27.3	$23,048	1.02598	$23,647.
Manning of Inspected Vessels; Freight Vessel <100 GT, Small Passenger Vessel, or Sailing School Vessel.	46 U.S.C. 8101(h); 33 CFR 27.3	$3,047	1.02598	$3,126.
Watchmen on Passenger Vessels	46 U.S.C. 8102(a)	$3,047	1.02598	$3,126.
Citizenship Requirements	46 U.S.C. 8103(f)	$1,522	1.02598	$1,562.
Watches on Vessels; Violation of 8104(a) or (b).	46 U.S.C. 8104(i)	$23,048	1.02598	$23,647.
Watches on Vessels; Violation of 8104(c), (d), (e), or (h).	46 U.S.C. 8104(j)	$23,048	1.02598	$23,647.
Employing Qualified Available U.S. Citizens or Residents.	46 U.S.C. 8106(f)(2)–(3)	Daily $10,324/Maximum $103,241.	1.02598	Daily $10,592/Maximum $105,923.
Staff Department on Vessels	46 U.S.C. 8302(e)	$304	1.02598	$312.
Officer's Competency Certificates	46 U.S.C. 8304(d)	$304	1.02598	$312.
Coastwise Pilotage; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	46 U.S.C. 8502(e)	$23,048	1.02598	$23,647.
Coastwise Pilotage; Individual	46 U.S.C. 8502(f)	$23,048	1.02598	$23,647.
Federal Pilots	46 U.S.C. 8503	$73,045	1.02598	$74,943.
Merchant Mariners Documents	46 U.S.C. 8701(d)	$1,522	1.02598	$1,562.
Crew Requirements	46 U.S.C. 8702(e)	$23,048	1.02598	$23,647.
Small Vessel Manning	46 U.S.C. 8906	$48,586	1.02598	$49,848.
Pilotage: Great Lakes; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	46 U.S.C. 9308(a)	$23,048	1.02598	$23,647.
Pilotage: Great Lakes; Individual	46 U.S.C. 9308(b)	$23,048	1.02598	$23,647.
Pilotage: Great Lakes; Violation of 9303	46 U.S.C. 9308(c)	$23,048	1.02598	$23,647.
Requirement to Report Sexual Assault and Harassment; Mandatory Reporting by Responsible Entity of a Vessel.	46 U.S.C. 10104(a)(2)	$51,621	1.02598	$52,962.
Requirement to Report Sexual Assault and Harassment; Company After Action Summary, violation of 10104(d)(1).	46 U.S.C. 10104(d)(2)	$25,810	1.02598	$26,481.
Requirement to Report Sexual Assault and Harassment; Company After Action Summary, daily noncompliance penalty.	46 U.S.C. 10104(d)(2)	$516	1.02598	$529.
Requirement to Report Sexual Assault and Harassment; Company After Action Summary, Civil Penalty Maximum.	46 U.S.C. 10104(d)(2)	$51,621	1.02598	$52,962.
Pay Advances to Seamen	46 U.S.C. 10314(a)(2)	$1,522	1.02598	$1,562.

TABLE 3—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Pay Advances to Seamen; Remuneration for Employment.	46 U.S.C. 10314(b)	$1,522	1.02598	$1,562.
Allotment to Seamen	46 U.S.C. 10315(c)	$1,522	1.02598	$1,562.
Seamen Protection; General	46 U.S.C. 10321	$10,557	1.02598	$10,831.
Coastwise Voyages: Advances	46 U.S.C. 10505(a)(2)	$10,557	1.02598	$10,831.
Coastwise Voyages: Advances; Remuneration for Employment.	46 U.S.C. 10505(b)	$10,557	1.02598	$10,831.
Coastwise Voyages: Seamen Protection; General.	46 U.S.C. 10508(b)	$10,557	1.02598	$10,831.
Effects of Deceased Seamen	46 U.S.C. 10711	$609	1.02598	$625.
Complaints of Unfitness	46 U.S.C. 10902(a)(2)	$1,522	1.02598	$1,562.
Proceedings on Examination of Vessel	46 U.S.C. 10903(d)	$304	1.02598	$312.
Permission to Make Complaint	46 U.S.C. 10907(b)	$1,522	1.02598	$1,562.
Accommodations for Seamen	46 U.S.C. 11101(f)	$1,522	1.02598	$1,562.
Medicine Chests on Vessels	46 U.S.C. 11102(b)	$1,522	1.02598	$1,562.
Destitute Seamen	46 U.S.C. 11104(b)	$304	1.02598	$312.
Wages on Discharge	46 U.S.C. 11105(c)	$1,522	1.02598	$1,562.
Log Books; Master Failing to Maintain	46 U.S.C. 11303(a)	$609	1.02598	$625.
Log Books; Master Failing to Make Entry	46 U.S.C. 11303(b)	$609	1.02598	$625.
Log Books; Late Entry	46 U.S.C. 11303(c)	$457	1.02598	$469.
Carrying of Sheath Knives	46 U.S.C. 11506	$153	1.02598	$157.
Vessel Documentation	46 U.S.C. 12151(a)(1)	$19,950	1.02598	$20,468.
Documentation of Vessels—Related to Activities involving mobile offshore drilling units.	46 U.S.C. 12151 (a)(2)	$33,252	1.02598	$34,116.
Vessel Documentation; Fishery Endorsement	46 U.S.C. 12151(c)	$152,461	1.02598	$156,422.
Numbering of Undocumented Vessels—Willful violation.	46 U.S.C. 12309(a)	$15,232	1.02598	$15,628.
Numbering of Undocumented Vessels	46 U.S.C. 12309(b)	$3,047	1.02598	$3,126.
Vessel Identification System	46 U.S.C. 12507(b)	$25,597	1.02598	$26,262.
Measurement of Vessels	46 U.S.C. 14701	$55,789	1.02598	$57,238.
Measurement; False Statements	46 U.S.C. 14702	$55,789	1.02598	$57,238.
Commercial Instruments and Maritime Liens	46 U.S.C. 31309	$25,597	1.02598	$26,262.
Commercial Instruments and Maritime Liens; Mortgagor.	46 U.S.C. 31330(a)(2)	$25,597	1.02598	$26,262.
Commercial Instruments and Maritime Liens; Violation of 31329.	46 U.S.C. 31330(b)(2)	$63,991	1.02598	$65,653.
Vessel Escort Operations and Towing Assistance.	46 U.S.C. 55112(d); 33 CFR 27.3	$10,324	1.02598	$10,592.
Ports and Waterway Safety Regulations	46 U.S.C. 70036(a); 33 CFR 27.3	$114,630	1.02598	$117,608.
Vessel Navigation: Regattas or Marine Parades; Unlicensed Person in Charge.	46 U.S.C. 70041(d)(1)(B); 33 CFR 27.3.	$11,524	1.02598	$11,823.
Vessel Navigation: Regattas or Marine Parades; Owner Onboard Vessel.	46 U.S.C. 70041(d)(1)(C); 33 CFR 27.3.	$11,524	1.02598	$11,823.
Vessel Navigation: Regattas or Marine Parades; Other Persons.	46 U.S.C. 70041(d)(1)(D); 33 CFR 27.3.	$5,761	1.02598	$5,911.
Regulation of Vessels in Territorial Waters of the United States.	46 U.S.C. 70052(c)	$25,810	1.02598	$26,481.
Port Security	46 U.S.C. 70119(a)	$42,425	1.02598	$43,527.
Port Security—Continuing Violations	46 U.S.C. 70119(b)	$76,230	1.02598	$78,210.
Maritime Drug Law Enforcement; Penalties	46 U.S.C. 70506	$7,034	1.02598	$7,217.
Hazardous Materials: Related to Vessels Maximum Penalty.	49 U.S.C. 5123(a)(1)	$99,756	1.02598	$102,348.
Hazardous Materials: Related to Vessels—Penalty from Fatalities, Serious Injuries/Illness or Substantial Damage to Property.	49 U.S.C. 5123(a)(2)	$232,762	1.02598	$238,809.
Hazardous Materials: Related to Vessels; Training.	49 U.S.C. 5123(a)(3)	$601	1.02598	$617.

* Office of Mgmt. and Budget, Exec. Office of the President, M–25–02, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 17, 2024) (*https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf*).
** Enacted under the Tariff Act; exempt from inflation adjustments.

E. Transportation Security Administration

The Transportation Security Administration (TSA) is updating its civil penalties regulation in accordance with the 2015 Act. Pursuant to its statutory authority in 49 U.S.C. 46301(a)(1), (4), (5), (6), 49 U.S.C. 46301(d)(2), (8), and 49 U.S.C. 114(u), TSA may impose penalties for violations of statutes that TSA administers, including penalties for violations of implementing regulations or orders. Note that pursuant to division K, title I, sec. 1904(b)(1)(I), of Public Law 115–254, 132 Stat. 3186, 3545 (Oct. 5, 2018), the TSA Modernization Act—part of the FAA Reauthorization Act of 2018—the former 49 U.S.C. 114(v), which relates to penalties, was redesignated as 49 U.S.C. 114(u).

TSA assesses these penalties for a wide variety of aviation and surface security requirements, including violations of TSA's requirements applicable to Transportation Worker Identification Credentials (TWIC),[16] as well as violations of requirements described in chapter 449 of title 49 of

[16] *See, e.g.,* 46 U.S.C. 70105, 49 U.S.C. 46302 and 46303, and 49 U.S.C. chapter 449.

the U.S.C. These penalties can apply to a wide variety of situations, as described in the statutory and regulatory provisions, as well as in guidance that TSA publishes. Table 4 shows the 2025 adjustment for the penalties that TSA administers.

TABLE 4—TRANSPORTATION SECURITY ADMINISTRATION CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2024 FR	Multiplier *	New penalty as adjusted by this final rule
Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by a person operating an aircraft for the transportation of passengers or property for compensation.	49 U.S.C. 46301(a)(1), (4), (5), (6); 49 U.S.C. 46301(d)(2), (8); 49 CFR 1503.401(c)(3).	$41,577 (up to a total of $665,226 per civil penalty action).	1.02598	$42,657 (up to a total of $682,509 per civil penalty action).
Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by an individual (except an airman serving as an airman), any person not operating an aircraft for the transportation of passengers or property for compensation, or a small business concern.	49 U.S.C. 46301(a)(1), (4), (5); 49 U.S.C. 46301(d)(8); 49 CFR 1503.401(c).	$16,630 (up to a total of $83,154 for individuals or small businesses, $665,226 for others).	1.02598	$17,062 (up to a total of $85,314 for individuals or small businesses, $682,509 for others).
Violation of any other provision of title 49 U.S.C. or of 46 U.S.C. ch. 701, a regulation prescribed, or order issued thereunder.	49 U.S.C. 114(u); 49 CFR 1503.401(b).	$14,232 (up to a total of $71,162 total for individuals or small businesses, $569,288 for others).	1.02598	$14,602 (up to a total of $73,011 total for individuals or small businesses, $584,078 for others).

* Office of Mgmt. and Budget, Exec. Office of the President, M–25–02, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 17, 2024) (*https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf*).

IV. Administrative Procedure Act

The Administrative Procedure Act (''APA'') (5 U.S.C. 551 *et seq.*) require agencies, when conducting rulemaking, to provide advance public notice, seek public comment, and provide a thirty-day delayed effective date. An agency may issue a rule without first providing an opportunity for notice and comment if the agency makes a finding of good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Notice and comment procedures are unnecessary, for example, if Congress requires non-discretionary action of an agency, leaving the agency without discretion to vary its action in response to the views or suggestions of public commenters.

DHS finds that notice and comment procedures are not required for these annual inflation adjustments. The 2015 Act had instructed agencies to make the required annual adjustments ''notwithstanding section 553 of title 5 of the U.S.C.'' (See 28 U.S.C. 2461 note). Furthermore, DHS has good cause to forgo notice and comment procedures because such procedures would be unnecessary due to DHS's lack of discretion in updating the penalties. As required by the 2015 Act, DHS is updating the penalty amounts by applying the cost-of-living adjustment multiplier that OMB has provided to agencies. For the same reasons, DHS also finds that it has good cause to forgo a delayed effective date under section 553(d) of the APA.

V. Regulatory Analyses

A. Executive Orders 12866 and 13563

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

OMB has not designated this final rule a ''significant regulatory action'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this rule. This final rule makes nondiscretionary adjustments to existing civil monetary penalties in accordance with the 2015 Act and OMB guidance.[17] DHS therefore did not consider alternatives and does not have the flexibility to alter the adjustments of the civil monetary penalty amounts as provided in this rule. To the extent this final rule increases civil monetary penalties, it would result in an increase in transfers from persons or entities assessed a civil monetary penalty to the government.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). See 5 U.S.C. 601–612. The Regulatory Flexibility Act does not apply to this final rule because a notice of proposed rulemaking was not required for the reasons stated above.

C. 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. This final rule will not result in such an expenditure.

[17] Office of Mgmt. and Budget, Exec. Office of the President, M–25–02, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 17, 2024) (*https://www.whitehouse.gov/wp-content/uploads/2024/12/M-25-02.pdf*).

D. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule, because this final rule does not trigger any new or revised recordkeeping or reporting.

List of Subjects

8 CFR Part 270

Administrative practice and procedure, Aliens, Employment, Fraud, Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 280

Administrative practice and procedure, Immigration, Penalties.

19 CFR Part 4

Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

33 CFR Part 27

Administrative practice and procedure, Penalties.

49 CFR Part 1503

Administrative practice and procedure, Investigations, Law enforcement, Penalties.

Amendments to the Regulations

Accordingly, for the reasons stated in the preamble, DHS is amending 8 CFR parts 270, 274a, and 280, 19 CFR part 4, 33 CFR part 27, and 49 CFR part 1503 as follows:

Title 8—Aliens and Nationality

PART 270—PENALTIES FOR DOCUMENT FRAUD

■ 1. The authority citation for part 270 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321 and Pub. L. 114–74, 129 Stat. 599.

■ 2. In § 270.3, revise paragraphs (b)(1)(ii)(A) through (D) to read as follows:

§ 270.3 Penalties.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *First offense under section 274C(a)(1) through (4).* Not less than $275 and not exceeding $2,200 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (4) of the Act before March 27, 2008; not less than $375 and not exceeding $3,200 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (4) of the Act on or after March 27, 2008, and on or before November 2, 2015; and not less than $590 and not exceeding $4,730 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (4) of the Act after November 2, 2015.

(B) *First offense under section 274C(a)(5) or (6).* Not less than $250 and not exceeding $2,000 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (6) of the Act before March 27, 2008; not less than $275 and not exceeding $2,200 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (6) of the Act on or after March 27, 2008, and on or before November 2, 2015; and not less than $500 and not exceeding $3,988 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (6) of the Act after November 2, 2015.

(C) *Subsequent offenses under section 274C(a)(1) through (4).* Not less than $2,200 and not more than $5,500 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (4) of the Act before March 27, 2008; not less than $3,200 and not exceeding $6,500 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (4) of the Act occurring on or after March 27, 2008 and on or before November 2, 2015; and not less than $4,730 and not more than $11,823 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (4) of the Act after November 2, 2015.

(D) *Subsequent offenses under section 274C(a)(5) or (6).* Not less than $2,000 and not more than $5,000 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (6) of the Act before March 27, 2008; not less than $2,200 and not exceeding $5,500 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (6) of the Act occurring on or after March 27, 2008, and on or before November 2, 2015; and not less than $3,988 and not more than $9,970 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (6) of the Act after November 2, 2015.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1105a, 1324a; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 4. In § 274a.8, revise paragraph (b) to read as follows:

§ 274a.8 Prohibition of indemnity bonds.

* * * * *

(b) *Penalty.* Any person or other entity who requires any individual to post a bond or security as stated in this section shall, after notice and opportunity for an administrative hearing in accordance with section 274A(e)(3)(B) of the Act, be subject to a civil monetary penalty of $1,000 for each violation before September 29, 1999, of $1,100 for each violation occurring on or after September 29, 1999, but on or before November 2, 2015, and of $2,861 for each violation occurring after November 2, 2015, and to an administrative order requiring the return to the individual of any amounts received in violation of this section or, if the individual cannot be located, to the general fund of the Treasury.

■ 5. In § 274a.10, revise paragraphs (b)(1)(ii)(A) through (C) and the first sentence of paragraph (b)(2) introductory text to read as follows:

§ 274a.10 Penalties.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) First offense—not less than $275 and not more than $2,200 for each unauthorized alien with respect to whom the offense occurred before March 27, 2008; not less than $375 and not exceeding $3,200, for each unauthorized alien with respect to whom the offense occurred occurring on or after March 27, 2008, and on or before November 2, 2015; and not less than $716 and not more than $5,724 for each unauthorized alien with respect to whom the offense occurred occurring after November 2, 2015;

(B) Second offense—not less than $2,200 and not more than $5,500 for each unauthorized alien with respect to whom the second offense occurred before March 27, 2008; not less than $3,200 and not more than $6,500, for each unauthorized alien with respect to whom the second offense occurred on or after March 27, 2008, and on or before November 2, 2015; and not less than $5,724 and not more than $14,308 for

each unauthorized alien with respect to whom the second offense occurred after November 2, 2015; or

(C) More than two offenses—not less than $3,300 and not more than $11,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before March 27, 2008; not less than $4,300 and not exceeding $16,000, for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after March 27, 2008, and on or before November 2, 2015; and not less than $8,586 and not more than $28,619 for each unauthorized alien with respect to whom the third or subsequent offense occurred after November 2, 2015; and

* * * * *

(2) A respondent determined by the Service (if a respondent fails to request a hearing) or by an administrative law judge, to have failed to comply with the employment verification requirements as set forth in § 274a.2(b), shall be subject to a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred before September 29, 1999; not less than $110 and not more than $1,100 for each individual with respect to whom such violation occurred on or after September 29, 1999, and on or before November 2, 2015; and not less than $288 and not more than $2,861 for each individual with respect to whom such violation occurred after November 2, 2015. * * *

* * * * *

PART 280—IMPOSITION AND COLLECTION OF FINES

■ 6. The authority citation for part 280 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221–223, 226, 227, 230; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 7. In § 280.53, revise paragraphs (b)(1) through (15) to read as follows:

§ 280.53 Civil monetary penalties inflation adjustment.

* * * * *

(b) * * *

(1) Section 231(g) of the Act, penalties for non-compliance with arrival and departure manifest requirements for passengers, crewmembers, or occupants transported on commercial vessels or aircraft arriving to or departing from the United States: From $1,696 to $1,740.

(2) Section 234 of the Act, penalties for non-compliance with landing requirements at designated ports of entry for aircraft transporting aliens: From $4,610 to $4,730.

(3) Section 240B(d) of the Act, penalties for failure to depart voluntarily: From $1,942 minimum/$9,718 maximum to $1,992 minimum/$9,970 maximum.

(4) Section 243(c)(1)(A) of the Act, penalties for violations of removal orders relating to aliens transported on vessels or aircraft, under section 241(d) of the Act, or for costs associated with removal under section 241(e) of the Act: From $3,887 to $3,988.

(5) Penalties for failure to remove alien stowaways under section 241(d)(2) of the Act: From $9,718 to $9,970.

(6) Section 251(d) of the Act, penalties for failure to report an illegal landing or desertion of alien crewmen, and for each alien not reported on arrival or departure manifest or lists required in accordance with section 251 of the Act: From $460 to $472; and penalties for use of alien crewmen for longshore work in violation of section 251(d) of the Act: From $11,524 to $11,823.

(7) Section 254(a) of the Act, penalties for failure to control, detain, or remove alien crewmen: From $1,152 minimum/$6,913 maximum to $1,182 minimum/$7,093 maximum.

(8) Section 255 of the Act, penalties for employment on passenger vessels of aliens afflicted with certain disabilities: From $2,304 to $2,364.

(9) Section 256 of the Act, penalties for discharge of alien crewmen: From $3,457 minimum/$6,913 maximum to $3,547 minimum/$7,093 maximum.

(10) Section 257 of the Act, penalties for bringing into the United States alien crewmen with intent to evade immigration laws: From $23,048 maximum to $23,647 maximum.

(11) Section 271(a) of the Act, penalties for failure to prevent the unauthorized landing of aliens: From $6,913 to $7,093.

(12) Section 272(a) of the Act, penalties for bringing to the United States aliens subject to denial of admission on a health-related ground: From $6,913 to $7,093.

(13) Section 273(b) of the Act, penalties for bringing to the United States aliens without required documentation: From $6,913 to $7,093.

(14) Section 274D of the Act, penalties for failure to depart: From $973 maximum to $998 maximum, for each day the alien is in violation.

(15) Section 275(b) of the Act, penalties for improper entry: From $97 minimum/$487 maximum to $100 minimum/$500 maximum, for each entry or attempted entry.

Title 19—Customs Duties

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 8. The authority citation for part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1415, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Sections 4.80, 4.80a, and 4.80b also issued under 19 U.S.C. 1706a; 28 U.S.C. 2461 note; 46 U.S.C. 12112, 12117, 12118, 50501–55106, 55107, 55108, 55110, 55114, 55115, 55116, 55117, 55119, 56101, 55121, 56101, 57109; Pub. L. 108–7, Division B, Title II, § 211;

* * * * *

Section 4.92 also issued under 28 U.S.C. 2461 note; 46 U.S.C. 55111;

* * * * *

■ 9. In § 4.80, revise paragraphs (b)(2) and (i) to read as follows:

§ 4.80 Vessels entitled to engage in coastwise trade.

* * * * *

(b) * * *

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is $300 for each passenger so transported and landed on or before November 2, 2015, and $996 for each passenger so transported and landed after November 2, 2015 (46 U.S.C. 55103, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).

* * * * *

(i) Any vessel, entitled to be documented and not so documented, employed in a trade for which a Certificate of Documentation is issued under the vessel documentation laws (see § 4.0(c)), other than a trade covered by a registry, is liable to a civil penalty of $500 for each port at which it arrives without the proper Certificate of Documentation on or before November 2, 2015, and $1,659 for each port at which it arrives without the proper Certificate of Documentation after November 2, 2015 (19 U.S.C. 1706a, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015). If such a vessel has on board any foreign merchandise (sea stores excepted), or any domestic taxable alcoholic beverages, on which the duty and taxes have not been paid or secured to be paid, the vessel and its cargo are subject to seizure and forfeiture.

■ 10. In § 4.92, revise the third sentence to read as follows:

§ 4.92 Towing.

* * * The penalties for violation of this section occurring after November 2, 2015, are a fine of from $1,161 to $3,650 against the owner or master of the towing vessel and a further penalty against the towing vessel of $198 per ton of the towed vessel (46 U.S.C. 55111, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).

Title 33—Navigation and Navigable Waters

PART 27—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 11. The authority citation for part 27 continues to read as follows:

Authority: Secs. 1–6, Pub. L. 101–410, 104 Stat. 890, as amended by Sec. 31001(s)(1), Pub. L. 104–134, 110 Stat. 1321 (28 U.S.C. 2461 note); Department of Homeland Security Delegation No. 0170.1, sec. 2 (106).

■ 12. In § 27.3, revise the third sentence of the introductory text and table 1 to read as follows:

§ 27.3 Penalty adjustment table.

* * * The adjusted civil penalty amounts listed in Table 1 to this section are applicable for penalty assessments issued after January 2, 2025, with respect to violations occurring after November 2, 2015. * * *

TABLE 1 TO § 27.3—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Civil monetary penalty description	2025 Adjusted maximum penalty amount ($)
14 U.S.C. 521(c)	Saving Life and Property	$13,295
14 U.S.C. 521(e)	Saving Life and Property; Intentional Interference with Broadcast	1,365
14 U.S.C. 936(i)	Confidentiality of Medical Quality Assurance Records (first offense)	6,677
14 U.S.C. 936(i)	Confidentiality of Medical Quality Assurance Records (subsequent offenses)	44,521
19 U.S.C. 70	Obstruction of Revenue Officers by Masters of Vessels	9,956
19 U.S.C. 70	Obstruction of Revenue Officers by Masters of Vessels—Minimum Penalty	2,323
19 U.S.C. 1581(d)	Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge [1]	5,000
19 U.S.C. 1581(d)	Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge—Minimum Penalty [1].	1,000
33 U.S.C. 471	Anchorage Ground/Harbor Regulations General	14,435
33 U.S.C. 474	Anchorage Ground/Harbor Regulations St. Mary's River	996
33 U.S.C. 495(b)	Bridges/Failure to Comply with Regulations	36,439
33 U.S.C. 499(c)	Bridges/Drawbridges	36,439
33 U.S.C. 502(c)	Bridges/Failure to Alter Bridge Obstructing Navigation	36,439
33 U.S.C. 533(b)	Bridges/Maintenance and Operation	36,439
33 U.S.C. 1208(a)	Bridge to Bridge Communication; Master, Person in Charge or Pilot	2,654
33 U.S.C. 1208(b)	Bridge to Bridge Communication; Vessel	2,654
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (Class I per violation)	23,647
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (Class I total under paragraph)	59,114
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (Class II per day of violation)	23,647
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (Class II total under paragraph)	295,564
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per day of violation) Judicial Assessment	59,114
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per barrel of oil or unit discharged) Judicial Assessment.	2,365
33 U.S.C. 1321(b)(7)(B)	Oil/Hazardous Substances: Failure to Carry Out Removal/Comply With Order (Judicial Assessment).	59,114
33 U.S.C. 1321(b)(7)(C)	Oil/Hazardous Substances: Failure to Comply with Regulation Issued Under 1321(j) (Judicial Assessment).	59,114
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges, Gross Negligence (per barrel of oil or unit discharged) Judicial Assessment.	7,093
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges, Gross Negligence—Minimum Penalty (Judicial Assessment).	236,451
33 U.S.C. 1322(j)	Marine Sanitation Devices; Operating	9,956
33 U.S.C. 1322(j)	Marine Sanitation Devices; Sale or Manufacture	26,543
33 U.S.C. 1608(a)	International Navigation Rules; Operator	18,610
33 U.S.C. 1608(b)	International Navigation Rules; Vessel	18,610
33 U.S.C. 1908(b)(1)	Pollution from Ships; General	93,058
33 U.S.C. 1908(b)(2)	Pollution from Ships; False Statement	18,610
33 U.S.C. 2072(a)	Inland Navigation Rules; Operator	18,610
33 U.S.C. 2072(b)	Inland Navigation Rules; Vessel	18,610
33 U.S.C. 2609(a)	Shore Protection; General	65,653
33 U.S.C. 2609(b)	Shore Protection; Operating Without Permit	26,262
33 U.S.C. 2716a(a)	Oil Pollution Liability and Compensation	59,114
33 U.S.C. 3852(a)(1)(A)	Clean Hulls; Civil Enforcement	54,124
33 U.S.C. 3852(a)(1)(A)	Clean Hulls; related to false statements	72,164
33 U.S.C. 3852(c)	Clean Hulls; Recreational Vessels	7,217
42 U.S.C. 9609(a)	Hazardous Substances, Releases, Liability, Compensation (Class I)	71,545
42 U.S.C. 9609(b)	Hazardous Substances, Releases, Liability, Compensation (Class II)	71,545
42 U.S.C. 9609(b)	Hazardous Substances, Releases, Liability, Compensation (Class II subsequent offense)	214,637
42 U.S.C. 9609(c)	Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment)	71,545
42 U.S.C. 9609(c)	Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment subsequent offense).	214,637
46 U.S.C. 80509(a)	Safe Containers for International Cargo	7,820
46 U.S.C. 70305(c)	Suspension of Passenger Service	78,210
46 U.S.C. 2110(e)	Vessel Inspection or Examination Fees	11,823

TABLE 1 TO § 27.3—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	2025 Adjusted maximum penalty amount ($)
46 U.S.C. 2115	Alcohol and Dangerous Drug Testing	9,624
46 U.S.C. 2302(a)	Negligent Operations: Recreational Vessels	8,705
46 U.S.C. 2302(a)	Negligent Operations: Other Vessels	43,527
46 U.S.C. 2302(c)(1)	Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug	9,624
46 U.S.C. 2306(a)(4)	Vessel Reporting Requirements: Owner, Charterer, Managing Operator, or Agent	14,988
46 U.S.C. 2306(b)(2)	Vessel Reporting Requirements: Master	2,998
46 U.S.C. 3102(c)(1)	Immersion Suits	14,988
46 U.S.C. 3106(d)	Master Key Control System	1,059
46 U.S.C. 3302(i)(5)	Inspection Permit	3,126
46 U.S.C. 3318(a)	Vessel Inspection; General	14,988
46 U.S.C. 3318(g)	Vessel Inspection; Nautical School Vessel	14,988
46 U.S.C. 3318(h)	Vessel Inspection; Failure to Give Notice in accordance with (IAW) 3304(b)	2,998
46 U.S.C. 3318(i)	Vessel Inspection; Failure to Give Notice IAW 3309(c)	2,998
46 U.S.C. 3318(j)(1)	Vessel Inspection; Vessel ≥1600 Gross Tons	29,980
46 U.S.C. 3318(j)(1)	Vessel Inspection; Vessel <1600 Gross Tons (GT)	5,996
46 U.S.C. 3318(k)	Vessel Inspection; Failure to Comply with 3311(b)	29,980
46 U.S.C. 3318(l)	Vessel Inspection; Violation of 3318(b)-3318(f)	14,988
46 U.S.C. 3502(e)	List/count of Passengers	312
46 U.S.C. 3504(c)	Notification to Passengers	31,252
46 U.S.C. 3504(c)	Notification to Passengers; Sale of Tickets	1,562
46 U.S.C. 3506	Copies of Laws on Passenger Vessels; Master	625
46 U.S.C. 3507(h)(1)(A)	Passenger Vessel Security and Safety; Daily Penalty & Maximum Penalty	26,481 Daily/ $52,962 Maximum
46 U.S.C. 3508(d)	Passenger Vessel Security and Safety; Crewmembers Crime Scene Preservation Training; Maximum Penalty.	52,962
46 U.S.C. 3718(a)(1)	Liquid Bulk/Dangerous Cargo	78,134
46 U.S.C. 4106	Uninspected Vessels	13,132
46 U.S.C. 4311(b)(1)	Recreational Vessels (maximum for related series of violations)	413,388
46 U.S.C. 4311(b)(1)	Recreational Vessels; Violation of 4307(a)	8,267
46 U.S.C. 4311(c)	Engine Cut-Off Switches; Violation of 4312(b), First Offense	106
46 U.S.C. 4311(c)	Engine Cut-Off Switches; Violation of 4312(b), Second Offense	265
46 U.S.C. 4311(c)	Engine Cut-Off Switches; Violation of 4312(b), Subsequent to Second Offense	529
46 U.S.C. 4311(d)	Recreational Vessels	3,126
46 U.S.C. 4507	Uninspected Commercial Fishing Industry Vessels	13,132
46 U.S.C. 4703	Abandonment of Barges	2,224
46 U.S.C. 5116(a)	Load Lines	14,308
46 U.S.C. 5116(b)	Load Lines; Violation of 5112(a)	28,619
46 U.S.C. 5116(c)	Load Lines; Violation of 5112(b)	14,308
46 U.S.C. 6103(a)	Reporting Marine Casualties	49,848
46 U.S.C. 6103(b)	Reporting Marine Casualties; Violation of 6104	13,132
46 U.S.C. 8101(e)	Manning of Inspected Vessels; Failure to Report Deficiency in Vessel Complement	2,365
46 U.S.C. 8101(f)	Manning of Inspected Vessels	23,647
46 U.S.C. 8101(g)	Manning of Inspected Vessels; Employing or Serving in Capacity not Licensed by U.S. Coast Guard (USCG).	23,647
46 U.S.C. 8101(h)	Manning of Inspected Vessels; Freight Vessel <100 GT, Small Passenger Vessel, or Sailing School Vessel.	3,126
46 U.S.C. 8102(a)	Watchmen on Passenger Vessels	3,126
46 U.S.C. 8103(f)	Citizenship Requirements	1,562
46 U.S.C. 8104(i)	Watches on Vessels; Violation of 8104(a) or (b)	23,647
46 U.S.C. 8104(j)	Watches on Vessels; Violation of 8104(c), (d), (e), or (h)	23,647
46 U.S.C. 8106(f)	Employing Qualified Available U.S. Citizens or Residents	10,592 Daily/ $105,923 Maximum
46 U.S.C. 8302(e)	Staff Department on Vessels	312
46 U.S.C. 8304(d)	Officer's Competency Certificates	312
46 U.S.C. 8502(e)	Coastwise Pilotage; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	23,647
46 U.S.C. 8502(f)	Coastwise Pilotage; Individual	23,647
46 U.S.C. 8503	Federal Pilots	74,943
46 U.S.C. 8701(d)	Merchant Mariners Documents	1,552
46 U.S.C. 8702(e)	Crew Requirements	23,647
46 U.S.C. 8906	Small Vessel Manning	49,848
46 U.S.C. 9308(a)	Pilotage: Great Lakes; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	23,647
46 U.S.C. 9308(b)	Pilotage: Great Lakes; Individual	23,647
46 U.S.C. 9308(c)	Pilotage: Great Lakes; Violation of 9303	23,647
46 U.S.C. 10104(a)(2)	Requirement to Report Sexual Assault and Harassment; Mandatory Reporting by Responsible Entity of a Vessel.	51,621
46 U.S.C. 10104(d)(2)	Requirement to Report Sexual Assault and Harassment; Company After Action Summary, violation of 10104(d)(1).	25,810

TABLE 1 TO § 27.3—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	2025 Adjusted maximum penalty amount ($)
46 U.S.C. 10104(d)(2)	Requirement to Report Sexual Assault and Harassment; Company After Action Summary, Daily Noncompliance Penalty.	516
46 U.S.C. 10104(d)(2)	Requirement to Report Sexual Assault and Harassment; Company After Action Summary, Civil Penalty Maximum.	51,621
46 U.S.C. 10314(a)(2)	Pay Advances to Seamen	1,562
46 U.S.C. 10314(b)	Pay Advances to Seamen; Remuneration for Employment	1,562
46 U.S.C. 10315(c)	Allotment to Seamen	1,562
46 U.S.C. 10321	Seamen Protection; General	10,831
46 U.S.C. 10505(a)(2)	Coastwise Voyages: Advances	10,831
46 U.S.C. 10505(b)	Coastwise Voyages: Advances; Remuneration for Employment	10,831
46 U.S.C. 10508(b)	Coastwise Voyages: Seamen Protection; General	10,831
46 U.S.C. 10711	Effects of Deceased Seamen	625
46 U.S.C. 10902(a)(2)	Complaints of Unfitness	1,562
46 U.S.C. 10903(d)	Proceedings on Examination of Vessel	312
46 U.S.C. 10907(b)	Permission to Make Complaint	1,562
46 U.S.C. 11101(f)	Accommodations for Seamen	1,562
46 U.S.C. 11102(b)	Medicine Chests on Vessels	1,562
46 U.S.C. 11104(b)	Destitute Seamen	312
46 U.S.C. 11105(c)	Wages on Discharge	1,562
46 U.S.C. 11303(a)	Log Books; Master Failing to Maintain	625
46 U.S.C. 11303(b)	Log Books; Master Failing to Make Entry	625
46 U.S.C. 11303(c)	Log Books; Late Entry	469
46 U.S.C. 11506	Carrying of Sheath Knives	157
46 U.S.C. 12151(a)(1)	Vessel Documentation	20,468
46 U.S.C. 12151(a)(2)	Documentation of Vessels—Related to activities involving mobile offshore drilling units	34,116
46 U.S.C. 12151(c)	Vessel Documentation; Fishery Endorsement	156,422
46 U.S.C. 12309(a)	Numbering of Undocumented Vessels—Willful violation	15,628
46 U.S.C. 12309(b)	Numbering of Undocumented Vessels	3,126
46 U.S.C. 12507(b)	Vessel Identification System	26,262
46 U.S.C. 14701	Measurement of Vessels	57,238
46 U.S.C. 14702	Measurement; False Statements	57,238
46 U.S.C. 31309	Commercial Instruments and Maritime Liens	26,262
46 U.S.C. 31330(a)(2)	Commercial Instruments and Maritime Liens; Mortgagor	26,262
46 U.S.C. 31330(b)(2)	Commercial Instruments and Maritime Liens; Violation of 31329	65,653
46 U.S.C. 55112(d)	Vessel Escort Operations and Towing Assistance	10,592
46 U.S.C. 70036(a)	Ports and Waterways Safety Regulations	117,608
46 U.S.C. 70041(d)(1)(B)	Vessel Navigation: Regattas or Marine Parades; Unlicensed Person in Charge	11,823
46 U.S.C. 70041(d)(1)(C)	Vessel Navigation: Regattas or Marine Parades; Owner Onboard Vessel	11,823
46 U.S.C. 70041(d)(1)(D)	Vessel Navigation: Regattas or Marine Parades; Other Persons	5,911
46 U.S.C. 70052(c)	Regulation of Vessels in Territorial Waters of the United States	26,481
46 U.S.C. 70119(a)	Port Security	43,527
46 U.S.C. 70119(b)	Port Security—Continuing Violations	78,210
46 U.S.C. 70506	Maritime Drug Law Enforcement; Penalties	7,217
49 U.S.C. 5123(a)(1)	Hazardous Materials: Related to Vessels—Maximum Penalty	102,348
49 U.S.C. 5123(a)(2)	Hazardous Materials: Related to Vessels—Penalty from Fatalities, Serious Injuries/Illness or Substantial Damage to Property.	238,809
49 U.S.C. 5123(a)(3)	Hazardous Materials: Related to Vessels—Training	617

[1] Enacted under the Tariff Act of 1930 exempt from inflation adjustments.

Title 49—Transportation

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 13. The authority citation for part 1503 continues to read as follows:

Authority: 6 U.S.C. 1142; 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 20109, 31105, 40113–40114, 40119, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314; Pub. L. 104–134, as amended by Pub. L. 114–74.

■ 14. In § 1503.401, revise paragraphs (b)(1) and (2) and (c)(1) through (3) to read as follows:

§ 1503.401 Maximum penalty amounts.

* * * * *

(b) * * *

(1) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual or small business concern (''small business concern'' as defined in section 3 of the Small Business Act (15 U.S.C. 632)). For violations that occurred after November 2, 2015, $14,602 per violation, up to a total of $73,011 per civil penalty action, in the case of an individual or small business concern; and

(2) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $400,000 per civil penalty action, in the case of any other person. For violations that occurred after November 2, 2015, $14,602 per violation, up to a total of $584,078 per civil penalty action, in the case of any other person.

(c) * * *

(1) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual or small business concern (''small business concern'' as defined in

section 3 of the Small Business Act (15 U.S.C. 632)). For violations that occurred after November 2, 2015, $17,062 per violation, up to a total of $85,314 per civil penalty action, in the case of an individual (except an airman serving as an airman), or a small business concern.

(2) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $400,000 per civil penalty action, in the case of any other person (except an airman serving as an airman) not operating an aircraft for the transportation of passengers or property for compensation. For violations that occurred after November 2, 2015, $17,062 per violation, up to a total of $682,509 per civil penalty action, in the case of any other person (except an airman serving as an airman) not operating an aircraft for the transportation of passengers or property for compensation.

(3) For violations that occurred on or before November 2, 2015, $25,000 per violation, up to a total of $400,000 per civil penalty action, in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman). For violations that occurred after November 2, 2015, $42,657 per violation, up to a total of $682,509 per civil penalty action, in the case of a person (except an individual serving as an airman) operating an aircraft for the transportation of passengers or property for compensation.

Kara Lynum,

Acting General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2024–31204 Filed 12–31–24; 8:45 am]

BILLING CODE 9110–9P–P; 9111–14–P; 9111–28–P; 9110–04–P; 9110–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2670; Project Identifier MCAI–2024–00736–R; Amendment 39–22916; AD 2024–25–51]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Deutschland GmbH Model MBB–BK 117 C–2 helicopters. The FAA previously sent this AD as an emergency AD to all known U.S. owners and operators of these helicopters. This AD was prompted by a report of vibrations of the yaw axis during a hover taxi. This AD requires repetitively inspecting the bolted joint between the cardan-pivot joint assembly and the tail rotor actuator piston rod and, depending on the results, taking corrective action. This AD also prohibits installing certain tail rotor actuators unless its requirements are met. These actions are specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 17, 2025. Emergency AD 2024–25–51, issued on December 12, 2024, which contains the requirements of this amendment, was effective with actual notice.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 17, 2025.

The FAA must receive comments on this AD by February 18, 2025.

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–2024–2670; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood 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–2024–2670.

FOR FURTHER INFORMATION CONTACT: Tara Lucas, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (206) 231–3189; email: *Tara.Lucas@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–2024–2670; Project Identifier MCAI–2024–00736–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 Tara Lucas, Aviation

Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (206) 231–3189; email: *Tara.Lucas@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued Emergency AD 2024–25–51, dated December 12, 2024 (the emergency AD), to address an unsafe condition on Airbus Helicopters Deutschland GmbH Model MBB–BK 117 C–2 helicopters. The FAA sent the emergency AD to all known U.S. owners and operators of these helicopters. For helicopters having tail rotor actuator part number (P/N) B673M40A1002 (manufacturer P/N 5038A0000–01) installed, the emergency AD requires repetitively inspecting the bolted joint between the cardan-pivot joint assembly and the tail rotor actuator piston rod and, depending on the results, taking corrective action. The emergency AD also prohibits installing this part-numbered tail rotor actuator on any helicopter unless it is new, or the inspection is done.

The emergency AD was prompted by Emergency AD 2024–0237–E, dated December 9, 2024 (EASA Emergency AD 2024–0237–E) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition on all Airbus Helicopters Deutschland GmbH Model MBB–BK117 C–2 helicopters. The MCAI states a bolt on the tail rotor actuator that connects the cardan-pivot joint assembly with the tail rotor actuator piston rod was found worn and broken during a subsequent inspection. EASA considers the MCAI an interim action.

The FAA is issuing this AD to detect a worn tail rotor actuator bolt. This condition, if not addressed, could result in failure of a tail rotor actuator bolt, loss of tail rotor control, and subsequent loss of control of the helicopter.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–2670.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA Emergency AD 2024–0237–E, which requires, for helicopters having tail rotor actuator P/N B673M40A1002 (manufacturer P/N 5038A0000–01) installed, repetitively inspecting the bolted joint between the cardan-pivot joint assembly and the tail rotor actuator piston rod. Depending on the results, EASA Emergency AD 2024–0237–E requires contacting AH [Airbus Helicopters] to obtain applicable repair instructions and accomplishing those instructions within the compliance time specified within. EASA Emergency AD 2024–0237–E also prohibits installing this part-numbered tail rotor actuator on any helicopter unless its requirements are met.

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

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in EASA Emergency AD 2024–0237–E described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA Emergency AD 2024–0237–E is incorporated by reference in this AD. This AD requires compliance with EASA Emergency AD 2024–0237–E in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA Emergency AD 2024–0237–E does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA Emergency AD 2024–0237–E. Material required by EASA Emergency AD 2024–0237–E for compliance will be available at *regulations.gov* under Docket No. FAA–2024–2670 after this AD is published.

Interim Action

The FAA considers that this AD is an interim action. If final action is later identified, the FAA might consider further rulemaking then.

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 required the immediate adoption of the emergency AD to all known U.S. owners and operators of these helicopters. The FAA found that the risk to the flying public justified waiving notice and comment prior to adoption of this rule because a tail rotor actuator is part of an assembly that is critical to the control of a helicopter. Failure of this part could result in an emergency condition on these helicopters, which primarily conduct air ambulance and military operations. Additionally, the FAA has no information pertaining to the extent of wear in the tail rotor actuator bolts that may currently exist in helicopters or how quickly the condition may propagate to failure, therefore, the initial actions required by this AD must be accomplished before next flight. These conditions still exist, therefore, 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 the FAA has determined that it has good cause to adopt this rule without notice

and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 156 helicopters of U.S. registry.

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

ESTIMATED COSTS OF REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspecting the tail rotor actuator.	2 work-hours × $85 per work-hour = $170 (per inspection cycle).	$0	$170 (per inspection cycle) ...	$26,520 (per inspection cycle).

Corrective actions that may be required depending on the results of an inspection could vary from helicopter to helicopter. The FAA has no data to determine the costs to accomplish these corrective actions. The FAA estimates the following costs to do any necessary replacement that may be done.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacing the tail rotor actuator	1 work-hour × $85 per work-hour = $85	$71,933	$72,018

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–25–51 Airbus Helicopters Deutschland GmbH: Amendment 39–22916; Docket No. FAA–2024–2670; Project Identifier MCAI–2024–00736–R.

(a) Effective Date

The FAA issued Emergency Airworthiness Directive (AD) 2024–25–51 on December 12, 2024 (the emergency AD), directly to affected owners and operators. As a result of such actual notice, the emergency AD was effective for those owners and operators on the date it was provided. This AD contains the same requirements as the emergency AD and, for those who did not receive actual notice, is effective on January 17, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH Model MBB–BK 117 C–2 helicopters, certificated in any category.

Note 1 to paragraph (c): Helicopters with an MBB–BK 117 C–2e designation are Model MBB–BK 117 C–2 helicopters.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of vibrations of the yaw axis during a hover taxi. The FAA is issuing this AD to detect a worn tail rotor actuator bolt. The unsafe condition, if not addressed, could result in failure of a tail rotor actuator bolt, loss of tail rotor control, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency Emergency AD 2024–0237–E, dated December 9, 2024 (EASA Emergency AD 2024–0237–E).

(h) Exceptions to EASA Emergency AD 2024–0237–E

(1) Where EASA Emergency AD 2024–0237–E requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA Emergency AD 2024–0237–E refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the material referenced in paragraph (1) of EASA Emergency AD 2024–0237–E states to ''use a suitable pen,'' this

AD requires replacing that text with ''use a permanent marker.''

(4) Where paragraph (3) of EASA Emergency AD 2024–0237–E states ''discrepancy,'' for the purpose of this AD, a ''discrepancy'' is defined as the lines on the piston rod and the bolt do not stay aligned to each other while rotating the tail rotor actuator, or the line is not aligned on the piston rod, the cardan-pivot joint assembly, the lever assembly, and the bolt after connecting the tail rotor actuator upper control rod and the bellcrank.

(5) Where paragraph (3) of EASA Emergency AD 2024–0237–E states to ''contact AH for applicable repair instructions and, within the compliance time specified in those instructions, accomplish those instructions accordingly,'' this AD requires replacing that text with ''accomplish corrective action in accordance with a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus Helicopters Deutschland GmbH's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.''

(6) Where paragraphs (4) and (5) of EASA Emergency AD 2024–0237–E specify accomplishing corrective actions, this AD requires accomplishing corrective actions in accordance with a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus Helicopters Deutschland GmbH's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(7) This AD does not adopt the ''Remarks'' section of EASA Emergency AD 2024–0237–E.

(i) No Reporting Requirement

Although the material referenced in EASA Emergency AD 2024–0237–E specifies to submit certain information to the manufacturer, this AD does not require that action.

(j) Alternative Methods of Compliance (AMOCs)

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

(k) Additional Information

For more information about this AD, contact Tara Lucas, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (206) 231–3189; email: *Tara.Lucas@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2024–0237–E, dated December 9, 2024.

(ii) [Reserved]

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

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood 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 December 17, 2024.

Victor Wicklund,

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

[FR Doc. 2024–31500 Filed 12–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2719; Project Identifier MCAI–2024–00664–R; Amendment 39–22923; AD 2024–26–08]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Leonardo S.p.a. Model AB139 and AW139 helicopters. This AD was prompted by reports of broken main landing gear (MLG) shock absorber piston rod eye ends. This AD requires repetitively inspecting the MLG shock absorber piston rod eye ends, reporting the results of the inspection, and, depending on the results, replacing the MLG shock absorber assembly. It also prohibits installing certain MLG shock absorber assemblies unless specific requirements are met, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 17, 2025.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 17, 2025.

The FAA must receive comments on this AD by February 18, 2025.

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–2024–2719; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood 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–2024–2719.

FOR FURTHER INFORMATION CONTACT: Adam Hein, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4116; email: *Adam.Hein@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–2024–2719; Project Identifier MCAI–2024–00664–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 Adam Hein, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued a series of ADs, the most recent being EASA Emergency AD 2024–0211–E, dated November 7, 2024 (EASA Emergency AD 2024–0211–E) (also referred to as the MCAI), to correct an unsafe condition on all Leonardo S.p.a. Model AB139 and AW139 helicopters. The MCAI states that there have been reports of broken MLG shock absorber piston rod eye ends and the consequent investigation determined that the cause was fatigue cracking. The FAA is issuing this AD to address fatigue cracking of the MLG shock absorber piston rod eye ends. The unsafe condition, if not detected and corrected, could result in structural failure of the MLG possibly resulting in damage to the helicopter and injury to occupants.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–2719.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA Emergency AD 2024–0211–E, which requires repetitive ultrasonic inspections of the piston rod eye ends of MLG shock absorber assembly having part number (P/N) 3G3210V00333 or P/N 3G3210V01031 (vendor P/N 1654B0000–01 or P/N 1654C0000–01 respectively) and, depending on findings, replacing the MLG shock absorber assembly. EASA Emergency AD 2024–0211–E also requires reporting the inspection results to Leonardo. Lastly, EASA Emergency AD 2024–0211–E prohibits installing an affected MLG shock absorber assembly on any helicopter unless its requirements are met.

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

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in the MCAI, described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA Emergency AD 2024–0211–E is incorporated by reference in this AD. This AD requires compliance with EASA Emergency AD 2024–0211–E in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA Emergency AD 2024–0211–E does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA Emergency AD 2024–0211–E. Material required by EASA Emergency AD 2024–0211–E for compliance will be available at *regulations.gov* under Docket No. FAA–2024–2719 after this AD is published.

Interim Action

The FAA considers that this AD is an interim action. If final action is later identified, the FAA might consider further rulemaking then.

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 the MLG shock absorber assembly is part of an assembly that is critical to the control of a helicopter during landings, which is a critical phase of flight. The FAA has no information pertaining to the extent of fatigue damage in MLG shock absorber piston rod eye ends that may currently exist in helicopters or how quickly the

condition may propagate to failure, therefore, the initial instance of the inspections must be accomplished within 10 to 100 hours time-in-service, a time period of approximately 10 days to three months based on the average flight-hour utilization rates of these helicopters. 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 the 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 144 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting the MLG shock absorber piston rod takes 1 work-hour for a cost of $85 per helicopter and $12,240 for the U.S. fleet, per inspection cycle. Reporting the results takes 1 work-hour for a cost of $85 per helicopter and $12,240 for the U.S. fleet, per inspection cycle.

If required, replacing a MLG shock absorber assembly takes 20 work-hours and parts cost up to $39,105 for a cost of up to $40,805 per assembly.

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

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–26–08 Leonardo S.p.a. Helicopters: Amendment 39–22923; Docket No. FAA–2024–2719; Project Identifier MCAI–2024–00664–R.

(a) Effective Date

This airworthiness directive (AD) is effective January 17, 2025.

(b) Affected ADs

None.

(c) Applicability

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

(d) Subject

Joint Aircraft System Component (JASC) Code 3210, Main Landing Gear.

(e) Unsafe Condition

This AD was prompted by reports of broken main landing gear (MLG) shock absorber piston rod eye ends. The FAA is issuing this AD to address fatigue cracking of the MLG shock absorber piston rod eye ends. The unsafe condition, if not addressed, could result in structural failure of the MLG and consequent damage to the helicopter and injury to occupants.

(f) Compliance

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

(g) Definition

For the purpose of this AD, a landing is counted anytime the helicopter lifts off into the air and then lands again regardless of the duration of the landing and regardless of whether the engine is shutdown.

(h) Requirements

Except as specified in paragraph (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with European Union Aviation Safety Agency Emergency AD 2024–0211–E, dated November 7, 2024 (EASA Emergency AD 2024–0211–E).

(i) Exceptions to EASA Emergency AD 2024–0211–E

(1) Where EASA Emergency AD 2024–0211–E requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA Emergency AD 2024–0211–E refers to its effective date, this AD requires using the effective date of this AD.

(3) Where Note 2 of EASA Emergency AD 2024–0211–E specifies procedures for calculating the number of landings if the number of landings since new is not known: if the ''FH'' (total hours time-in-service) accumulated on the affected part, as defined in EASA Emergency AD 2024–0211–E, cannot be determined, this AD requires using the total hours-time-in-service on the helicopter for that calculation.

(4) Where paragraph (1) of EASA Emergency AD 2024–0211–E specifies accomplishing special detailed inspections (SDIs), this AD requires the landing gear in the fully extended position for the SDIs.

(5) Where paragraph (1) of EASA Emergency AD 2024–0211–E specifies accomplishing SDIs and the material referenced in EASA Emergency AD 2024–0211–E specifies that the ultrasonic testing inspections must be performed by personnel qualified in accordance with the non-destructive testing requirements of EN4179/NAS410 for Level II or higher, or of an equivalent standard recognized by the competent authority, this AD requires the ultrasonic testing inspections be accomplished by a Level II or Level III inspector certified in the FAA-acceptable standards for nondestructive inspection personnel.

Note 1 to paragraph (i)(5): Advisory Circular 65–31B contains examples of FAA-acceptable Level II and Level III qualification standards criteria for inspection personnel doing nondestructive test inspections.

(6) Where paragraph (2) of EASA Emergency AD 2024–0211–E states ''discrepancies, as identified in the EASB, are,'' this AD requires replacing that text with ''a cracked or broken piston rod eye end, or an ultrasonic testing inspection indication equal to or greater than 80% full screen height (FSH) within the recording gate, as defined in the material referenced in EASA Emergency AD 2024–0211–E, of an upper or lower piston rod eye end, is.''

(7) Where the material referenced in EASA Emergency AD 2024–0211–E specifies sending parts to Leonardo Helicopters [LH], this AD does not require that action.

(8) Where paragraph (3) of EASA Emergency AD 2024–0211–E allows credit for the initial instance of the (ultrasonic testing) inspection required by paragraph (1) of EASA Emergency AD 2024–0211–E, this AD allows that credit if the ultrasonic testing inspection that was previously done was accomplished by a Level II or Level III inspector certified in the FAA-acceptable standards for nondestructive inspection personnel.

Note 2 to paragraph (i)(8): Advisory Circular 65–31B contains examples of FAA-acceptable Level II and Level III qualification standards criteria for inspection personnel doing nondestructive test inspections.

(9) Where paragraph (5) of EASA Emergency AD 2024–0211–E specifies reporting inspection results to Leonardo within 10 days after accomplishment of any inspection required by paragraph (1) of EASA Emergency AD 2024–0211–E, this AD requires reporting inspection results of each instance of the inspection required by paragraph (1) of EASA Emergency AD 2024–0211–E at the applicable compliance times specified in paragraph (i)(9)(i) or (ii) of this AD. This AD does not require submitting information to Liebherr.

(i) For an inspection done on or after the effective date of this AD: Submit the report within 10 days after the inspection.

(ii) For an inspection done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(10) This AD does not adopt the ''Remarks'' section of EASA Emergency AD 2024–0211–E.

(j) Alternative Methods of Compliance (AMOCs)

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

(k) Additional Information

(1) For more information about this AD, contact Adam Hein, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4116; email: *Adam.Hein@faa.gov.*

(2) For advisory circular material identified in this AD that is not incorporated by reference, go to *faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1023552.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2024–0211–E, dated November 7, 2024.

(ii) [Reserved]

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

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood 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 December 23, 2024.

Steven W. Thompson,

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

[FR Doc. 2024–31511 Filed 12–30–24; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2669; Project Identifier MCAI–2024–00660–R; Amendment 39–22915; AD 2024–26–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model H160–B helicopters. This AD was prompted by a report of excessive axial play of the rotating scissors spherical bearings. This AD requires measuring the axial play of the rotating scissors spherical bearings and, depending on the results, accomplishing corrective action and reporting inspection results, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 17, 2025.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 17, 2025.

The FAA must receive comments on this AD by February 18, 2025.

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–2024–2669; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

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

• You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood 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–2024–2669.

FOR FURTHER INFORMATION CONTACT: Michael Mueller, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (847) 294–7543; email: *Michael.J.Mueller@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–2024–2669; Project Identifier MCAI–2024–00660–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.

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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 Michael Mueller, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (847) 294–7543; email: *Michael.J.Mueller@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2024–0206–E, dated October 22, 2024 (EASA AD 2024–0206–E) (also referred to as the MCAI), to correct an unsafe condition on Airbus Helicopters Model H160–B helicopters. The MCAI states that a report was received of excessive axial play in the rotating scissors spherical bearings. The FAA is issuing this AD to address excessive axial play of the rotating scissors spherical bearings. The unsafe condition, if not addressed, could result in reduced control of the helicopter.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–2669.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2024–0206–E. This material requires measuring the axial play of rotating scissors spherical bearing part number U623A40T1007, except those having serial numbers identified within. Depending on the results, EASA AD 2024–0206–E requires replacing the rotating scissors spherical bearings, or after a certain amount of flight time remeasuring the axial play again and replacing the rotating scissors spherical bearings. EASA AD 2024–0206–E also requires reporting inspection results to Airbus Helicopters.

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

FAA's Determination

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 is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in the MCAI, described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2024–0206–E is incorporated by reference in this AD. This AD requires compliance with EASA AD 2024–0206–E in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2024–0206–E does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2024–0206–E. Material required by EASA AD 2024–0206–E for compliance will be available at *regulations.gov* under Docket No. FAA–2024–2669 after this AD is published.

Interim Action

The FAA considers that this AD is an interim action. If final action is later identified, the FAA might consider further rulemaking then.

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 the affected components are part of an assembly that is critical to the control of a helicopter. The FAA has no information pertaining to the extent of excessive axial play of the rotating scissors spherical bearings that may currently exist in helicopters or how quickly degradation may occur. Additionally, this is a newer model helicopter, and this excessive axial play of the rotating scissors spherical bearings is considered early for the parts. Accordingly, the initial actions required by this AD must be accomplished within 15 hours time-in-service or 30 days, whichever occurs first, and depending on the results, taking corrective action and reporting results for up to two inspections for anticipated further analysis. 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 the 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 11 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Measuring the axial play of the two rotating scissors spherical bearings takes 2 work-hours for a cost of $170 per helicopter and $1,870 for the U.S fleet. Reporting the results takes 1 work-hour for $85 per helicopter and up to $935 for the U.S. fleet, per reporting instance.

If required, replacing a rotating scissors spherical bearing takes 2 work-hours for a cost of $170 and parts cost $1,270, for an estimated cost of $1,440 per bearing.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–26–01 Airbus Helicopters: Amendment 39–22915; Docket No. FAA–2024–2669; Project Identifier MCAI–2024–00660–R.

(a) Effective Date

This airworthiness directive (AD) is effective January 17, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model H160–B helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 6230, Main Rotor Mast/Swashplate.

(e) Unsafe Condition

This AD was prompted by a report of excessive axial play of the rotating scissors spherical bearings. The FAA is issuing this AD to address excessive axial play of the rotating scissors spherical bearings. The unsafe condition, if not addressed, could result in reduced control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with European Union Aviation Safety Agency Emergency AD 2024–0206–E, dated October 22, 2024 (EASA AD 2024–0206–E).

(h) Exceptions to EASA AD 2024–0206–E

(1) Where EASA AD 2024–0206–E requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2024–0206–E refers to its effective date, this AD requires using the effective date of this AD.

(3) Paragraph (5) EASA AD 2024–0206–E specifies to report inspection results to AH [Airbus Helicopters] within certain compliance times. For this AD, report inspection results at the applicable times specified in paragraph (h)(3)(i) or (ii) of this AD.

(i) For an inspection done on or after the effective date of this AD: Submit the report within 7 days after the inspection.

(ii) For an inspection done before the effective date of this AD: Submit the report within 7 days after the effective date of this AD.

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2024–0206–E.

(i) Special Flight Permits

Special flight permits are prohibited.

(j) Alternative Methods of Compliance (AMOCs)

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

(k) Additional Information

For more information about this AD, contact Michael Mueller, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (847) 294–7543; email: *Michael.J.Mueller@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2024–0206–E, dated October 22, 2024.

(ii) [Reserved]

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

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood 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 December 17, 2024.

Victor Wicklund,

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

[FR Doc. 2024–31510 Filed 12–30–24; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

2900–AS21

Presumptive Service Connection for Bladder, Ureter, and Related Genitourinary Cancers Due to Exposure to Fine Particulate Matter

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule (IFR) to amend its adjudication regulations to establish presumptive service connection for urinary bladder, ureter, and related genitourinary (GU) cancers due to exposure to Particulate Matter 2.5 ($PM_{2.5}$) and to implement certain provisions of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT Act). The new presumptions would apply to Veterans who served on active military, naval, air, or space service in Southwest Asia theater of operations or Somalia during the Persian Gulf War (hereafter Gulf War) on or after August 2, 1990, and in Afghanistan, Syria, Djibouti, Uzbekistan, Egypt, Jordan, Lebanon, and Yemen during the Gulf War on or after September 11, 2001. This amendment is necessary to provide expeditious health care, services, and benefits to these veterans. This IFR addresses the needs and concerns of Gulf War veterans and Service members who have served and continue to serve in these locations and have been diagnosed with bladder, ureter, and related GU cancers. Neither Congress nor the President has established an end date for the Gulf War. Therefore, to expedite the provision of health care, services, and benefits to current and future Gulf War veterans who may be affected by $PM_{2.5}$ due to their military service, VA is establishing presumptive service connection for urinary bladder, ureter, and related GU cancers. This IFR will ease the evidentiary burden of Gulf War Veterans who file claims with VA for these conditions.

DATES:

Effective date: This interim final rule is effective January 2, 2025.

Comment date: Comments must be received on or before March 3, 2025.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on *www.regulations.gov* as soon as possible after they have been received. VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a plain language summary (not more than 100 words in length) of this interim final rule is available at *www.regulations.gov,* under RIN 2900–AS21.

FOR FURTHER INFORMATION CONTACT: Sara Cohen, Lead, Part 3 Regulations Staff, Robert Parks, Chief, Part 3 Regulations Staff (211C), Compensation Service (21C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background

On August 10, 2022, Congress enacted Public Law 117–168, the PACT Act. The PACT Act provided a process for VA to establish presumptive service connection based on toxic exposures. 38 U.S.C. 1171 *et seq.* The PACT Act also added a presumption of service connection for certain diseases associated with exposure to burn pits and other toxins (BPOT) in 38 U.S.C. 1120. This presumption applies to veterans who served in locations listed in 38 U.S.C. 1119(c)(1). The diseases subject to the presumption include kidney cancers and ''[r]eproductive cancer of any type.'' 38 U.S.C. 1120(b)(2)(E), (G). Kidney and reproductive cancers are part of genitourinary (GU) tract. Although the GU system is composed of kidneys, ureters, urinary bladder, urethra,[1] reproductive and genital organs, including the ureteric orifice, urachus, and over-lapping sites of the bladder (the urinary organs), the PACT Act did not address all these organs.

Following the 38 U.S.C. 1171 *et seq.* process, VA determined it was necessary and clinically appropriate to consider expanding presumptive status consideration to cancers of these additional organs. One of VA's priorities is to address the long overdue needs of the Gulf War cohort and to address the imminent need for these veterans to receive care, services, and benefits. VA has reviewed both medical and scientific literature, and concludes that (1) urinary bladder cancer is sufficiently linked to $PM_{2.5}$ and that (2) cancers of the ureter, ureteric orifice, urachus, and over-lapping sites of the bladder are closely related to urinary bladder cancer with a common embryologic, anatomical, structural, and functional relationship. Moreover, the cancers of the ureter, ureteric orifice, urachus, and over-lapping sites of the bladder are exposed to toxic waste from the kidneys and the bladder as part of the GU system's function. Because, as discussed below, there is a medical nexus between the composition and duration of $PM_{2.5}$ and airborne hazard exposures to the development of GU cancers, VA has determined that presumptions of service connection for these cancers are warranted. *See* 38 U.S.C. 1174(a)(1).

In this IFR, VA adds 38 CFR 3.320a to its adjudicatory regulations to presume service connection for these cancers for certain Gulf War Veterans. VA adds these cancers as presumptive in 38 CFR 3.320a by IFR so that any Veteran with these cancers and who served in a prescribed location need not wait for benefits.

II. Scientific Background

a. Exposure to Fine Particulate Matter

On August 5, 2021, VA promulgated 38 CFR 3.320 to establish presumptions of service connection for certain chronic diseases based on exposure to $PM_{2.5}$ during service in the Southwest Asia theater of operations during the Persian Gulf War, or service in Afghanistan, Syria, Djibouti, or Uzbekistan, on or after September 19, 2001, during the Persian Gulf War. 86 FR 42724, 42733 (2021) (interim final rule); *see* 88 FR 60341 (2023) (adopting the interim final rule with changes). VA based these presumptions on review and analysis of airborne hazards in the Southwest Asia theater of operations during the Persian Gulf War, by examining the National Academies of Science, Engineering, and Medicine's (NASEM) 2020 report, Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations; [2] NASEM's 2011 report, Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan; [3] and NASEM's 2010 report, Review of the Department of Defense (DoD) Enhanced Particulate Matter Surveillance Program.[4] *See* 86 FR at 42725–42726. The 2010 report concluded that Service members deployed to the Middle East ''are exposed to high concentrations of $PM_{[2.5]}$.'' [5] *See* 86 FR at 42725. Toxic compounds present in burn pit fumes include $PM_{2.5}$.[6] This airborne pollution includes smoke from oil well fires, sand, dust, mechanical fumes from aircraft, vehicle, and ship engines, wood, plastic, rubber, metals, munitions, chemicals, and food and human waste.[7] Incomplete combustion of organic and inorganic material in burn pits results in high volumes of toxic PM in the air that includes metals, benzene, and other toxic compounds.[8]

When promulgating 38 CFR 3.320 in August 2021, to determine the qualifying periods of service, VA primarily considered (1) whether burn pits were used in the location, (2) the $PM_{2.5}$ levels, and (3) desert climates according to 86 FR at 42725–42729. However, in August 2022, the PACT Act created new 38 U.S.C. 1119, ''Presumptions of toxic exposure,'' with a different list of qualifying periods of service. Section 1119(c) defines a ''covered veteran'' as a veteran who served in the following eligible locations: Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, Somalia, and the United Arab Emirates, on or after August 2, 1990, and Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, and Uzbekistan on or after September 11, 2001.

In the present rulemaking, after reviewing the three considerations of burn pit use, $PM_{2.5}$ levels, and desert climates, VA has determined that the qualifying periods of service should include both those listed in 38 CFR 3.320(a)(5) and those listed in 38 U.S.C. 1119(c) to ensure that (1) veterans currently eligible for the presumption of exposure to $PM_{2.5}$ in 38 CFR 3.320 and (2) veterans eligible for the presumption of exposure to BPOT in 38 U.S.C. 1119 are both covered in this rulemaking. Thus, VA's new presumptions in 38 CFR 3.320a will not simply cover the locations in current 38 CFR 3.320(a)(5), but also the locations listed in 38 U.S.C. 1119(c) (including Egypt, Jordan, Lebanon, Somalia, and Yemen).

This approach conforms with the information available regarding documented burn pit use. In 2021, DoD provided Congress with a list of locations within U.S. Central Command where open burn pits have been used since 2001.[9] The U.S. Central Command's Area of Responsibility consists of 21 nations that stretch from Northeast Africa across the Middle East to Central and South Asia [10] and is the only combatant command that conducts

[1] VA does not address urethral cancer in this rulemaking, because such cancer is a reproductive cancer, and therefore already subject to presumptive service connection under 38 U.S.C. 1120(b)(2)(E). *See* 89 FR 79815, 79824 (2024) (proposed rule).

[2] National Academies of Sciences, Engineering, and Medicine 2020. *Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations.* Washington, DC: The National Academies Press. *https://doi.org/10.17226/25837.*

[3] Institute of Medicine 2011. *Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan.* Washington, DC: The National Academies Press. *https://doi.org/10.17226/13209* (hereinafter ''NASEM 2011 Report'').

[4] National Research Council 2010. *Review of the Department of Defense Enhanced Particulate Matter Surveillance Program Report.* Washington, DC: The National Academies Press. *https://doi.org/10.17226/12911* (hereinafter ''NRC'').

[5] NRC, *supra.*

[6] Wang X, Doherty TA, James C. *Military burn pit exposure and airway disease: Implications for our Veteran population.* Ann Allergy Asthma Immunol. 2023 Dec;131(6):720–725. doi: 10.1016/j.anai.2023.06.012. *https://pmc.ncbi.nlm.nih.gov/articles/PMC10728339/.*

[7] *Id.*

[8] American Cancer Society. Military Burn Pits and Cancer Risk. 2022. *https://www.cancer.org/healthy/cancer-causes/chemicals/burn-pits.html.*

[9] See Letter from Office of Under Secretary of Defense to the U.S. House of Representatives Committee on Appropriations (May 7, 2001), available on the rulemaking docket at *www.regulations.gov* (hereinafter ''Defense Letter'').

[10] U.S. Central Command. Area of Responsibility. *https://www.centcom.mil/AREA-OF-RESPONSIBILITY/.*

open burn pit operations.[11] Egypt, Jordan, Lebanon, and Yemen were included as locations with open, active burn pits.[12] Somalia was not included on the list. However, there is evidence of burn pit use in Somalia when service members were deployed in support of Operation Show Care in 1993.[13] Additional deployments occurred in 1992, 1995, 2012, and 2022.[14]

Additionally, all the locations listed in 38 U.S.C. 1119(c) have similar arid desert climate conditions. DoD's 2008 Enhanced Particulate Matter Surveillance Program studied the chemical and physical properties of dust at 15 deployment sites in the Middle East, Central Asia, and Northeast Africa.[15] The study found that Military Exposure Guideline (MEG) values for $PM_{2.5}$ were exceeded at all 15 sites for the entire one-year sampling period.[16] The study also demonstrated how short-term dust events—exacerbated by dirt roads, agricultural activities, and disturbance of the desert floor by motorized vehicles—all contribute to exceedance of both PM_{10} and $PM_{2.5}$ mass exposure guidelines and standards.[17] Finally, DoD's report also stated that $PM_{2.5}$ levels in the Middle East are as much as ten times greater than the levels at both urban and rural southwestern U.S. air monitoring sites.[18]

Dust storms and high windblown dust concentrations are one of many environmental hazards experienced during deployment to locations within U.S. Central Command. Windblown dust in these locations is considered an airborne hazard because it combines with elemental carbon and metals that arise from transportation and industrial activities.[19] Although dust in these locations can be toxic based on transportation and industrial activities alone, open air burn pits increase the concentration of toxins in $PM_{2.5}$.

As discussed above, in locations that rely on open burning of waste, the $PM_{2.5}$ air pollution in that location will contain toxic combustion emissions. Open burning is the ''burning of any matter in such a manner that products of combustion resulting from the burning are emitted directly into the ambient or surrounding outside air without passing through an adequate stack, duct or chimney.'' [20] The Environmental Protection Agency (EPA) defines ''ambient air'' as ''that portion of the atmosphere, external to buildings, to which the general public has access.'' 40 CFR 50.1(e). Because $PM_{2.5}$ is a form of ambient air pollution and open burning of waste emits toxic combustion emissions into the ambient air, VA considers exposure to $PM_{2.5}$ as encompassing exposure to burn pit smoke.

The 38 U.S.C. 1119(c) locations have a history of annual $PM_{2.5}$ levels that exceed military and EPA air quality standards. Not only do they exceed air quality standards, average $PM_{2.5}$ concentrations have been increasing in North Africa and the Middle East since 1990, while Europe and North America have experienced decreasing trends in average $PM_{2.5}$ concentrations.[21] Based on evidence of burn pit use, $PM_{2.5}$ levels that exceed military and EPA air quality standards, and their arid desert climate conditions that exacerbate $PM_{2.5}$ levels, VA finds there is sufficient evidence to extend the presumption of exposure to $PM_{2.5}$ beyond the locations listed in 38 CFR 3.320 to Egypt, Jordan, Lebanon, Somalia, and Yemen. Moreover, for consistency with 38 U.S.C. 1119(c)(1)(B), which presumes toxic exposure in certain countries (including Afghanistan, Syria, Djibouti, and Uzbekistan) back to September 11, 2001, new 38 CFR 3.320a will have a presumption of exposure for Veterans who served in those countries on or after September 11, 2001.

VA notes that the PACT Act's definition of a ''covered Veteran'' in 38 U.S.C. 1119(c) does not include all areas historically included in the Southwest Asia theater of operations, omitting the neutral zone between Iraq and Saudi Arabia, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, and the Red Sea. However, in this IFR, VA shall maintain the locations currently included in the Southwest Asia theater of operations under 38 CFR 3.317(e)(2) and 3.320(a)(6), as that list was based on Executive Order 12744 of January 21, 1991, which designated the combat zone of the Persian Gulf War. Doing so allows individuals with service in those locations to still qualify as covered veterans under 38 CFR 3.320a. VA will carry over the definition of ''Southwest Asia Theater of Operations'' from 38 CFR 3.317(e)(2) and 3.320(a)(6) into 38 CFR 3.320a.

b. Urinary Bladder, Ureter, and Related Cancers

The PACT Act presumption determination process consists of four phases. The Ongoing Exploratory Surveillance Phase includes collaborating with VA partners, to include Veterans Service Organizations and other stakeholders, to identify, monitor, and investigate potential toxic exposures and adverse health effects. 38 U.S.C. 1172(a). The Research and Assessment Phase involves collecting information, evidence, and data regarding a particular toxic exposure and adverse health effect, and potentially conducting a scientific study and analysis of the data. 38 U.S.C. 1172(c). Based on the findings, VA's Military Environment Exposures Sub-Council (MEESC) may recommend that the Secretary initiate a formal evaluation of the issue. 38 U.S.C. 1172(d).

If the Secretary adopts that recommendation, the Formal Evaluation Phase begins. 38 U.S.C. 1173. In this phase, a technical working group is convened to conduct an evaluation of the evidence and research collected in the prior phases, as well as claims data, to render a conclusion on the strength of the evidence, and to provide a recommendation to the Secretary with respect to a presumption. 38 U.S.C. 1173. If the Secretary decides to accept the recommendation, the Rulemaking and Implementation Phase then begins. 38 U.S.C. 1174.

Here, after research and assessment, and at the MEESC's recommendation, on February 26, 2024, the Secretary initiated a formal evaluation of GU cancers and their possible association with exposure to $PM_{2.5}$ pollution in the Southwest Asia Theater of Operations. In April 2024, the formal evaluation concluded and the recommendation was to establish a presumption.[22] On June 25, 2024, the recommendation was conveyed to the Secretary. On October 25, 2024, the Secretary accepted the

[11] Department of Defense. Open Burn Pit Report to Congress. 2019. *https://www.acq.osd.mil/eie/Downloads/Congress/Open%20Burn%20Pit%20Report-2019.pdf.*

[12] See Defense Letter, *supra.*

[13] Center of Military History, United States Army. *United States Forces, Somalia After Action Report* and Historical Overview: The United States Army in Somalia, 1992–1994. *https://www.history.army.mil/html/documents/somalia/index.html.*

[14] CRS Report R42738, *Instances of Use of United States Armed Forces Abroad, 1798–2022, https://crsreports.congress.gov/product/pdf/R/R42738/38;* Stimson Center, U.S. Security Assistance to Somalia, *https://www.stimson.org/2023/us-security-cooperation-with-somalia/.*

[15] Department of Defense. Enhanced Particulate Matter Surveillance Program Final Report. 2008. *https://apps.dtic.mil/sti/pdfs/ADA605600.pdf* (hereinafter ''EPMSP Report'').

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] NASEM 2011 Report, *supra.*

[20] Estrellan, C.R. and Iino, F. (2010) Toxic Emissions from Open Burning. Chemosphere, 80, 193–207. *https://doi.org/10.1016/j.chemosphere.2010.03.057.*

[21] EPMSP Report, *supra.*

[22] The MEESC report (hereinafter MEESC Report) is attached to this rulemaking, available at *www.regulations.gov.*

recommendation, paving the way for this rulemaking.

Under 38 U.S.C. 1173(b), a formal evaluation shall be based on the review of available scientific literature, including human, toxicological, animal, and methodological studies, and other factors, and must consider claims data including claim rate, grant rate, and service connection prevalence. It can also consider the level of disability and mortality caused by the health effects related to the case of toxic exposure being evaluated; the quantity and quality of the information available and reviewed; the feasibility of and period for generating relevant information and evidence; whether such health effects are combat or deployment related; the ubiquity or rarity of the health effects; and any time frame during which a health effect must become manifest.

A formal evaluation shall review scientific evidence in a manner that conforms to principles of scientific and data integrity; must be free from suppression or distortion of scientific or technological findings, data, information, conclusions, or technical results; must evaluate the likelihood that a positive association exists between an illness and a toxic exposure while serving in the active military, naval, air, or space service; and determine whether the evidence supports a finding of a positive association between the toxic exposure and the illness. 38 U.S.C. 1173(c).

The Secretary had 160 days from June 25, 2024 (*i.e.,* until December 2, 2024) to make a decision on the formal evaluation's recommendation. 38 U.S.C. 1174(a). The Secretary accepted the recommendation long before the 160 days, on October 25, 2024, paving the way for this rulemaking.

Throughout this process, the MEESC considered whether VA should expand the PACT Act's existing organ-specific presumptions to organ-system presumptions based on common embryologic development, proximity to each other, and use of common structural pathways. For example, kidney/renal cancers are covered under the PACT Act, as are all reproductive organs. The MEESC considered whether it made sense from a clinical and/or scientific standpoint to cover a significant portion of the GU system (made up of the urinary and reproductive systems) but exclude other organs within this same system.

As further discussed below, the GU system is composed of kidneys, ureters, urinary bladder, urethra, reproductive, and genital organs. The PACT Act provided a presumption for kidney/renal cancer and all reproductive organ cancers for certain veterans; however, it did not include ureteral, urinary bladder, and several related cancers of the GU system. VA has determined it is necessary and clinically appropriate to consider expanding presumptive status to cancers of these additional organs for specific veteran populations. Clinical and scientific review provides a strong scientific rationale to add the urinary bladder, ureters, and associated structures.

The GU system as a whole encompasses the reproductive and urinary system organs. These organs are usually grouped together because of a common embryological origin, proximity to each other, and use of common structural pathways.[23] The GU system shares common embryologic, anatomic, structural, and functional relationships through the intermediate mesoderm, splanchnopleuric mesoderm, and the endoderm.[24]

The urinary system's function is to filter blood and create urine as a waste by-product. The organs of the urinary system include the kidneys, renal pelvis, ureters, bladder, and urethra.[25] The kidneys and ureters form early in the embryotic period, after which the bladder and urethra are formed.[26] Week four of gestation commences with the development of the urinary tract, which includes the kidney, ureter, and urinary bladder. Bladder development is comprised of the intermediate mesenchyme (embryonic connective tissue in the mesoderm) and occurs when the urogenital septum divides.[27] Once the bladder is formed, it connects to the other organs. As the kidneys ascend, the ureters elongate and open into the bladder superiorly, while the roots of the mesonephric ducts are carried inferiorly, before fusing to form the trigone region. Endodermal cells from the urogenital sinus soon replace the mesodermal cells epithelium of the trigone region, thus completing development.

Between 32–36 weeks gestation, this development is completed and the organs become distinct. The urachus, an embryonic remnant, connects the bladder to the umbilical cord during fetal development and is the main fetal excretory organ. After birth, this tube closes and becomes a ligament, although it fails to close some cases.[28]

The kidney consists of various cell types originating from the ureteric bud and the metanephrogenic mesenchyme, which differentiate into more than 26 different cell types in the kidney. The ureteric bud contributes to the development of the ureter and parts of the kidney, which serves a critical role in the formation of the renal collecting system.[29] Embryologically, the urothelium of the urinary bladder and urethra is derived from the ventral urogenital sinus, like the epithelium in the renal pelvis and ureters.[30] In utero, the intermediate mesoderm forms the kidneys, ureters, and renal vasculature. The splanchnopleuric mesoderm forms the smooth muscle and connective tissue of the bladder. The endoderm forms the inner bladder and urethra.[31] The development of the ureter and kidney cells are closely linked through the interaction of the ureteric bud and metanephric mesenchyme, leading to the formation of the complex structures of the urinary system.[32] The urethra in the neck of the bladder develops into the male urethra prostatic part, and female urethra.[33]

The organs of the GU system are necessarily interrelated. The kidneys filter waste and fluid, including toxic exposures that get into the body, to produce urine. Once the kidneys produce the urine, it is transported from

[23] Genitourinary System, Science Direct. *https://www.sciencedirect.com/topics/medicine-and-dentistry/genitourinary-system.*

[24] Rehman S, Ahmed D, (Aug 8, 2023). Embryology, Kidney, Bladder, and Ureter. StatPearls [internet]. *https://www.ncbi.nlm.nih.gov/books/NBK547747/* (hereinafter ''Rehman'').

[25] Anatomy of the Urinary System. *https://www.hopkinsmedicine.org/health/wellness-and-prevention/anatomy-of-the-urinary-system.*

[26] Kucharz, E.J. (1992). Urinary and Reproductive Systems. In: The Collagens: Biochemistry and Pathophysiology. Springer, Berlin, Heidelberg. *https://doi.org/10.1007/978-3-642-76197-3_18.*

[27] Rehman, *supra.*

[28] See MEESC memorandum, ''Additional Clarification and Details on Genitourinary Cancer Formal Evaluation in Support of Rulemaking'' dated November 6, 2024 (hereinafter MEESC Memorandum), attached to this rulemaking, available at *www.regulations.gov.*

[29] Qais Al-Awqati; Juan A. Oliver, (February 2002). Stem Cells in the Kidney. Kidney International, Volume 61, Issue 2. *https://www.sciencedirect.com/science/article/pii/S0085253815482262?via%3Dihub.*

[30] Guo-Xia Tong, Woojin M Yu, Nike T Beaubier, et al., (September 2009) Expression of PAX8 in Normal and Neoplastic Renal Tissues: An Immunohistochemical Study. Modern Pathology, Volume 22, Issue 9, 1218–1227. *https://www.sciencedirect.com/science/article/pii/S0893395222024747?via%3Dihub.*

[31] Rehman, *supra.*

[32] Shah MM, Tee JB, Meyer T, Meyer-Schwesinger C, Choi Y, Sweeney DE, Gallegos TF, Johkura K, Rosines E, Kouznetsova V, Rose DW, Bush KT, Sakurai H, Nigam SK. The instructive role of metanephric mesenchyme in ureteric bud patterning, sculpting, and maturation and its potential ability to buffer ureteric bud branching defects. Am J Physiol Renal Physiol. 2009 Nov;297(5):F1330–41. doi: 10.1152/ajprenal.00125.2009. Epub 2009 Sep 2. Erratum in: Am J Physiol Renal Physiol. 2010 May;298(5):F1285. PMID: 19726549; PMCID: PMC2781331, *https://pubmed.ncbi.nlm.nih.gov/19726549/.*

[33] Rehman, *supra.*

the kidneys to the urinary bladder by the ureters, which are bilateral tubular structures that connect the kidneys to the urinary bladder. The openings of the ureters into the urinary bladder are called the ureteric orifices. The urine, which contains the waste that was filtered from the body by the kidneys, is stored in the urinary bladder until it is time to urinate. When it is time to urinate, the urethra, a small tube, allows the urine to pass outside the body.

As discussed, the GU system cancers share common embryologic, anatomic, structural, and functional relationships. Necessarily, each of these organs is exposed to the waste/toxins, starting in the kidneys, which is turned into urine. The urothelium is exposed to toxins in the urine, so that any carcinogenic effect would also be expected in the bladder and ureter. The urine exposes the remaining GU structures to the toxins and any resultant carcinogens, including $PM_{2.5}$.[34] Hence, any carcinogens in the kidneys or bladder necessarily pass through the remainder of the GU system, providing the exposure to carcinogens to each part of the GU system.

1. Association Between $PM_{2.5}$ and Urinary Bladder Cancer

In support of this rulemaking, as required by 38 U.S.C. 1173, VA conducted a formal evaluation of whether a sufficient association between $PM_{2.5}$ and bladder cancer existed. The results of the studies reviewed by VA's experts showed an association between $PM_{2.5}$ and bladder cancer and that 6–19% of bladder cancers are attributable to occupational exposures. Studies from 2003 to 2022 supported the association between $PM_{2.5}$ and bladder cancer.

A 2003 study estimated occupational exposure caused death due to bladder cancer for 534 to 1,451 men and 116 to 740 women annually.[35] Nine years later, the International Association for Research on Cancer (IARC) also found evidence that air pollution was associated with developing bladder cancer.[36] In 2017, another study positively correlated the concentration of ambient $PM_{2.5}$ with development of, and death from, bladder cancer.[37] That same year a study also found airborne pollution and particulate matter posed an elevated risk for bladder cancer.[38] Two 2020 studies similarly found an elevated hazard ratio between exposure to air pollution and PM and the development of bladder cancer, concluding such exposures may be a risk factor for bladder cancer.[39] According to a 2020 scientific review of bladder and kidney cancer, studies suggested positive, even though mostly non-significant, associations between air pollution exposure, including $PM_{2.5}$, and bladder cancer mortality and kidney cancer incidence. Bladder cancer showed a positive association: bladder cancer mortality had an adjusted odds-ratio of an average of 13% percent with a slight increase of $PM_{2.5.}$ r.[40]

The EPA also concluded that long-term exposure to $PM_{2.5}$, in the form of diesel exhaust emissions, has a likely causal relationship to the development of bladder cancer.[41] This is supported by a 2022 EPA study.[42] Supporting the previous studies, a 2022 large pooled study found evidence of an association between long-term $PM_{2.5}$ mass exposure and bladder cancer. A 2024 study performed a meta-analysis which combined the results of from 18 cohort studies, 10 case-control studies, and nine ecological studies, studies published through early 2024. The authors stated that a 5 microgram increase per cubic meter in the atmosphere in $PM_{2.5}$ was significantly associated with an increased relative risk for bladder cancer of 7%.[43]

$PM_{2.5}$ exposure is of concern for those deployed to the Southwest Asia Theater of operations and other known BPOT locations. VA has already examined studies by NASEM on the contribution of air pollution to adverse health effects among U.S. Service members serving in the Middle East.[44] 86 FR at 42725–42726. Thus, VA has determined that it will consider bladder cancers for this population to be associated with exposure to $PM_{2.5}$. Accordingly, VA concludes it is appropriate to add bladder cancer to 38 CFR 3.320a.

2. Association Between $PM_{2.5}$ and Cancers of the Ureter, Ureteric Orifice, Urachus, Over-Lapping and Sites of the Bladder

Ureter cancer is a rare type of cancer; however, between 5% and 10% of all urothelial cancers start in the ureter.[45] As discussed above, all parts of the GU system share the same embryonic origin. The development of ureter and kidney cells is closely linked through the interaction of the ureteric bud and metanephric mesenchyme, leading to the formation of the complex structures of the urinary system.

The PACT Act has associated kidney cancer with $PM_{2.5}$ for certain Veterans. The kidneys transport waste into the ureters.[46] From the ureters, the ureteric orifices empty the urine into the urinary bladder. Each of these organs is exposed to waste and toxins produced by the kidneys, thus exposing them to any carcinogens.[47] Accordingly, the same $PM_{2.5}$ that affected the kidneys necessarily affects the entire GU tract. Because individuals with renal pelvis or ureter cancer can develop cancer in the kidneys and/or bladder over time,[48] there are common risk factors for cancer development throughout the uroepithelium. As such, VA concludes

[34] MEESC Report, *supra.*

[35] Steenland K, Burnett C, Lalich, et al., (May, 2003). Dying for work: The magnitude of US mortality from selected causes of death associated with occupation. *Am J Ind Med.* 43(5):461–82. *https://pubmed.ncbi.nlm.nih.gov/12704620/.*

[36] IARC (International Association for Research on Cancer). Air Pollution and Cancer, IARC Scientific Publication No. 161, 2013. *https://publications.iarc.fr/Book-And-Report-Series/Iarc-Scientific-Publications/Air-Pollution-And-Cancer-2013.*

[37] Yeh, H.L., Hsu, S.W., Chang, Y.C., Chan, T.C., Tsou, H.C., Chang, Y.C., & Chiang, P.H. (2017). Spatial Analysis of Ambient $PM_{2.5}$ Exposure and Bladder Cancer Mortality in Taiwan. International journal of environmental research and public health, 14(5), 508; *https://pmc.ncbi.nlm.nih.gov/articles/PMC5451959.*

[38] Turner MC, Krewski D, Diver WR, Pope CA 3rd, Burnett RT, Jerrett M, Marshall JD, Gapstur SM. Ambient Air Pollution and Cancer Mortality in the Cancer Prevention Study II. Environ Health Perspect. 2017 Aug 21;125(8):087013; *https://ehp.niehs.nih.gov/doi/10.1289/EHP1249.*

[39] Coleman NC, Burnett RT, Higbee JD, Lefler JS, Merrill RM, Ezzati M, Marshall JD, Kim SY, Bechle M, Robinson AL, Pope CA 3rd. Cancer mortality risk, fine particulate air pollution, and smoking in a large, representative cohort of US adults. Cancer Causes Control. 2020 Aug;31(8):767–776. (hereafter Cancer mortality risk); *https://pubmed.ncbi.nlm.nih.gov/32462559.*

[40] Zare Sakhvidi MJ, Lequy E, Goldberg M, Jacquemin B. Air pollution exposure and bladder, kidney and urinary tract cancer risk: A systematic review. Environ Pollut. 2020 Dec;267:115328; *https://www.sciencedirect.com/science/article/abs/pii/S0269749120360164?via%3Dihub.*

[41] EPA Supplement to the 2019 Integrated Science Assessment for Particulate Matter (Final Report, 2022) *https://www.epa.gov/isa/integrated-science-assessment-isa-particulate-matter* (hereafter ''EPA supplement'').

[42] *Id.*

[43] Li J, Deng Z, Soerensen SJC, Kachuri L, Cardenas A, Graff RE, Leppert JT, Langston ME, Chung BI. *Ambient air pollution and urological cancer risk: A systematic review and meta-analysis of epidemiological evidence.* Nat Commun. 2024 Jun 15;15(1):5116, *https://pmc.ncbi.nlm.nih.gov/articles/PMC11180144/.*

[44] NASEM, Gulf War and Health Series: Volume 3: Fuels and Products of Combustion (2005), *https://doi.org/10.17226/*11180 and Volume 11: Generational Health Effects of Serving in the Gulf War (2018), *https://doi.org/10.17226/25162.* NASEM, Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations (2020), *https://doi.org/10.17226/25837.*

[45] Saint John's Cancer Institute. *Ureteral Cancer and Ureteral Urothelial Carcinoma (UTUC).https://www.saintjohnscancer.org/urology/conditions/ureteral-cancer/.*

[46] MEESC Memorandum, *supra.*

[47] *Id.*

[48] MEESC Report, *supra.*

that bladder, ureter, and kidney cancers should all be treated the same for purposes of the presumption.[49]

III. Addition of Urinary Bladder, Ureter, and Related Cancers to 38 CFR 3.320a

Since August 5, 2021, VA has presumed for certain Veterans that asthma, rhinitis, or sinusitis are associated with $PM_{2.5}$. 38 CFR 3.320(a)(2); 86 FR at 42732–42733. VA added nine rare cancers to the list of disabilities presumptively associated with $PM_{2.5}$ on April 26, 2022. 38 CFR 3.320(a)(3); 87 FR 24421, 24429 (2022). VA instituted these presumptions based on scientific and medical studies, which focused on the respiratory effects of $PM_{2.5}$ for veterans who served in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, and Uzbekistan during the Gulf War. 86 FR at 42729; 87 FR at 24424–24525.

As discussed above, in the PACT Act, Congress enacted a presumption associating kidney cancer and reproductive cancers (which includes male urethra and prostate cancer) with toxic exposures in covered locations. 38 U.S.C. 1120(b)(2)(E), (G). Although the PACT Act covers almost 73% of existing cancers, it did not include all genitourinary tract cancers.[50] Yet Congress authorized VA to enact additional presumptions based on a positive association with a substance, chemical, or airborne hazard. 38 U.S.C. 1120(b)(15). Because urinary bladder cancer is related to $PM_{2.5}$ inhalation and BPOT exposure, and cancers of the ureter and related cancers receive toxins in the same manner as the bladder, VA concludes they should be extended a presumption in new 38 CFR 3.320a.

As discussed above, VA is enacting this presumption pursuant to the 38 U.S.C. 1171 *et seq.* process. But VA also notes the alternative authority to add these presumptions under 38 U.S.C. 501(a)(1), which permits VA to issue necessary or appropriate regulations with respect to the nature and extent of proof and evidence in order to establish rights to benefits, such as presumptions of service connection.

IV. New 38 CFR 3.320a

VA will use the heading of ''[p]resumptive service connection for bladder, ureter, and related genitourinary cancers'' for 38 CFR 3.320a. VA will describe the presumption of exposure in paragraph (a), describe the presumptions of service connection in paragraph (b), provide the definition of covered veteran in paragraph (c), and provide the standard exceptions for presumptions in paragraph (d).

Although this rulemaking is based on current medical and scientific evidence related to the respiratory health effects of $PM_{2.5}$ on veterans who served during the Gulf War and are otherwise covered by the PACT Act, VA will continue to review new scientific evidence as it develops regarding all health effects resulting from exposure to BPOT, including $PM_{2.5}$. This rulemaking does not limit the future establishment of additional presumptions of service connection.

V. Severability

The purpose of this section is to clarify the agency's intent with respect to the severability of provisions of this rule. Each provision of this rule 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 rulemaking invalid. Likewise, if the application of any portion of this rule to a particular circumstance is determined to be invalid, the agency intends that the rule remain applicable to all other circumstances.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), VA has concluded that there is good cause to publish the IFR without prior opportunity for comment and to publish the rule with an immediate effective date. There is good cause to immediately address the needs of Service members and veterans who have been exposed to airborne hazards, *i.e.,* $PM_{2.5}$, due to their service in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, Uzbekistan, Somalia, Egypt, Jordan, Lebanon, and Yemen.

VA concludes that the ordinary notice-and-comment procedures here would be impracticable, in that they would cause Veterans serious harm by further delaying and in some cases outright preventing Veterans from receiving the benefits of these presumptions given the nature of the diseases at issue. In particular, bladder and ureter cancers are diseases of significant morbidity and mortality. Bladder cancer alone is fairly common and causes morbidity and mortality. According to the latest national statistics available from the Centers for Disease Control and Prevention (CDC) which were from 2021, bladder cancer is the seventh most common cancer in the U.S. with a rate of 18.1 cases per 100.000 persons.[51] In 2021, 75,450 new cases of urinary bladder cancer were reported in the U.S.[52] In 2022, which is the latest year for which CDC has available mortality data, 17,334 people died of urinary bladder cancer in the U.S. Most of the deaths were in men, according to the CDC.[53] In 2022, the latest year for which mortality data are available, in the United States, 12,460 men died of urinary cancer.[54] For ureter cancer, the five-year survival rate is 5% or less.[55]

Overall, delaying this rulemaking for notice and comment runs the real risk of harming the very population this rulemaking intends to help. Moreover, the 38 U.S.C. 1119(c) locations are dictated by Congress; they cannot be removed by either VA or public comment.

The new presumptions are entirely pro-claimant in nature. They do not adversely affect any person. And because VA has a sufficient scientific basis to support the new presumptions, withholding the presumptions during the notice and comment process could unnecessarily deprive veterans and beneficiaries of benefits to which they would otherwise be entitled and prolong their inability to timely receive benefits. Additionally, this could create risks to beneficiaries' welfare and health that would be exacerbated by any additional delay in implementation. Due to the complexity and the historical scientific uncertainty surrounding these issues of airborne hazard exposures and disease, many veterans who will be affected by this rule have long borne the burden and expense of their disabilities while awaiting the results of research and investigation. Under these circumstances, there is good cause to avoid further delay on their receipt of benefits, potentially at the risk of their welfare and health.

Overall, the Secretary's decision to extend new presumptions to veterans who have been exposed to $PM_{2.5}$ due to their service in the Southwest Asia theater of operations, and Somalia, Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, and Uzbekistan requires immediate effect to help them access these benefits without undue delay. For veterans that are not otherwise eligible for health care, these presumptions could result in needed

[49] *Id.*

[50] MEESC Report, *supra.*

[51] United States Cancer Statistics: Data Visualizations, *https://gis.cdc.gov/Cancer/USCS/#/AtAGlance/.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] Social Security Administration, Program Operations Manual System, *https://secure.ssa.gov/poms.nsf/lnx/0423022345.*

health care eligibility based on service connection.

Section 553(d) of 5 U.S.C. also requires a 30-day delayed effective date following publication of a rule, except for ''(1) a substantive rule which grants or recognizes an exemption or relieves a restriction, (2) interpretative rules and statements of policy, or (3) as otherwise provided by the agency for good cause found and published with the rule.'' Pursuant to section 553(d)(3), the Secretary finds that there is good cause to make the rule effective upon publication, for the reasons discussed above.

For the foregoing reasons, and as explained in further detail in the IFR, the Secretary of Veterans Affairs is issuing this rule as an IFR with an immediate effective date. However, VA will consider and address comments that are received within 60 days of the date this IFR is published in the **Federal Register**.

Executive Orders 12866, 13563, and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is a significant regulatory action under Executive Order 12866, Section 3(f)(1), as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Unfunded Mandates

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

Paperwork Reduction Act

Although this interim final rule contains provisions constituting collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), there are no provisions associated with this rulemaking constituting any new collection of information or any revisions to the existing collection of information. The collection of information for 38 CFR 3.320a is currently approved by the Office of Management and Budget (OMB) and has been assigned OMB control numbers 2900–0747, 2900–0886, 2900–0004, and 2900–0002.

Congressional Review Act

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

List of Subjects in 38 CFR Part 3

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

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, signed and approved this document on December 20, 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.

Michael P. Shores,

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 3 as set forth below:

PART 3—ADJUDICATION

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

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

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

■ 2. Add § 3.320a to read as follows:

§ 3.320a Presumptive service connection for bladder, ureter, and related genitourinary cancers.

(a) *Presumption of exposure.* A covered veteran as defined in paragraph (c) of this section shall be presumed to have been exposed to certain toxic substances, chemicals, and airborne hazards, including fine particulate matter, during such service, unless there is affirmative evidence to establish that the veteran was not exposed to any such toxic substances, chemicals, and airborne hazards during that service.

(b) *Presumption of service connection.* Except as provided in paragraph (d) of this section, the following diseases becoming manifest in a covered veteran, as defined in paragraph (c) of this section, shall be considered to have been incurred in or aggravated during active military, naval, air, or space service, notwithstanding that there is no record of evidence of such disease during the period of such service:

(1) Urinary bladder cancer, including over-lapping sites of the bladder.

(2) Ureter cancer, including the ureteric orifice, and urachus.

(c) *Covered Veteran.* For purposes of this section, the term covered veteran means any veteran who:

(1) On or after August 2, 1990, performed active military, naval, air, or space service while assigned to a duty station in, including airspace above

(i) The Southwest Asia theater of operations as defined in § 3.317(e)(2); or

(ii) Somalia; or

(2) On or after September 11, 2001, performed active military, naval, air, or space service while assigned to a duty station in, including airspace above:

(i) Afghanistan;

(ii) Djibouti;

(iii) Egypt;

(iv) Jordan;

(v) Lebanon;

(vi) Syria;

(vii) Yemen; or

(viii) Uzbekistan.

(d) *Exceptions.* A disease listed in paragraph (b) of this section shall not be presumed service connected if there is affirmative evidence that:

(1) The disease was not incurred or aggravated during active military, naval, air, or space service; or

(2) The disease was caused by a supervening condition or event that occurred between the Veteran's most recent departure from active military, naval, air, or space service and the onset of the disease; or

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

(Authority: 38 U.S.C. 501, 1119, 1120, 1174)

[FR Doc. 2024–31220 Filed 12–31–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL MARITIME COMMISSION

46 CFR Part 542

[Docket No. FMC–2023–0010]

RIN 3072–AC92

Definition of Unreasonable Refusal To Deal or Negotiate With Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier

AGENCY: Federal Maritime Commission.

ACTION: Final rule; announcement of effective date; correction.

SUMMARY: The Federal Maritime Commission (FMC or Commission) received approval from the Office of Management and Budget (OMB) for an information collection request associated with the final rule, ''Definition of Unreasonable Refusal to Deal or Negotiate with Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier.'' This rule announces the effective date for the requirements for ocean common carriers to annually file a documented export policy with the Commission and provides implementing instructions. In the final rule published July 23, 2024, the Commission stated it would publish a document in the **Federal Register** (FR) announcing the effective date of the collection-of-information-related sections upon OMB approval. This rule establishes the effective date of the relevant provisions. It also corrects an error in the regulatory text.

DATES: The amendments adding 46 CFR 542.1(j) (instruction 2) and 46 CFR 542.99 (instruction 3), published on July 23, 2024 (89 FR 59648), are effective on February 3, 2025. The correction to 46 CFR 542.99 is effective February 3, 2025.

Parties required to file a documented export policy must file their initial documented export policy with the Commission on or before March 1, 2025. Subsequent annual documented export policies must subsequently be filed on or before March 1 for each calendar year.

ADDRESSES: Background documents associated with this collection are available on *www.reginfo.gov* (search OMB Control No. 3072–0076) and *www.regulations.gov* (search Docket No. FMC–2023–0010).

FOR FURTHER INFORMATION CONTACT: David Eng, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: On July 23, 2024, in accordance with the Ocean Shipping Reform Act of 2022, the Federal Maritime Commission published the final rule, ''Definition of Unreasonable Refusal to Deal or Negotiate with Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier.'' The final rule contained two provisions, 46 CFR 542.1(j), and 46 CFR 542.99, that were delayed indefinitely, pending information collection approval from OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. On September 27, 2024, OMB, Office of Information and Regulatory Affairs, approved the information collection requirements (*https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202407-3072-001*). The assigned OMB Control Number is 3072–0076. Accordingly, FMC announces that 46 CFR 542.1(j) and 46 CFR 542.99 are effective February 3, 2025. FMC is also making a minor correction to 46 CFR 542.99.

Filing Instructions

Unless superseded by subsequent Commission order or filing instructions issued by the Commission:

1. Parties required under 46 CFR 542.4(j) to file a documented export policy must file their initial documented export policy with the Commission on or before March 1, 2025. Subsequent annual documented export policies must be filed with the Commission on or before March 1 of each calendar year. A documented export policy should cover the time period until the next policy is due for submission; carriers may file updated versions more frequently as needed.

2. Documents must be submitted in English, and any monetary terms shall be expressed in terms of U.S. currency.

3. If any topics listed under 541.2(j)(1)(i), 541.2(j)(1)(ii), and/or 541.2(j)(1)(iii) are not addressed in a documented export policy because they are not applicable, the documented export policy should attest to this inapplicability clearly and unambiguously and provide an explanation for non-applicability.

4. Submissions shall be signed by a duly authorized officer of the regulated party with a copy of evidence of the officer's authority.

List of Subjects in 46 CFR Part 542

Administrative practice and procedure, Non-vessel-operating common carriers, Ocean common carrier, Refusal to deal or negotiate, Vessel-operating common carriers, Vessel space accommodations.

For the reasons set forth in the preamble, FMC corrects 46 CFR part 542 by making the following correcting amendment:

■ 1. The authority citation for part 542 continues to read as follows:

Authority: 5 U.S.C. 553; and 46 U.S.C. 40104, 46105, 40307, 40501–40503, 40901–40904, 41101–41106.

■ 2. Revise § 542.99 to read as follows:

§ 542.99 OMB control number assigned pursuant to the Paperwork Reduction Act.

The Commission has received Office of Management and Budget approval for the collection of information in § 542.1(j) of this part pursuant to the Paperwork Reduction Act of 1995, as amended. The valid control number for this collection is 3072–0076.

By the Commission.

David Eng,

Secretary.

[FR Doc. 2024–31017 Filed 12–31–24; 8:45 am]

BILLING CODE 6730–02–P

Proposed Rules

Federal Register

Vol. 90, No. 1

Thursday, January 2, 2025

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 47

[REG–115560–23]

RIN 1545–BQ92

Excise Tax on Designated Drugs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the excise tax on certain sales of designated drugs by manufacturers, producers, and importers during statutorily defined periods. The proposed regulations would provide substantive rules that relate to the imposition and calculation of the tax. The proposed regulations would affect manufacturers, producers, and importers of designated drugs that sell such drugs during statutorily defined periods.

DATES: Written or electronic comments and requests for a public hearing must be received by March 3, 2025. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–115560–23) 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–115560–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact James S. Williford or Jacob W. Peeples at (202) 317–6855 (not a toll-free number); concerning the submission 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 phone at (202) 317–6901 (not a toll-free number) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This notice of proposed rulemaking contains proposed regulations that would amend 26 CFR part 47 (Designated Drugs Excise Tax Regulations) related to the excise tax imposed by section 5000D of the Internal Revenue Code (Code) on certain sales by manufacturers, producers, or importers of designated drugs (section 5000D tax). These proposed regulations are issued under the express delegation of authority granted to the Secretary of the Treasury or her delegate (Secretary) by section 5000D(h), which states: ''The Secretary shall prescribe such regulations and other guidance as may be necessary to carry out the provisions of this section.'' These proposed regulations are also issued under the express delegation of authority provided in section 7805(a), which authorizes the Secretary to prescribe all needful rules and regulations for the enforcement of the Code, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

Background

Sections 1191 through 1198 of the Social Security Act (SSA) (42 U.S.C. 1320f to 1320f–7), added by sections 11001 and 11002 of Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), require the Secretary of Health and Human Services (HHS) to establish a Medicare prescription drug price negotiation program (Program) to negotiate maximum fair prices (MFPs) for certain high expenditure, single-source drugs covered by Medicare. Under the Program, the Secretary of HHS must, among other things: (1) publish a list of selected drugs in accordance with section 1192 of the SSA; (2) enter into agreements with willing manufacturers of selected drugs in accordance with section 1193 of the SSA; and (3) negotiate MFPs for such selected drugs in accordance with section 1194 of the SSA. Under section 1193(a)(3) of the SSA, manufacturers of selected drugs that choose to enter into agreements with the Secretary of HHS and that agree to an MFP commit to provide access to selected drugs at the negotiated prices to MFP-eligible individuals (as defined in section 1191(c)(2) of the SSA), as well as to pharmacies and other dispensers, hospitals, physicians, other providers of services, and suppliers with respect to MFP-eligible individuals.

Section 5000D was added to a new chapter 50A of the Code by section 11003 of the IRA and is effective for sales on and after August 16, 2022. Section 5000D(a) imposes the section 5000D tax on the sale by the manufacturer, producer, or importer of any designated drug during a day described in section 5000D(b), referred to herein as a ''statutory period,'' with respect to such designated drug. In the case of a sale of a designated drug timed for the purpose of avoiding the section 5000D tax, section 5000D(f)(2) authorizes the Secretary to treat such sale as occurring during a statutory period.

Section 5000D(e)(1) provides that a ''designated drug'' is any ''negotiation-eligible drug,'' as defined in section 1192(d) of the SSA, included on the list published under section 1192(a) of the SSA that is manufactured or produced in the United States, as defined in section 5000D(e)(2), or entered into the United States for consumption, use, or warehousing.

Under section 5000D(a), the amount of section 5000D tax imposed on the sale of a designated drug during a statutory period is the amount that causes the ratio of (1) the section 5000D tax, divided by (2) the sum of the section 5000D tax and the price for which the designated drug was sold, when such ratio is expressed as a percentage, to equal the ''applicable percentage'' (as defined in section 5000D(d)):

$$\text{Applicable Percentage} = \text{Tax}/(\text{Tax} + \text{Price})$$

The applicable percentage ranges from 65 percent to 95 percent, depending on the number of days a sale

is made after the start of a statutory period. Section 5000D(d).

As noted previously, section 5000D(h) authorizes the Secretary to prescribe such regulations and other guidance as may be necessary to carry out the provisions of section 5000D. On August 28, 2023, the Treasury Department and the IRS published Notice 2023–52, 2023–35 I.R.B. 650, announcing the Secretary's intent to issue proposed regulations addressing substantive and procedural issues related to section 5000D. Notice 2023–52 described certain rules that those proposed regulations would include and provided taxpayers with interim guidance.

On October 2, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–115559–23) in the **Federal Register** (88 FR 67690) proposing amendments to the Excise Tax Procedural Regulations under 26 CFR part 40 to address tax return filing and other procedural requirements related to the section 5000D tax applicable to returns filed for calendar quarters beginning on or after October 1, 2023. On July 5, 2024, the Treasury Department and the IRS published a Treasury decision (T.D. 10003) in the **Federal Register** (89 FR 55507) finalizing, with minor modifications, the proposed amendments to 26 CFR part 40 and adding part 47 to 26 CFR.

These proposed regulations would amend the Designated Drugs Excise Tax Regulations by providing substantive rules related to the section 5000D tax, including rules consistent with the substantive rules described in Notice 2023–52. Specifically, these proposed regulations would provide definitions of certain terms, such as ''manufacturer, producer, or importer,'' ''sale,'' and ''price,'' and rules governing the imposition and calculation of the section 5000D tax. Concurrently with the filing for public inspection of these proposed regulations, the Treasury Department and the IRS are releasing Revenue Procedure 2025–9 to provide a safe harbor that taxpayers may use to identify the subset of each sale in units of a designated drug made during a statutory period that is subject to the section 5000D tax. After its release, Revenue Procedure 2025–9 will be published in the Internal Revenue Bulletin (*see* § 601.601(d) of the Statement of Procedural Rules (26 CFR part 601)).

Explanation of Provisions

These proposed regulations are organized into two sections: proposed § 47.5000D–2 (relating to definitions) and proposed § 47.5000D–3 (relating to the imposition and calculation of the section 5000D tax).

I. Definitions

Proposed § 47.5000D–2 would provide definitions necessary to clarify the application of section 5000D.

A. Applicable Percentage

Proposed § 47.5000D–2(b)(1) would incorporate the substance of the statutory definition of the term ''applicable percentage'' provided in section 5000D(d). Proposed § 47.5000D–2(b)(1) would also clarify that, to determine the appropriate applicable percentage for a specific applicable sale, days described in section 5000D(b) are cumulative regardless of whether such days are consecutive.

B. Applicable Sale

Proposed § 47.5000D–2(b)(2) would define the term ''applicable sale'' to mean the sale transaction that is the subset of each sale in units of a designated drug, as defined in section 5000D(e)(1), by the manufacturer, producer, or importer that will be dispensed, furnished, or administered to MFP-eligible individuals, as defined in section 1191(c)(2) of the Social Security Act (42 U.S.C. 1320f(c)(2)) and any regulations or guidance issued thereunder by the Secretary of HHS. As explained in part II.A of this Explanation of Provisions, the proposed definition of ''applicable sale'' would reflect the scope of the section 5000D tax provided by the statutory context of its enactment.

C. Manufacturer, Producer, or Importer

The section 5000D tax is imposed on the sale of a designated drug by the ''manufacturer, producer, or importer'' of that designated drug. While the statute does not define ''manufacturer, producer, or importer,'' the language of section 5000D(a) makes clear that these terms are not limited to the persons directly responsible for the conduct that gives rise to statutory periods. Proposed § 47.5000D–2(b)(3)(i) would define the term ''manufacturer, producer, or importer'' to mean the person that makes the first sale (the definition of ''sale'' is explained in part I.F of this Explanation of Provisions) of units of a designated drug or, in the case of imports, the person that makes the first sale of such units after they are entered into the United States for consumption, use, or warehousing. *See* section 5000D(e)(1). Under this proposed definition, the section 5000D tax would typically be imposed on persons colloquially considered drug makers (that is, persons that physically or chemically create units of a drug).

The proposed definition of ''manufacturer, producer, or importer'' would also clarify that a sale of units of a designated drug would be the ''first sale'' if that sale precedes in time all other sales of those units. The ''first sale'' of any units of a designated drug would not, therefore, generally be the sale of such units to an MFP-eligible individual or other sales of such units that typically occur ''down'' or ''later'' in the supply chain that begins with the maker of a drug and ends with its ultimate user. For example, sales of units of a designated drug by a wholesaler, relabeler, repackager,[1] retail pharmacy, healthcare provider, or other person that typically sells drugs or biological products ''down'' or ''later'' in the supply chain, would not, under most circumstances, be the first sale of those units and, consequently, such person would not be the manufacturer, producer, or importer with respect to such units for purposes of the section 5000D tax. That designation would, under most circumstances, fall to a person ''up'' or ''earlier'' in the supply chain. If, however, a wholesaler, relabeler, repackager, retail pharmacy, healthcare provider, or other person were to make the first sale of units of a designated drug after entry into the United States for consumption, use, or warehousing, such person would be the manufacturer, producer, or importer with respect to such units for purposes of the section 5000D tax.

The first sale concept is consistent with almost a century of case law regarding the imposition of excise taxes on first or initial sales by manufacturers, producers, or importers. *See, e.g., Indian Motorcycle Co.* v. *United States,* 283 U.S. 570, 574 (1931) (''[T]he requirement that the tax be paid by 'the manufacturer, producer, or importer' [. . .] is intended to be no more than a comprehensive and convenient mode of reaching all first or initial sales[.]''); *Smith* v. *United States,* 319 F.2d 776, 778–79 (5th Cir. 1963) (excise tax is designed ''to impose a tax on the initial sale made in the United States by a manufacturer, producer, or importer''); *Texas Truck Parts and Tire* v. *United States,* 118 F.4th 687, 697 (5th Cir. 2024) (''Our reading of the relevant law comports with this principle, providing

[1] The Treasury Department and the IRS understand that, for purposes of the SSA and regulations and guidance issued thereunder, relabelers and repackagers are considered ''manufacturers,'' and drugs, once relabeled or repackaged, new drugs. That regulatory regime is, however, nondeterminative with regard to the section 5000D tax.

that Texas Truck is liable for the excise tax upon the initial sale in the United States.'').

Proposed § 47.5000D–2(b)(3)(ii) would clarify that the proposed definition of ''manufacturer, producer, or importer'' would apply independently of whether the sale in question occurs during a statutory period, meaning that the person that makes the first sale of a unit of a designated drug is the manufacturer, producer, or importer of that unit, to the exclusion of others in the supply chain, even if such sale is not taxable. *See* the example provided in proposed § 47.5000D–2(c)(2).

D. Sale Prior to Publication of Selected Drug List

Under proposed § 47.5000D–2(b)(3)(iii), a person that would meet the definition of ''manufacturer, producer, or importer'' but for the timing of the publication of the list of selected drugs published under section 1192(a) of the SSA would be considered a manufacturer, producer, or importer for purposes of the section 5000D tax. As illustrated in the example provided in proposed § 47.5000D–2(c)(3), this proposed rule would ensure that subsequent sales by other persons, ''down'' or ''later'' in the supply chain, that take possession of a drug or biological product prior to the publication of that list are not subject to taxation if such drugs or biological products become designated drugs while in such persons' possession.

E. Price

Under section 5000D(a)(2), the section 5000D tax is calculated, in part, by reference to the price of the designated drug sold during a statutory period; however, section 5000D does not define the term ''price'' for this purpose. Proposed § 47.5000D–2(b)(4) would define ''price'' broadly,[2] capturing all amounts (other than the amount of the section 5000D tax) required by a manufacturer, producer, or importer to be paid as consideration for, or otherwise as a condition of, a sale of the subset of units of such sale that comprise an applicable sale. Because, as explained in part II.A of this Explanation of Provisions, section 5000D(a) imposes a tax only on sales of designated drugs dispensed, furnished, or administered to MFP-eligible individuals, the price charged by the manufacturer, producer, or importer for such units would generally be the relevant price for purposes of determining the section 5000D tax. For purposes of this proposed definition, it would be immaterial that any amount constituting the price may be paid to a person other than the manufacturer, producer, or importer, or that it may be separately billed to the buyer as an amount earmarked for expenses incurred or to be incurred on such buyer's behalf.

Rebates and other price adjustments are common in the prescription drug supply chain. To account for such adjustments, proposed § 47.5000D–2(b)(4)(ii) would allow a manufacturer, producer, or importer to adjust the amount charged in an applicable sale, for purposes of calculating the section 5000D tax, to reflect bona fide discounts, rebates, or allowances that are connected to that applicable sale and either paid to the buyer in such applicable sale, credited to the account of such buyer, or reimbursed to a third party for the benefit of such buyer by such manufacturer, producer, or importer. Under the proposed rule, a bona fide discount, rebate, or allowance would be made when the amount actually paid by, or charged against the account of, the buyer in the applicable sale is reduced by subsequent transactions between the parties. For example, a wholesaler chargeback paid by a manufacturer, producer, or importer to reflect a discounted sale of drugs ''downstream'' by the wholesaler would constitute a bona fide discount, rebate, or allowance, provided that such chargeback is connected to the applicable sale giving rise to the section 5000D tax liability (and not any other sale, ongoing sales generally, or any other goods or services) and reduces the amount paid by, or charged against the account of, the buyer in that applicable sale (and not any other sale).

Proposed § 47.5000D–2(b)(4)(iii) would provide that the amount of any bona fide discount, rebate, or allowance described in § 47.5000D–2(b)(4)(ii) that may be used to reduce the amount charged for an applicable sale is limited to the percentage of a sale that constitutes such applicable sale. *See* Identification of Applicable Sales in part II.C of this Explanation of Provisions.

Proposed § 47.5000D–2(b)(4)(ii) and (iii) are intended to reflect the amount charged for the applicable sale in light of industry practices related to bona fide discounts, rebates, and allowances. The Treasury Department and the IRS request comments on other types of discounts, rebates, or allowances, including discounts, rebates, and allowances occurring at other points in the supply chain, that should be considered or treated as price adjustments under proposed § 47.5000D–2(b)(4)(ii) and (iii).

Proposed § 47.5000D–2(b)(4)(iv) would provide the method for allocating the amount described in proposed § 47.5000D–2(b)(4)(iii)—that is, the amount by which any bona fide discount, rebate, or allowance reduces the amount charged in an applicable sale—between tax and price. This proposed rule would treat an applicable sale, including the extent to which the amount charged includes price and tax, as provided in § 47.5000D–3(b)(2)(i), as though such applicable sale was initially made at the adjusted price.

Proposed § 47.5000D–2(c)(6) would provide an example of a price adjustment under proposed § 47.5000D–2(b)(4)(ii) and (iii) and the allocation required under proposed § 47.5000D–2(b)(4)(iv).

F. Sale

Proposed § 47.5000D–2(b)(5) would define ''sale'' as any agreement by which substantial incidents of ownership in units of a designated drug serve, in whole or in part, as consideration.

II. Imposition and Calculation of Tax

Proposed § 47.5000D–3 would provide rules relating to the imposition and calculation of the section 5000D tax.

A. Imposition of Tax

Proposed § 47.5000D–3(a)(1) would provide that section 5000D imposes a tax on an applicable sale made by a manufacturer, producer, or importer during a day described in section 5000D(b). As described in part I.B of this Explanation of Provisions, the term ''applicable sale'' refers to the subset of a sale in units of a designated drug that will be dispensed, furnished, or administered to MFP-eligible individuals, as defined in section 1191(c)(2) of the SSA and any regulations or guidance issued thereunder by the Secretary of HHS.

The scope of sales potentially subject to the section 5000D tax, as expressed in this proposed rule, reflects the broader statutory context of the Program, which defines both the substance and operation of the tax. Among other things, the objects of the tax, ''designated drug[s],'' are defined by section 5000D(e)(1), in part, by reference to the ''negotiation-eligible drugs,'' as defined in section 1192(d) of the SSA, included on the list published under section 1192(a) of the SSA. Such negotiation-eligible drugs are identified, under the Program, on the basis of

[2] ''Price,'' as defined in proposed § 47.5000D–2(b)(4), does not apply beyond section 5000D.

historical Medicare expenditures (*see* section 1192(b) and (c) of the SSA) and for the sole purpose of affecting prices paid by Medicare beneficiaries (*see* section 1192(a)(3) of the SSA). Similarly, the statutory periods during which the section 5000D tax may arise are defined by reference to milestones of the Program. *See* section 5000D(b). And, more generally, the applicability of the section 5000D tax is expressly linked to whether the manufacturer of a designated drug has a statutorily defined agreement with Medicare in place. *See* section 5000D(c). Because the section 5000D tax depends substantively on, and operates only in relation to, the Program, the scope of the Program—which provides access to selected drugs at the negotiated prices only to Medicare beneficiaries and their pharmacies, mail order services, and other dispensers, as well as hospitals, physicians, and other providers of services and suppliers—is reflected in the scope of the tax.

B. Attachment of and Person Liable for the Tax

Proposed § 47.5000D–3(a)(2) would clarify that the section 5000D tax attaches when a manufacturer, producer, or importer of a designated drug makes an applicable sale of such designated drug during a statutory period. Under proposed § 47.5000D–3(a)(3), the manufacturer, producer, or importer of a designated drug that sells units of such designated drug during a statutory period would be liable for any section 5000D tax arising from that sale.

C. Identification of Applicable Sales

Consistent with Notice 2023–52, proposed § 47.5000D–3(a)(4) would require a manufacturer, producer, or importer to employ a reasonable method to identify any applicable sales it made during a statutory period. The proposed rule would require a manufacturer, producer, or importer's method of identifying such applicable sales to be based on recent transactions reflected in books, records, or other information pertaining to the drug or biological product selected under the Program. For this purpose, recent transactions would include those occurring no more than 24 months before the first day of the calendar quarter in which the applicable sales occurred.

For statutory periods that begin prior to March 1, 2026, proposed § 47.5000D–3(a)(4)(iii) would allow a manufacturer, producer, or importer to disregard sales of drugs or biological products furnished or administered by a hospital, physician, or other provider of services or supplier, where the recipient is an individual enrolled under Medicare part B of title XVIII of the SSA, including an individual enrolled in a Medicare Advantage plan under part C of title XVIII of the SSA, if payment may be made under part B for such units, consistent with section 1192(b)(2) of the SSA, which provides for the temporary exclusion of expenditures under part B of title XVIII of the SSA for purposes of ranking negotiation-eligible drugs.

The Treasury Department and the IRS are aware that identifying applicable sales made during a statutory period may be difficult or burdensome. To help a manufacturer, producer, or importer comply with this requirement, the Treasury Department and the IRS are proposing a safe harbor for identifying such applicable sales. Specifically, proposed § 47.5000D–3(a)(4)(iv) would provide that a manufacturer, producer, or importer may satisfy the requirement to identify applicable sales by using the safe harbor percentage provided in guidance published in the Internal Revenue Bulletin. A manufacturer, producer, or importer that uses the safe harbor provided in proposed § 47.5000D–3(a)(4)(iv) to identify the applicable sales made during a statutory period would be deemed to have complied with the requirements of proposed § 47.5000D–3(a)(4)(i) through (iii), as applicable.

To ensure consistent reporting and reduce the potential for abuse, proposed § 47.5000D–3(a)(4)(iv)(C) and (D) would require the safe harbor to be applied uniformly to all sales of a designated drug by a manufacturer, producer, or importer subject to the section 5000D tax during a calendar quarter and, unless the safe harbor percentage is changed by subsequent guidance, for a period of three consecutive calendar quarters thereafter.

Under proposed § 47.5000D–3(a)(4)(iv)(E), any update of to the safe harbor percentage described in proposed § 47.5000D–3(a)(4)(iv)(A) would use a calculation methodology similar to that described in proposed § 47.5000D–3(a)(4)(iv)(A), use the most recent analysis that the IRS has received from CMS of data available to CMS, and relieve a manufacturer, producer, or importer from an existing obligation under proposed § 47.5000D–3(a)(4)(iv)(C) to use the safe harbor described in proposed § 47.5000D–3(a)(4)(iv) as of the effective date of such updated safe harbor percentage. If a manufacturer, producer, or importer continues to use the safe harbor described in proposed § 47.5000D–3(a)(4)(iv) after the safe harbor percentage is updated, such manufacturer, producer, or importer would be required to use the updated safe harbor percentage on and after the effective date of such updated safe harbor percentage and for the remainder of any period required by proposed § 47.5000D–3(a)(4)(iv)(C).

Finally, proposed § 47.5000D–3(a)(4)(v) would provide that once a section 5000D tax liability is reported to the IRS for a particular calendar quarter, the manufacturer, producer, or importer liable for the section 5000D tax may not later recalculate its section 5000D tax liability for that quarter using a different method to identify its applicable sales. However, the correction of a mathematical or clerical error or the use of corrected data from the same historical period used to identify the applicable sales originally would not alone constitute the recalculation of a section 5000D tax liability using a different method.

D. Calculation of Tax

Proposed § 47.5000D–3(b)(1) would provide the tax rate by restating the statutory formula for calculating the section 5000D tax. As described in the Background section of this preamble, section 5000D(a) provides a formula for calculating the section 5000D tax by which an applicable percentage, ranging from 65 to 95 percent, equals the tax divided by the sum of the tax and the price. The applicable percentage varies depending on the number of days that have passed since a statutory period began.

E. Effect of Invoicing Tax on Tax Calculation

Consistent with Notice 2023–52, proposed § 47.5000D–3(b)(2)(i) would provide that if a manufacturer, producer, or importer makes no separate charge on its invoice or similar document with respect to a sale, the amount charged is presumed to include the proper amount of the section 5000D tax. The price would, under those circumstances, exclude the portion of the amount charged that is allocable to the section 5000D tax; no section 5000D tax would be calculated on the amount allocated to the section 5000D tax. *see* the example provided in proposed § 47.5000D–3(b)(3).

If a manufacturer, producer, or importer includes the section 5000D tax as a separate line item on an invoice or similar document, proposed § 47.5000D–3(b)(2)(ii) would provide that the amount of section 5000D tax so charged is not included in the price; thus, no section 5000D tax would be due on the amount of section 5000D tax so charged.

Although this rule is modeled on a similar rule found in § 48.4216(a)–2(a) of the Manufacturers and Retailers Excise Tax Regulations, neither that rule nor any other found in 26 CFR part 48 would apply or provide any interpretive guidance with respect to any rule proposed or issued under section 5000D because the part 48 regulations apply to taxes imposed by chapters 31 and 32 of the Code, and section 5000D is in chapter 50A.

F. Anti-Abuse Rule

Pursuant to the authority provided in section 5000D(h), proposed § 47.5000D–3(c) would provide an anti-abuse rule under which a transaction or series of transactions, including transactions made other than at arm's length, may be adjusted, recharacterized, or otherwise recast by the IRS in circumstances in which the parties engaged in such transaction or series of transactions with a principal purpose of avoiding the section 5000D tax or substantially reducing the purported price on which the section 5000D tax is calculated.

Proposed Applicability Date

These regulations are proposed to apply to sales of designated drugs on and after the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register**.

Effect on Other Documents

Taxpayers may continue to rely on sections 3.01 and 3.02 of Notice 2023–52 until these proposed regulations are finalized.

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) generally 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. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Any collection burden associated with rules described in these proposed regulations is previously accounted for in OMB Control Number 1545–0023, which covers Form 720, *Quarterly Federal Excise Tax Return.* The recordkeeping requirements associated with Form 720 have already been approved by OMB. Moreover, a taxpayer may avail itself of the safe harbor proposed in these proposed regulations without filing any formal election or statement or performing any other affirmative act. These proposed regulations do not, therefore, alter previously accounted for information collection requirements or create new collection requirements. For PRA burden estimated for procedural rules related to the section 5000D tax, see the preamble to TD 10003.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA), the Secretary of the Treasury hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the section 5000D tax is imposed only when certain drug manufacturers, producers, or importers sell certain designated drugs during periods described in section 5000D(b). The periods described in section 5000D(b) relate to milestones in the Program, the scope of which is limited to a subset of drugs with high Medicare expenditures. To the extent any section 5000D tax liability arises, taxpayers will be few and unlikely to meet the relevant definitions of small entities under the RFA and regulations thereunder. These proposed regulations will not, therefore, create additional obligations for, or have a significant economic impact on, a substantial number of small entities, and analysis under the RFA is not required. Notwithstanding this certification, the Treasury Department and the IRS welcome comments on the impact of these proposed regulations on small entities.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Code, 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 its impact on small business.

V. Unfunded Mandates Reform Act

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

VI. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on *https://www.regulations.gov.*

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**.

Statement of Availability of IRS Documents

The IRS notice cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office,

Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of these regulations is the Office of the Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 47

Excise taxes.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 47 as follows:

PART 47—DESIGNATED DRUGS EXCISE TAX REGULATIONS

■ **Paragraph 1.** The authority citation for part 47 is amended by adding entries in numerical order for §§ 47.5000D–2 and 47.5000D–3 to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 47.5000D–2 also issued under 26 U.S.C. 5000D(h). Section 47.5000D–3 also issued under 26 U.S.C. 5000D(h).

■ **Par. 2.** Section 47.5000D–0 is amended by:

■ a. Removing the entry ''§§ 47.5000D–2—47.5000D–4 [Reserved]''.

■ b. Adding entries for §§ 47.5000D–2 and 47.5000D–3 and the entry ''§ 47.5000D–4 [Reserved]'' in numerical order.

The additions read as follows:

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* * * * *

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■ **Par. 3.** Sections 47.5000D–2 and 47.5000D–3 are added to read as follows:

§ 47.5000D–2 Definitions.

(a) *Overview.* This section provides definitions for purposes of section 5000D of the Internal Revenue Code (Code) and the Designated Drugs Excise Tax Regulations in this part.

(b) *Definitions*—(1) *Applicable percentage.* The term *applicable percentage* has the meaning provided in section 5000D(d). To determine the applicable percentage with respect to a specific applicable sale, days described in section 5000D(b) are cumulative regardless of whether such days are consecutive.

(2) *Applicable sale.* The term *applicable sale* means the sale transaction that is the subset of each sale in units of a designated drug, as defined in section 5000D(e)(1), made by the manufacturer, producer, or importer that will be dispensed, furnished, or administered to maximum fair price-eligible individuals, as defined in section 1191(c)(2) of the Social Security Act (42 U.S.C. 1320f(c)(2)) and any regulations (in title 42 of the Code of Federal Regulations) or guidance issued thereunder by the Secretary of Health and Human Services. *See* § 47.5000D–3(a)(4) for methods of identifying applicable sales.

(3) *Manufacturer, producer, or importer*—(i) *In general.* With respect to any units of a designated drug, the term *manufacturer, producer, or importer* means the person that makes the first sale of such units or, in the case of imports, the person that makes the first sale of such units after such units are entered into the United States for consumption, use, or warehousing. A sale is the first sale if it precedes in time any other sale of the same units. Each unit of a designated drug, therefore, has only one manufacturer, producer, or importer.

(ii) *Sale made other than on a day described in section 5000D(b).* A person that meets the criteria of paragraph (b)(3)(i) of this section is a manufacturer, producer, or importer regardless of whether the sale described in paragraph (b)(3)(i) is made during a day described in section 5000D(b). *See Example 2* provided in paragraph (c)(2) of this section.

(iii) *Sale made prior to publication of the list of selected drugs under section 1192(a) of the Social Security Act.* With respect to particular units of a drug or biological product, if a person would be described in paragraph (b)(3)(i) of this section but for the timing of the publication of the list of selected drugs under section 1192(a) of the Social Security Act, such person will nevertheless be considered the manufacturer, producer, or importer of such units. Subsequent sellers of such units would not, therefore, be the manufacturer, producer, or importer of such units. *See Example 3* provided in paragraph (c)(3) of this section.

(4) *Price*—(i) *In general.* Except as provided in § 47.5000D–3(b)(2)(i) and (ii), the term *price* means, with respect to an applicable sale of units of a designated drug sold during a day

described in section 5000D(b), any amount (whether in cash or in kind) that is required by a manufacturer, producer, or importer to be paid as a condition of such applicable sale. It is immaterial, for purposes of this paragraph (b)(4), that such amount may be paid to a person other than the manufacturer, producer, or importer, or that it may be separately billed to the buyer as an amount earmarked for expenses incurred or to be incurred on such buyer's behalf.

(ii) *Adjustment to amount charged.* A manufacturer, producer, or importer may adjust the amount charged in an applicable sale to reflect a bona fide discount, rebate, or allowance that is connected to such applicable sale and paid or credited by such manufacturer, producer, or importer against such amount. The basic consideration in determining, for purposes of this section, whether a bona fide discount, rebate, or allowance has been made is whether the amount actually paid by, or charged against the account of, the buyer in the applicable sale has been reduced. Such amount will be considered reduced by reason of a bona fide discount, rebate, or allowance only if the manufacturer, producer, or importer repays part or all of the amount charged to the buyer, credits the buyer's account, or reimburses a third party for part or all of the amount charged for the benefit of the buyer.

(iii) *Amount of adjustment.* The amount of any bona fide discount, rebate, or allowance described in paragraph (b)(4)(ii) of this section that may be used to reduce the amount charged for an applicable sale is limited by the percentage of a sale that constitutes such applicable sale.

(iv) *Allocation between price and tax.* The amount described in paragraph (b)(4)(iii) of this section must be allocated between price and the tax imposed by section 5000D(a) (section 5000D tax) in the same manner as the amount charged for the applicable sale absent such adjustment. *See Example 6* provided in paragraph (c)(6) of this section.

(5) *Sale.* The term *sale* means any agreement by which substantial incidents of ownership in units of a designated drug serve as consideration.

(c) *Examples.* The following examples illustrate the application of the definitions provided in this section and the rules provided in § 47.5000D–3. For purposes of this paragraph (c), all sales are applicable sales (*see* paragraph (b)(2) of this section and § 47.5000D–3(a)(4)) and, unless otherwise provided, all designated drugs are manufactured or produced in the United States.

(1) *Example 1: First sale of units of a designated drug*—(i) *Facts.* Manufacturer D is a manufacturer of Designated Drug Y. During the fourth quarter of 2024, Manufacturer D sells 1,000,000 units of Designated Drug Y to Wholesaler E, a drug wholesaler. With respect to Designated Drug Y, every day of the fourth quarter of 2024 is a day described in section 5000D(b).

(ii) *Analysis.* Manufacturer D incurs liability under section 5000D(a) and § 47.5000D–3(a) for its sale of the 1,000,000 units of Designated Drug Y to Wholesaler E. No other person incurs liability under section 5000D(a) and § 47.5000D–3(a) with respect to those units. Under paragraph (b)(3)(i) of this section, Manufacturer D's sale of the 1,000,000 units of Designated Drug Y to Wholesaler E is the first sale of such units of the designated drug. As a result, Manufacturer D is the manufacturer, producer, or importer with respect to such units of Designated Drug Y. Because Manufacturer D's sale of the 1,000,000 units of Designated Drug Y is made during a day described in section 5000D(b), that sale is subject to taxation under section 5000D(a) and § 47.5000D–3(a). No tax liability under section 5000D arises with respect to any subsequent sale of the 1,000,000 units of Designated Drug Y because no subsequent sale would qualify as the first sale of such units; therefore, no other person is the manufacturer, producer, or importer with respect to such units.

(2) *Example 2: Manufacturer sale prior to day described in section 5000D(b)*—(i) *Facts.* The facts are the same as those described in paragraph (c)(1)(i) of this section (*Example 1*), except that Manufacturer D's sale of the 1,000,000 units of Designated Drug Y is made after it is included on the list published under section 1192(a) of the Social Security Act, but before a day described in section 5000D(b).

(ii) *Analysis.* Manufacturer D incurs no liability under section 5000D(a) and § 47.5000D–3(a) for its sale of the 1,000,000 units of Designated Drug Y to Wholesaler E. In addition, no other person incurs liability under section 5000D(a) and § 47.5000D–3(a) with respect to those units. Under paragraph (b)(3)(i) of this section, Manufacturer D's sale of the 1,000,000 units of Designated Drug Y to Wholesaler E is the first sale of such units of the designated drug. As a result, Manufacturer D is the manufacturer, producer, or importer with respect to such units of Designated Drug Y. No tax liability under section 5000D, however, arises in relation to that sale because it was not made during a day described in section 5000D(b). Moreover, no tax liability under section 5000D arises with respect to any subsequent sale of the 1,000,000 units of Designated Drug Y because no subsequent sale would qualify as the first sale of such units, and therefore no other person is the manufacturer, producer, or importer with respect to such units.

(3) *Example 3: Sale made prior to publication of the list of selected drugs*—(i) *Facts.* Manufacturer B, a drug manufacturer, sells 1,000,000 units of Drug J to Wholesaler V, a drug wholesaler. After such sale and before Wholesaler V resells those 1,000,000 units, Drug J is identified as a selected drug on the list published under section 1192(a) of the Social Security Act, making it a designated drug (Designated Drug J), as defined in section 5000D(e)(1). Wholesaler V subsequently sells the 1,000,000 units of Designated Drug J to pharmacies; these sales occur on a day described in section 5000D(b).

(ii) *Analysis.* Manufacturer B incurs no liability under section 5000D(a) and § 47.5000D–3(a) for its sale of the 1,000,000 units of Designated Drug J to Wholesaler V. In addition, no other person incurs liability under section 5000D(a) and § 47.5000D–3(a) with respect to those units. At the time of Manufacturer B's sale to Wholesaler V, Drug J had not been included on the list of selected drugs published under section 1192(a) of the Social Security Act and, therefore, was not a designated drug as defined in section 5000D(e)(1). Under paragraph (b)(3)(iii) of this section, Manufacturer B would nevertheless be considered the manufacturer, producer, or importer with respect to the sale to Wholesaler V. No tax liability under section 5000D(a) and § 47.5000D–3(a) would arise with respect to Manufacturer B's sale because that sale did not occur (and could not have occurred) during a day described in section 5000D(b). Moreover, no tax liability under section 5000D would arise with respect to Wholesaler V's sale of the 1,000,000 units of Designated Drug J, even though such sale occurred during a day described in section 5000D(b), because, as a function of the rule provided in paragraph (b)(3)(iii) of this section, Wholesaler V did not make the first sale of such units. Wholesaler V is not, therefore, the manufacturer, producer, or importer under paragraph (b)(3)(i) of this section with respect to such units of Designated Drug J, and is not subject to tax under section 5000D and § 47.5000D–3(a).

(4) *Example 4: Subsequent sale to relabeler*—(i) *Facts.* The facts are the same as those described in paragraph (c)(1)(i) of this section (*Example 1*),

except that during the fourth quarter of 2024, Wholesaler E sells the same 1,000,000 units to Relabeler F, a drug relabeler. Relabeler F then relabels the 1,000,000 units of Designated Drug Y and, before the end of the fourth quarter of 2024, sells all 1,000,000 units to pharmacies.

(ii) *Analysis.* Manufacturer D incurs liability under section 5000D(a) and § 47.5000D–3(a) for its sale of the 1,000,000 units of Designated Drug Y to Wholesaler E. No other person incurs liability under section 5000D(a) and § 47.5000D–3(a) with respect to those units. Relabeler F's relabeling of the 1,000,000 units of Designated Drug Y does not affect this outcome, regardless of whether such relabeling involves affixing a new National Drug Code or Codes to the units of Designated Drug Y prior to those units of Designated Drug Y being furnished to a maximum fair price-eligible individual. Relabeler F's sales of the 1,000,000 units of Designated Drug Y to pharmacies are the third sales of such units, not the first. As a result, Manufacturer D is the manufacturer, producer, or importer with respect to such units under paragraph (b)(3)(i) of this section, not Relabeler F. Thus, Relabeler F's sale of such units is not subject to taxation under section 5000D(a) and § 47.5000D–3(a), but Manufacturer D's sale of such units to Wholesaler E is subject to the tax.

(5) *Example 5: Importation*—(i) *Facts.* With respect to Designated Drug Y, every day of the fourth quarter of 2024 is a day described in section 5000D(b). Manufacturer R is a manufacturer of Drug Y. During the fourth quarter of 2024, Manufacturer R sells 1,000,000 units of Drug Y to Wholesaler Q, a drug wholesaler, before such units are entered into the United States for consumption, use, or warehousing. Before the end of the fourth quarter of 2024, Wholesaler Q enters the 1,000,000 units of Drug Y into the United States for consumption, use or warehousing, rendering them units of a designated drug (Designated Drug Y), as defined in section 5000D(e)(1), and sells all 1,000,000 units to pharmacies.

(ii) *Analysis.* Wholesaler Q incurs liability under section 5000D(a) and § 47.5000D–3(a) for its sale of the 1,000,000 units of Designated Drug Y to the pharmacies. No other person incurs liability under section 5000D(a) and § 47.5000D–3(a) with respect to those units. Under paragraph (b)(3)(i) of this section, Manufacturer R is not the manufacturer, producer, or importer with respect to the 1,000,000 units of Drug Y that Manufacturer R sold to Wholesaler Q during the fourth quarter of 2024 because Manufacturer R's sale occurred before such units were entered into the United States for consumption, use, or warehousing. As a result, Manufacturer R's sale to Wholesaler Q is not subject to taxation under section 5000D(a) and § 47.5000D–3(a). Wholesaler Q's sales of the same 1,000,000 units of Designated Drug Y to pharmacies in the fourth quarter of 2024, however, are subject to taxation under section 5000D(a) and § 47.5000D–3(a). Wholesaler Q's sales to such pharmacies are the first sales of those units after they were entered into the United States for consumption, use, or warehousing. As a result, Wholesaler Q is the manufacturer, producer, or importer under paragraph (b)(3)(i) of this section with respect to such units of Designated Drug Y, and its sales thereof are subject to taxation under section 5000D(a) and § 47.5000D–3(a).

(6) *Example 6: Chargeback reimbursement and allocation*—(i) *Facts*—(A) *Manufacturer sale.* Manufacturer P is the manufacturer, producer, or importer of 100,000 units of Designated Drug Q. During a day described in section 5000D(b), and no more than 90 days since the first such day, Manufacturer P sells 100,000 units of Designated Drug Q to Wholesaler V at $1.00 per unit ($100,000). Manufacturer P reasonably determines that 40 percent of the sale is the applicable sale. *See* paragraph (b)(2) of this section and § 47.5000D–3(a)(4). Manufacturer P does not separately invoice any section 5000D tax to Wholesaler V. *See* § 47.5000D–3(b)(2)(i). Manufacturer P's sale to Wholesaler V would, therefore, have resulted in a section 5000D tax liability of $26,000 ($26,000 ÷ $40,000 = 65 percent).

(B) *Wholesaler sale and chargeback.* Pharmacy G purchases the 100,000 units of Designated Drug Q from Wholesaler V at a discount. Wholesaler V issues a $30,000 chargeback invoice to Manufacturer P related to the amount of the discount. Manufacturer P pays Wholesaler V the full amount of the chargeback.

(ii) *Analysis*—(A) *Bona fide discount, rebate, or allowance.* Manufacturer P's reimbursement for Wholesaler V's chargeback is a bona fide discount, rebate, or allowance against the price of the applicable sale because it is for the sale of the 100,000 units (and no other sale, goods, or services). Of the 100,000 units sold, 40 percent, or 40,000, constitute the applicable sale and are therefore subject to the section 5000D tax. Manufacturer P's reimbursement to Wholesaler V reduces the amount charged in that applicable sale, such that the amount charged per unit is $0.70 and the total amount charged in the applicable sale is $28,000 ($0.70 per unit × 40,000 units). The reimbursement proportionally attributable to the applicable sale is, therefore, $12,000 ($0.30 per unit × 40,000 units).

(B) *Allocation of chargeback reimbursement between tax and price.* (*1*) The amount by which the chargeback reimbursement reduces the price and tax, for purposes of section 5000D, is determined by allocating the reimbursement according to the same price-tax ratio that initially applied to the applicable sale:

Equation 1 to Paragraph (c)(6)(ii)(B)(*1*)

$$\frac{\textit{Tax Inclusive Price Adjustment}}{\textit{Tax Inclusive Sale Price}} \times \textit{Tax Exclusive Sale Price} = \textit{Price Adjustment}$$

(*2*) The quotient of the tax-inclusive price adjustment ($12,000) and the tax-inclusive sale price (the $40,000 amount charged) multiplied by the initial tax-exclusive sale price of the applicable sale (($1.00 − $0.65) × $40,000, or $14,000) results in a price adjustment of $4,200, meaning that, of the $12,000 reimbursement, $7,800 is allocated to tax and $4,200 is allocated to price. Thus, Manufacturer P's liability under section 5000D for the applicable sale is $18,200 (the $26,000 tax liability arising from the sale as originally made less the $7,800 of the reimbursement allocated to the tax). In other words, Manufacturer P's liability under section 5000D after the price adjustment is identical to the liability that Manufacturer P would have incurred under section 5000D had Manufacturer P originally sold the 100,000 units of Designated Drug Q to Wholesaler V at the adjusted amount ($18,200 ÷ $28,000 = 65 percent).

(d) *Severability.* The provisions of this section are separate and severable from one another and any other section in this part. If any provision of this section is stayed or determined to be invalid, it is the intention of the Department of the Treasury and the Internal Revenue Service that the remaining provisions

and sections of this part shall continue in effect.

(e) *Applicability date.* This section applies to sales of designated drugs on or after [date of publication of final regulations in the **Federal Register**].

§ 47.5000D–3 Imposition of section 5000D tax.

(a) *Imposition of tax*—(1) *In general.* Section 5000D(a) of the Internal Revenue Code (Code) imposes a tax (section 5000D tax) on applicable sales made by a manufacturer, producer, or importer during a day described in section 5000D(b).

(2) *Attachment of tax.* The section 5000D tax attaches when a manufacturer, producer, or importer of units of a designated drug makes an applicable sale of such units during a day described in section 5000D(b).

(3) *Person liable for tax.* A manufacturer, producer, or importer of units of a designated drug that makes an applicable sale of such units during a day described in section 5000D(b) is liable for the section 5000D tax imposed on such sale.

(4) *Identification of applicable sales*—(i) *In general.* A manufacturer, producer, or importer of units of a designated drug must employ a reasonable method to identify the applicable sales of such units, if any, that it makes during a day described in section 5000D(b). A manufacturer, producer, or importer's method of identifying such applicable sales must be based on its books, records, or other information. For example, a subsidiary may rely on historical sales data collected and analyzed by its parent, provided that such data and analysis meet the requirements of paragraph (a)(4)(ii) of this section and are otherwise reasonable.

(ii) *Books, records, and other information.* Books, records, and other information used to identify applicable sales must reflect transactions pertaining to the drug or biological product selected for inclusion on the list of selected drugs published under section 1192(a) of the Social Security Act that predate the first day of the calendar quarter in which the applicable sales occurred by no more than 24 months.

(iii) *Disregard of Medicare part B sales permissible prior to March 1, 2026.* For periods described in section 5000D(b) that begin prior to March 1, 2026, a manufacturer, producer, or importer's method may disregard sales of drugs or biological products furnished or administered by a hospital, physician, or other provider of services or supplier, the recipient of which is an individual enrolled under Medicare part B of title XVIII of the Social Security Act, including an individual enrolled in a Medicare Advantage plan under part C of such title, if payment may be made under part B for such units. *See* section 1192(b)(2) of the Social Security Act.

(iv) *Safe harbor*—(A) *In general.* A manufacturer, producer, or importer may satisfy the requirements of this paragraph (a)(4) by using the safe harbor percentage provided in guidance published in the Internal Revenue Bulletin (see § 601.601 of this chapter), as applicable to the relevant calendar quarter, to identify its applicable sales. Such safe harbor percentage is a rounded average of the percentage of all sales that are applicable sales of a sample of qualifying single-source drugs (as defined in section 1192(e) of the Social Security Act) that is large enough to yield meaningful results, as determined by the analysis of certain manufacturer- and patient-level data conducted by the Centers for Medicare and Medicaid Services (CMS).

(B) *No election required.* No election is required for a manufacturer, producer, or importer to use the safe harbor described in paragraph (a)(4)(iv)(A) of this section.

(C) *Must use safe harbor for four consecutive calendar quarters.* Except as provided in paragraph (a)(4)(iv)(E) of this section, a manufacturer, producer, or importer that uses the safe harbor described in paragraph (a)(4)(iv)(A) of this section must continue to use the safe harbor for a period of four consecutive calendar quarters, including the calendar quarter in which the safe harbor is first used.

(D) *Uniform application required.* A manufacturer, producer, or importer that uses the safe harbor described in paragraph (a)(4)(iv)(A) of this section for sales made during any day described in section 5000D(b) falling within a calendar quarter must apply the safe harbor to all sales by such manufacturer, producer, or importer during all days described in section 5000D(b) falling within that calendar quarter. Thus, if a manufacturer, producer, or importer uses the safe harbor described in paragraph (a)(4)(iii)(A) of this section with respect to one sale of a designated drug during a day described in section 5000D(b), it must use the safe harbor for all sales of that designated drug and all sales of any other designated drug that occur in that calendar quarter during a day described in section 5000D(b).

(E) *Updates to safe harbor percentage.* Any update to the safe harbor percentage described in paragraph (a)(4)(iv)(A) of this section will use a calculation methodology similar to that described in paragraph (a)(4)(iv)(A) of this section, use the most recent analysis that the Internal Revenue Service (IRS) has received from CMS of data available to CMS, and relieve a manufacturer, producer, or importer from an existing obligation under paragraph (a)(4)(iv)(C) of this section to use the safe harbor described in this paragraph (a)(4)(iv) as of the effective date of such updated safe harbor percentage. If a manufacturer, producer, or importer continues to use the safe harbor described in this paragraph (a)(4)(iv) after the safe harbor percentage is updated, such manufacturer, producer, or importer must use the updated safe harbor percentage on and after the effective date of such updated safe harbor percentage and for the remainder of any period required by paragraph (a)(4)(iv)(C) of this section.

(v) *Recalculation of liability not permitted.* Once a section 5000D tax liability is reported to the IRS for a particular calendar quarter, the manufacturer, producer, or importer liable for the section 5000D tax may not later recalculate its section 5000D tax liability for that quarter using a different method to identify its applicable sales. The correction of a mathematical or clerical error, or the use of corrected data from the same historical period used to originally identify the applicable sales, does not alone constitute the recalculation of a section 5000D tax liability using a different method.

(b) *Calculation of tax*—(1) *In general.* (i) For any applicable sale of units of a designated drug during a day described in section 5000D(b), the amount of the section 5000D tax is the amount such that the applicable percentage is equal to the ratio of such tax divided by the sum of such tax and the price of such applicable sale expressed as a percentage. This ratio may be expressed as follows:

Equation 1 to Paragraph (b)(1)(i)

Applicable Percentage = Tax/(Tax + Price)

(ii) See paragraph (b)(2) of this section for rules relating to the effect of certain invoicing methods on the determination of price.

(2) *Charging tax as line item; effect on price*—(i) *Presumption if no separate charge for tax is made.* If no separate charge is made for the section 5000D tax on the invoice or similar document pertaining to an applicable sale, the amount charged for units of the designated drug is presumed to include both the proper amount of section 5000D tax and the price. In such cases, the price excludes the portion of the

amount charged allocable to the section 5000D tax so charged, and no section 5000D tax is due on the amount of section 5000D tax so charged.

(ii) *Separately charged tax not part of price.* If the section 5000D tax is separately charged on the invoice or similar document pertaining to an applicable sale, the section 5000D tax so charged is not included in the price. Thus, if a manufacturer, producer, or importer calculates the section 5000D tax and charges it as a separate item on the invoice or similar document pertaining to an applicable sale, the amount of section 5000D tax so charged is not included in the price for purposes of calculating the section 5000D tax under paragraph (b)(1) of this section, and no section 5000D tax is due on the amount of section 5000D tax so charged.

(3) *Example*—(i) *Facts.* Manufacturer X is the manufacturer, producer, or importer of 409,000 units of Designated Drug H (that is, it makes the first sale of those units). During a day described in section 5000D(b), and no more than 90 days since the first such day, Manufacturer X sells 100,000 units of Designated Drug H to Wholesaler A at $1.00 per unit, 300,000 units of Designated Drug H to Wholesaler B at $0.90 per unit, and 9,000 units of Designated Drug H to Wholesaler C at $1.12 per unit. Manufacturer X has reasonably determined that the applicable sale consists of 35 percent of the units of Designated Drug H in each such sale. Manufacturer X has not separately invoiced any section 5000D tax to Wholesalers A, B, or C.

(ii) *Analysis*—(A) *In general.* To calculate its section 5000D tax liability with respect to its sales of Designated Drug H to Wholesalers A, B, and C, Manufacturer X must aggregate its section 5000D tax liability for the applicable sales by applying the presumption described in paragraph (b)(2)(i) of this section.

(B) *Step 1.* Manufacturer X begins by determining the applicable sales within each of the sales described in paragraph (b)(3)(i) of this section. The applicable sale within the sale to Wholesaler A is 35,000 units (100,000 units × 0.35). The applicable sale within the sale to Wholesaler B is 105,000 units (300,000 units × 0.35). And the applicable sale within the sale to Wholesaler C is 3,150 units (9,000 units × 0.35).

(C) *Step 2.* Next, Manufacturer X determines the amount charged for the applicable sales. The amount charged for the applicable sale to Wholesaler A is $35,000.00 (35,000 units × $1.00 per unit). The amount charged for the applicable sale to Wholesaler B is $94,500.00 (105,000 units × $0.90 per unit). And the amount charged for the applicable sale to Wholesaler C is $3,528.00 (3,150 units × $1.12 per unit).

(D) *Step 3.* Manufacturer X then determines the correct tax and price with respect to each amount charged for the applicable sales under the presumption provided in paragraph (b)(3)(i) of this section. Of the $35,000.00 Manufacturer X charged for the applicable sale to Wholesaler A (35,000 of 100,000 units), Manufacturer X allocates $22,750.00 to the section 5000D tax and $12,250.00 to the price ($22,750.00/($22,750.00 + $12,250.00) = 0.65). Of the $94,500.00 Manufacturer X charged for the applicable sale to Wholesaler B (105,000 of 300,000 units), Manufacturer X allocates $61,425.00 to the section 5000D tax and $33,075.00 to the price ($61,425.00/($61,425.00 + $33,075.00) = 0.65). And of the $3,528.00 Manufacturer X charged for the applicable sale to Wholesaler C (3,150 of 9,000 units), Manufacturer X allocates $2,293.20 to the section 5000D tax and $1,234.80 to the price ($2,293.20/($2,293.20 + $1,234.80) = 0.65).

(E) *Step 4.* Manufacturer X's section 5000D tax liability for the applicable sales is $86,468.20 ($22,750.00 + $61,425.00 + $2,293.20 = $86,468.20). This amount, when divided by the sum of the tax and the price of the applicable sales, equals 65 percent ($86,468.20/($86,468.20 + $46,559.80) = 0.65).

(c) *Anti-abuse rule.* If a manufacturer, producer, or importer engages in any transaction (or series of transactions) with a principal purpose of avoiding the section 5000D tax or substantially reducing the purported price at which a sale is made, including transactions made other than at arm's length, such transaction (or series of transactions) may be adjusted, recharacterized, or otherwise recast by the Secretary for purposes of determining the correct section 5000D tax liability. Whether a transaction (or series of transactions) has a principal purpose of avoiding the section 5000D tax or substantially reducing the purported price of an applicable sale is determined based on all of the facts and circumstances, including, but not limited to, a comparison of the purported business purpose for, and the section 5000D tax consequences of, the transaction (or series of transactions).

(d) *Severability.* The provisions of this section are separate and severable from one another and any other section of this part. If any provision of this section is stayed or determined to be invalid, it is the intention of the Department of the Treasury and Internal Revenue Service that the remaining provisions and sections of this part shall continue in effect.

(e) *Applicability date.* This section applies to sales of designated drugs on or after [date of publication of final regulations in the **Federal Register**].

Douglas W. O'Donnell,

Deputy Commissioner.

[FR Doc. 2024–31462 Filed 12–31–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 5

[Docket No. NSD 102; AG Order No. 6121–2024]

RIN 1124–AA00

Amending and Clarifying Foreign Agents Registration Act Regulations

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Justice (''DOJ,'' ''the Department'') is proposing amendments and other clarifications to the scope of certain exemptions, to update and add various definitions, and to make other modernizing changes to the Attorney General's Foreign Agents Registration Act (''FARA'') implementing regulations.

DATES: Electronic comments must be submitted and paper comments must be postmarked or otherwise indicate a shipping date on or before March 3, 2025. Paper comments postmarked on or before that date will be considered timely. The electronic Federal Docket Management System at *https://www.regulations.gov* will accept electronic comments until 11:59 p.m. Eastern Time on that date.

ADDRESSES: If you wish to provide comments regarding this rulemaking, you must submit comments, identified by the agency name and reference RIN 1124–AA00 or Docket No. NSD 102, by one of the two methods below:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Commercial Courier:* Jennifer Kennedy Gellie, Chief, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, FARA Unit, 175 N Street NE, Constitution Square, Building 3—Room 1.100, Washington, DC 20002.

Instructions: All submissions received must include the agency name and docket number or Regulatory

Information Number (''RIN'') for this rulemaking. Paper comments that duplicate an electronic submission are unnecessary. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jennifer Kennedy Gellie, Chief, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, FARA Unit, 175 N Street NE, Constitution Square, Building 3—Room 1.100, Washington, DC 20002; telephone: (202) 233–0776 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this notice of proposed rulemaking (''NPRM'') through one of the two methods identified above and by the deadline stated above.

Please note that all comments received are considered part of the public record and made available for public inspection at *https://www.regulations.gov.* Such information includes personally identifiable information (such as your name, address, etc.) voluntarily submitted by the commenter.

The Department may withhold from public viewing information provided in comments that is offensive, that may adversely impact the privacy of a third party, or for other legitimate reasons. For additional information, please read the Privacy & Security Notice that is available through the link in the footer of *https://www.regulations.gov.* The Freedom of Information Act, 5 U.S.C. 552, applies to all comments received. To inspect the agency's public docket file in person, you must make an appointment with the FARA Unit. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for FARA Unit contact information.

II. Background

The Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611 *et seq.* (''FARA'' or ''the Act''), was enacted to ensure that the United States Government and the American people are aware of persons who are acting within this country as agents of ''foreign principals,'' as defined by the Act, and are informed about the activities undertaken by such agents to influence public opinion or governmental action on political or policy matters. The Act requires that persons acting as agents of foreign principals label the informational materials they distribute and make periodic public disclosures of their agency relationship and activities as well as their receipts and disbursements in support of these activities. Disclosure of the required information allows the American public and government officials to evaluate the agents' statements and activities with knowledge of the foreign interests they serve. The FARA Unit of the Counterintelligence and Export Control Section (''CES'') in the National Security Division (''NSD'') of DOJ is responsible for the administration and enforcement of FARA.

The Act gives the Attorney General the authority to issue ''rules, regulations, and forms as he may deem necessary to carry out the provisions'' of the Act. *See* 22 U.S.C. 620; *see also id.* 612(f), 614(c). Under that authority, the Attorney General has issued regulations covering a range of administrative and enforcement functions. *See* 28 CFR 5.1–5.1101. The regulations were last amended in 2007.[1]

III. Public Comments and Discussion of Proposed Changes

The Department published an Advance Notice of Proposed Rulemaking (''ANPRM'') on December 13, 2021, soliciting public comment on 19 questions regarding the revision and amendment of the regulations implementing FARA and on the regulations as a whole.[2] The Department received comments from 29 commenters in response to the ANPRM, all of which provided responses to one of the 19 specific questions on which the Department solicited input.[3] One commenter conceded it was not addressing the substance of the ANPRM, but rather expressing its disagreement with the position taken in a prior communication from the FARA Unit. Nine commenters were lawyers or law firms that represent registrants or potential registrants. Ten commenters were nonprofit organizations that either are themselves, or represent members who are, registrants or potential registrants. Another six commenters were nonprofit organizations with an issue-based interest in FARA. Three commenters submitted comments anonymously.

The comments are summarized below as they relate to each of the 19 questions posed in the ANPRM, along with responses to the comments and an explanation of the changes, if any, to existing regulations that the Department proposes in light of the public comments.

A. Agency

Question 1: Should the Department incorporate into its regulations some or all of its guidance addressing the scope of ''agency,'' which is currently published as part of the FARA Unit's FAQs on its website? See U.S. Dep't of Just., *FARA Frequently Asked Questions* (Apr. 10, 2023), *https://www.justice.gov/nsd-fara/frequently-asked-questions. If so, which aspects of that guidance should be incorporated? Should any additional guidance currently included in the FAQs, or any other guidance, be incorporated into the regulations?*

Each commenter who took a position on this question favored clarifying the Department's definition of ''agency'' by regulation. However, opinions about how best to clarify the definition of ''agency'' were varied.

Six commenters favored incorporating into the proposed rule at least some portion of the Department's guidance document entitled, ''The Scope of Agency Under FARA'' (''Scope of Agency'').[4] The Department wishes to clarify that it has issued sources of guidance on the scope of agency, like this document and certain advisory opinions, that may not be contained within the FAQs referenced in Question 1. One commenter suggested incorporating facts in the *Scope of Agency* guidance document into the regulatory definitions of ''order,'' ''request,'' ''direction,'' and ''control.'' Other commenters proposed using the guidance as a starting point but making clearer in the proposed rule that a foreign principal must exert ''*some level of power over the agent* and must have *some sense of obligation to achieve the principal's requests.*'' One commenter recommended that ''the Department look to other settings in which agencies have defined similar relationships in order to provide detailed, practical guidance on this important threshold question.'' The commenter noted that

> the Department of [the] Treasury has issued detailed regulations to determine whether a foreign person ''controls'' an entity for Committee on Foreign Investment in the

[1] *See* 72 FR 10068 (Mar. 7, 2007).

[2] 86 FR 70787.

[3] One of these comments was submitted twice.

[4] U.S. Dep't of Just., *The Scope of Agency Under FARA* (May 2020), *https://www.justice.gov/media/1070276/dl?inline.*

United States (''CFIUS'') purposes, 31 CFR 800.208. Likewise, the Office of the Director of National Intelligence (''ODNI'') has provided a comprehensive list of factors it considers when assessing ''foreign ownership, control, or influence'' (''FOCI''), 32 CFR 2004.34.

Another commenter stated that the Department ''should draw upon preexisting legal schemas and limit the agency to contractual, common law agency, and quid pro quo arrangements'' to allow ''the Department and the regulated community to draw on extensive case law and guidance defining the scope of quid pro quo deals under other Federal statutes, while meeting the intent of FARA to require registration of persons acting on behalf of foreign principals.''

Three commenters specifically recommended adopting the definition of ''agency'' included in the Restatement (Third) of Agency. For example, one commenter recommended that the Department prioritize simplicity in its regulations by adopting the Restatement test for agency, which the commenter interpreted to require action at the control of the principal and the consent of both parties.

Another commenter suggested including illustrative examples in the regulations and identified particular areas for clarification. The commenter recommended that the Department explain under what circumstances an intermediary relationship will qualify as a principal/agent relationship under FARA, specifically agreeing with the ABA Task Force recommendation that a principal/agent relationship should only exist in intermediary relationships where ''a foreign principal exerts some degree of supervision, direction, control, or provides a majority of the financing *for the activities in question* rather than with respect to other aspects of the intermediary's operations.''

Several nonprofit organizations, or those representing their interests, suggested ways to exclude nonprofit entities from any definition of agency under FARA. For example, one commenter urged the Department to adopt a presumption that tax-exempt nonprofits are not generally acting ''for or in the interest of a foreign principal when conducting activities consistent with their missions'' and past practice—even if those activities are funded in part by a foreign principal.

Contrary to those recommendations, one commenter was opposed to incorporating the factors identified in the Department's guidance document, citing a concern that relying only on the listed factors could excuse ''true agents'' from FARA's registration requirement.

Having considered the public comments, the Department is not proposing to adopt the common-law definition of agency or to codify the Scope of Agency guidance document in the FARA regulations at this time.

First, the recommendations for the Department to adopt the test for common-law agency [5] as the test for agency under FARA are inconsistent with the statutory text and judicial interpretations of the statute. As discussed below, courts have held that the scope of agency under FARA is broader than the scope of agency under the common law. The scope of agency under FARA involves a two-part inquiry that considers both the relationship between the agent and the foreign principal and the activities the agent performs in the principal's interests. With regard to the relationship part of the inquiry, rather than being focused on ''whether the agent can impose liability on his principal,'' as with the common law definition, FARA is concerned with ''whether the relationship warrants registration by the agent to carry out the informative purposes of the Act.'' *Att'y Gen. of U.S.* v. *Irish N. Aid Comm.,* 668 F.2d 159, 161 (2d Cir. 1982) (''*INAC*'') (''Control is an appropriate criterion for a determination of common law agency because the agent contemplated by the Restatement has the power to bind his principal.''). Therefore, for example, whereas the common-law test for agency requires the agent to be subject to the principal's control, agency under FARA may encompass persons who act at the direction or request of a foreign principal.[6] This means that a person may not be an ''agent'' under the Restatement (Third) of Agency but could nonetheless be an ''agent of a foreign principal'' under FARA. *See INAC,* 668 F.2d at 161 (''We agree that the agency relationship sufficient to require registration need not . . . meet the standard of the Restatement (Second) of Agency[.]''); *see also RM Broad., LLC* v. *U.S. Dep't of Just.,* 379 F. Supp. 3d 1256, 1262 (S.D. Fla. 2019) (''[A] common-law agency relationship is unnecessary to satisfy FARA's definition of 'agent of a foreign principal.' ''). Indeed, if a person engages in certain activities even only at the ''request'' of a foreign principal, this may satisfy the two-part test to establish an agency relationship under FARA. *See Att'y Gen. of U.S.* v. *Irish N. Aid Comm.,* 530 F. Supp. 241, 257 (S.D.N.Y. 1981), *aff'd,* 668 F.2d at 161 (noting that the disjunctive use of ''or'' in the statute allows various means of direction or control to satisfy ''agency'' under FARA).

Second, after significant consideration of the issue, the Department believes that the non-exhaustive factors identified in the guidance are not well suited to adaptation as a test in a regulation intended to capture the full scope of the statute's broad concept of agency. In contrast to the CFIUS and FOCI contexts, it would not be feasible to codify the broad range of factors that may inform whether a person qualifies as an agent of a foreign principal under FARA. Instead, analyzing whether a registrant has an agency relationship with a foreign principal is a fact-intensive exercise better suited to the advisory-opinion process, where persons who are unclear as to the applicability of the Act can seek and receive definitive guidance as to whether they have a registration obligation. *See* 28 CFR 5.2 (setting forth the advisory opinion process); U.S. Dep't of Just., *FARA: Advisory Opinions*, *https://www.justice.gov/nsd-fara/advisory-opinions* (collecting FARA Unit advisory opinions by topic).

Question 2: Should the Department issue new regulations to clarify the meaning of the term ''political consultant,'' including, for example, by providing that this term is generally limited to those who conduct ''political activities,'' as defined in 22 U.S.C. 611(o)?

Under the statute, political consultants who act within the United States for or in the interests of the foreign principal must register.[7] The Act defines a political consultant broadly as ''any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party.'' [8]

Of the eight commenters responding to this question, all were in favor of limiting the definition of ''political consultant'' by regulation. For instance, one commenter stated that

because the current definition of ''political consultant'' is so wide-reaching, it is virtually certain that hundreds, if not thousands, of individuals are currently in

[5] *See* Restatement (Third) Of Agency § 1.01 cmt. c (2006) (''As defined by the common law, the concept of agency posits a consensual relationship in which one person, to one degree or another or respect or another, acts as a representative of or otherwise acts on behalf of another person with power to affect the legal rights and duties of the other person. The person represented has a right to control the actions of the agent.'').

[6] *See* 22 U.S.C. 611(c)(1).

[7] 22 U.S.C. 611(c)(1)(ii).

[8] 22 U.S.C. 611(p).

violation without ever realizing their registration obligations. This puts those few individuals that *do* register at a disadvantage, given the burden of registration and quarterly reporting.[9] Clarifying that the definition of ''political consultant'' includes only those who conduct political activities will level the playing field and provide much-needed clarity as to the law's applicability.

Multiple commenters referenced legislative history that suggests the term ''political consultant'' should be read narrowly. One such commenter quoted the 1965 legislative history, S. Rep. No. 89–143, at 9 (1965) (emphasis added by commenter):

> The definition of the term ''political consultant'' would apply to persons engaged in advising their foreign principals with respect to political matters. *However, a ''political consultant'' would not be required to register as an agent unless he is engaged in political activities, as defined, for his foreign principal.* A lawyer who advised his foreign client concerning the construction or application of an existing statute or regulation would be a ''political consultant'' under the definition, but unless the purpose of the advice was to effect a change in U.S. policy he would not be engaged in ''political activities'' and would be exempt from registering with the Department of Justice.

After reviewing the comments and upon further consideration, the Department believes that this issue also is not well suited to the issuance of a regulation. The narrow definition proposed by the commenter would render the definition of ''political consultant'' redundant of the definition of ''political activities,'' and the Department did not identify another potential definition consistent with the statutory language. If a putative agent is unsure about whether the agent's activities are registrable, the agent should request an advisory opinion.

B. Exemptions

The Department posed questions about three specific statutory exemptions and a general question soliciting comments on whether changes to the FARA regulations should be made to address other exemptions. The public comments on each are set forth below, along with a discussion of the proposed changes to the regulations under consideration.

1. Commercial Exemptions

Question 3: Should the Department issue a regulation addressing how 22 U.S.C. 613(d)(2) applies to political activities on behalf of foreign principals other than state-owned enterprises? If so, how should the Department amend the regulation to address when such activities do not serve ''predominantly a foreign interest''?

(a) Commenters Generally Favored Clarification

Most commenters who answered this question favored new regulations to clarify the application of 22 U.S.C. 613(d)(2), which provides an exemption for ''other activities not serving predominantly a foreign interest.'' [10] The relevant current regulation provides that a person engaged in political activities on behalf of a foreign corporation, even if owned in whole or in part by a foreign government, will not be serving predominantly a foreign interest where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation, so long as the political activities are not directed by a foreign government or foreign political party and the political activities do not directly promote the public or political interests of a foreign government or of a foreign political party.[11]

One commenter, in suggesting that the Department clarify the regulation, characterized the opinion of multiple interested parties—business, nonprofits, and law firms. The commenter is concerned that by reading 28 CFR 5.304(c) standing alone, the regulated community is under the misimpression that the only way to qualify for the exemption in section 613(d)(2) is if the entity meets the ''high standard'' set forth in the current regulation. The commenter believes this ''chills activities that are plainly outside of FARA's intended goal of disclosure for 'agents of foreign governments and political parties,' '' potentially requiring a ''privately held and controlled business'' to analyze, for example, whether its efforts to advance its own commercial interests could directly promote a foreign government's public or political interests if they ''simply coincide in even a limited fashion'' with the foreign government's stated views.

The Department agrees that the regulation interpreting the exemption at 22 U.S.C. 613(d)(2) needs revision. The Department has grappled for years with how to apply the current regulation to a broad range of complex scenarios, including the increasing use of state-owned enterprises by other countries for geopolitical and strategic purposes; foreign government funding of, and other influence on, think tanks and non-governmental organizations; the consulting work by former, high-ranking U.S. Government officials on behalf of foreign state allies and adversaries; and U.S. activities of sovereign wealth funds. The Department determined that it needs a more comprehensive regulation that better addresses the variegated relationships and conduct the Department sees in its investigations, and that better guides practitioners on how the Department analyzes this exemption.

The Department considered various approaches to revising the regulation, including one proposed by commenters.

(b) Intentionality Standard Proposal

Multiple commenters suggested that the Department adopt a version of an intentionality standard. Specifically, one commenter suggested the Department ''include an 'intent' or 'purpose' test'' to apply the provisions of section 613(d)(2). The commenter recommended that to the extent ''activities are not conducted with an intent to directly promote any public or political interests of any foreign government,'' the section 613(d)(2) exemption should remain available. In applying this approach, the commenter recommended a regulation that clearly provides that ''mere incidental or unintentional benefit to a foreign state'' does not require registration. Further, the commenter suggested that the Department make clear in a regulation that registration is not required ''where an agent acting on behalf of a principal has no contact with any foreign state (or political party) actors,'' and there is no conveying of any direction or request from any foreign state.

The Department declines to adopt this approach for two reasons. First, such a test is not consistent with the statutory text of the exemption, which makes no express reference to intent. Instead, the exemption requires that the activities not serve (whether intentionally or not) ''predominantly a foreign interest.'' [12] The intent or the purpose of the activities is relevant only to the extent that it could shed light on whether the activities serve predominantly a foreign interest. As set forth below, the approach the Department proposes is more consistent with the statutory language and is better suited to the task of ascertaining whether the activities serve predominantly a foreign interest.

[9] FARA imposes a semiannual, not quarterly, registration requirement. *See* 22 U.S.C. 612(b).

[10] Multiple commenters questioned the way the Department posed the question in the ANPRM, noting that the regulation is not limited to state-owned enterprises. The Department agrees. The question was intended to elicit suggestions for regulations addressing contexts outside those involving state-owned enterprises.

[11] 28 CFR 5.304(c).

[12] 22 U.S.C. 613(d)(2).

Second, adopting exclusively a subjective test to determine who may fall within the exemption would also frustrate the Department's ability to enforce FARA in accordance with its purpose. The Department would have to rebut a person's subjective claim that the ''purpose'' or the ''intent'' of the political activities had not been to benefit the public or political interests of the foreign government or foreign political party. Even if the Department were to adopt a test focused on the outward manifestations of a person's intent, rebutting such evidence would pose similar practical challenges for the Department's enforcement capacity. The Department declines to adopt a test that would so constrain its enforcement of the Act.

(c) Three Principal Proposed Changes to the 22 U.S.C. 613(d)(2) Exemption

Other than the purpose or intent test, commenters did not offer any comprehensive test that would apply in all circumstances. Nor does the Department think one is feasible given the fact-dependent nature of the ''predominant interest'' inquiry.[13] Likewise, commenters proposed a series of tests, each of which would apply in different circumstances such as where state-owned enterprises are or are not at issue, where commercial and non-commercial interests are present, and the like. The Department concluded that this approach would become too unwieldy, given the myriad scenarios to which the exemption may apply.

Rather, based on all the comments received, as well as the Department's decades of experience administering and enforcing the 613(d)(2) exemption, the Department proposes three principal changes to the relevant regulation.

(1) The first change would make clear that this exemption applies to commercial and non-commercial entities alike, so long as the predominant interest being served is not foreign. This change is consistent with the statutory language, which draws no distinction between commercial and noncommercial entities, and addresses the concerns from commenters referenced above (and below in response to Question 5) about the scope of the exemption.

(2) The second change would create a set of four exclusions to the exemption. The exclusions focus only on the relationship (if any) between the activities and a foreign government or foreign political party. If there is no such relationship, then the exclusions will not apply and the exemption will remain available. In each instance, the facts would establish whether the predominant interest served by the activities is foreign. Under the proposal, an agent would be categorically precluded from obtaining the exemption if (1) the intent or purpose of the activities is to benefit the political or public interests of the foreign government or political party; (2) a foreign government or political party influences the activities; (3) the principal beneficiary is a foreign government or political party; or (4) the activities are undertaken on behalf of an entity that is directed or supervised by a foreign government or political party (such as a state-owned enterprise) and promote the political or public interests of that foreign government or political party.

The sources for these proposed exclusions to the 613(d)(2) exemption are the statute, the regulations, relevant legislative history, and the Department's experience over the decades analyzing and applying the exemption.[14]

(A) The first proposed exclusion would cover cases in which there is evidence that the activities are intended to promote or benefit the political or public interests of a foreign government or foreign political party. In such cases, FARA registration should be required. There may be multiple motivations in any given case, but where there is evidence that an agent is motivated specifically to advance the political or public interests of the foreign government or foreign political party, there should exist at least a rebuttable presumption that the foreign interest predominates. In addition, because it may be difficult if not impossible to prove definitively which motivation is primary, the existence of an intent or purpose to advance the foreign interest should be determinative.

(B) The second proposed exclusion would cover cases where a foreign government or foreign political party itself is influencing the activities (as opposed to collateral activities outside the scope of FARA). The Department proposes that it should infer that influence is being exercised deliberately to benefit the foreign government or foreign political party. As with the first exclusion, the balance of the benefit accruing to domestic and foreign interests may be difficult to identify with certainty, but the existence of influence by a foreign government or foreign political party justifies withholding the exemption. Such influence may be exerted directly or through an intermediary; as a result, not every person relevant to the registrable conduct may appreciate that the influence originated with the foreign government or foreign political party. Although directing, controlling, owning, financing, and subsidizing are all ways a foreign government or political party may exert influence over the domestic person or the person's activities, and such influence may be exerted ''directly or indirectly'' (*i.e.,* through an intermediary),[15] such examples do not encompass the full spectrum of ways a foreign government or foreign political party may exert its influence. This proposed exclusion would allow the Department flexibility to determine if such influence is present in any form; if so, the exemption would not be available.

(C) The third proposed exclusion would cover cases where the principal beneficiary of the activities is a foreign government or foreign political party. The Department looked to the legislative history relating to the section 613(d)(2) exemption as well as, by analogy, a current regulation relating to the LDA exemption. In his remarks about this exemption, Senator Fulbright—who had introduced identical legislation in the previous Congress—stated that the bill ''is not designed or intended to impair the normal contacts of company officials with government agencies and the Congress, even if the contacts would constitute 'political activities' as defined in the bill, unless the principal beneficiary of the activities is the foreign subsidiary or parent.'' 111 Cong. Rec. 6985 (1965) (statement of Sen. Fulbright). Further support for adopting this exclusion comes from the current regulatory test for exempting persons from the LDA, under which circumstantial evidence that the foreign government or foreign political party is in fact directing or controlling the

[13] *Cf.* H.R. Rep. No. 89–1470, at 10 (1966) (''Applicability of the exemption will have to be judged on the facts of each case . . . . It is expected that the Department of Justice will, by regulation, establish criteria to provide guidance to agents involved in commercial activities which are of direct or indirect interest to a foreign government.''); S. Rep. No. 89–143, at 12 (''[I]t may prove difficult to decide whether the [section 3(d)(2) exemption] appl[ies] in a given situation. Clearly this is not an area where the law can establish strict criteria.'').

[14] The Department's FARA website contains, in redacted form, over 40 advisory opinions construing the section 613(d)(2) exemption. In addition, the Frequently Asked Questions page of the FARA website contains guidance on ''Exemptions,'' including but not limited to the section 613(d)(2) exemption. U.S. Dep't of Just., *FARA Frequently Asked Questions* (Apr. 10, 2023), *https://www.justice.gov/nsd-fara/frequently-asked-questions.*

[15] *See* 22 U.S.C. 611(c)(1).

activities prevents persons from using the exemption.[16]

(D) The fourth and final proposed exclusion covers cases where a person's activities are directly or indirectly supervised, directed, controlled, or financed in whole or in substantial part by a government of a foreign country or a foreign political party (such as when a state-owned enterprise is involved) and promote that foreign country's or political party's public or political interests. To describe the second element of the exclusion, the Department proposes retaining language from the current regulation that excludes from the exemption activities that promote the public or political interests of a foreign government or foreign political party,[17] though the Department proposes removing the word ''directly'' before ''promote'' from the formulation, for the reasons discussed below in response to Question 4.

(3) The third proposed change would apply when these exclusions do not preclude the exemption. In such cases, the Department has identified a non-exhaustive list of factors to determine whether, given the totality of the circumstances, the predominant interest being served is domestic rather than foreign, such that the exemption should apply. These non-exhaustive factors include, but are not limited to: (1) whether the public and relevant government officials already know about the relationship between the agent and the foreign principal; (2) whether the commercial activities further the commercial interests of a foreign commercial entity more than those of a domestic commercial entity; (3) the degree of influence (including through financing) that foreign sources have over domestic non-commercial entities, such as nonprofits; (4) whether the activities concern U.S. laws and policies applicable to domestic or foreign interests; and (5) the extent to which any foreign principal influences the activities. While in many instances several factors may prove significant, in other instances a single factor may be dispositive; further, depending on the circumstances, the factors may overlap to various degrees (and sometimes completely). The Department expects that advisory opinions and enforcement actions will clarify how these factors apply to a range of activities.

As the discussion below explains, the sources for these factors are the current statute, the current regulations, relevant legislative history, and the Department's experience over the decades analyzing and applying the section 613(d)(2) exemption.

(1) The first proposed factor is whether the public and relevant government officials already know about the relationship between the agent and the foreign principal. The Department derived this factor from former section 611(q) of the Act,[18] which required for the section 613(d)(2) exemption to apply that the ''identity of [the] foreign person is disclosed to the agency or official of the United States with whom such activities are conducted.'' Foreign Agents Registration Act of 1938, Amendments, Public Law 89–486, sec. 1(5), 80 Stat. 244, 245 (1966). The Department proposes carrying that transparency concept forward by considering it as a non-exclusive factor in determining whether registration is required.

(2) The second proposed factor is whether the activities further the commercial interests of a foreign commercial entity more than those of a domestic commercial entity. The Department drew this factor from the current regulation as an initial matter, which considers whose commercial interests are furthered. *See* 28 CFR 5.304(c). Both former section 611(q) and other legislative history reflect the principle that a regulated party ought not lose the exemption simply because its activities further the interests of both the domestic enterprise as well as a related foreign enterprise, so long as the domestic enterprise's interests predominate. *See* Public Law 89–486, sec. 1(5), 80 Stat. at 245; H.R. Rep. No. 89–1470, at 11 (1966). Further, in the Department's experience, whose commercial interests are furthered most by the activities is a useful metric to consider when determining the predominant interest.

(3) The third proposed factor is the amount of influence, including through financing, that foreign sources (whether governmental or private) have over the activities of domestic non-commercial entities. Financing is only one way a foreign principal may exert influence over a domestic entity and its activities, however.[19] Further, in the Department's experience, assessing the extent of a foreign source's influence over domestic non-commercial entities' activities, whatever form it may take, is a useful metric to consider when determining the predominant interest being served.

(4) The fourth proposed factor is whether the activities concern U.S. laws and policies that are more relevant to domestic interests or to foreign interests. The Department identified this factor by looking to legislative history. As the Senate Report noted, ''where the foreign subsidiary of a U.S. parent is concerned with U.S. legislation facilitating investment or expansion of production abroad[,] the locus of the interest will, also, as a general rule, be predominantly (even if not ultimately) foreign.'' S. Rep. No. 88–875, at 12 (1964). In this way, the Department proposes considering whether the activities relate to U.S. laws or policies that are principally of interest or would principally benefit the domestic entity or the foreign entity to determine where the locus or the predominant interest lies.

(5) The fifth proposed factor is the extent to which any foreign principal (as defined in the Act, and not limited to a foreign government or a foreign political party in this context) influences the activities. Here, put simply, the greater the foreign influence involved, the greater the likelihood that this factor will favor a finding that the predominant interests served by the activities are foreign.

The Department proposes the foregoing as a non-exhaustive set of factors because the ''[a]pplicability of the exemption will have to be judged on the facts of each case.'' H.R. Rep. No. 89–1470, at 10. This means there may be other factors that come to light while administering and enforcing this exemption, and the applicability of the exemption must be evaluated in light of the totality of the circumstances, taking all relevant factors into account.

Question 4: Is the language in 28 CFR 5.304(b), (c), which provides that the exemptions in sections 613(d)(1) and (d)(2) do not apply to activities that ''directly promote'' the public or political interests of a foreign government or political party, sufficiently clear? And does that language appropriately describe the full range of activities that are outside the scope of the exemptions because they promote such interests, including indirectly? Should the language be clarified, and, if so, how?

This question elicited responses from eight commenters, all of whom were in favor of clarifying the language referred to in the question. Commenters noted that guidance surrounding the ''directly promote'' standard was not clear and that revised regulations should make more explicit how the Department interprets that phrase. For example, one commenter indicated that the current regulatory language is unduly vague and

[16] *See* 28 CFR 5.307.

[17] *See* 28 CFR 5.304(b), (c).

[18] 22 U.S.C. 611(q) was repealed by the Lobbying Disclosure Act of 1995, which created a public registry of lobbyists for domestic interests.

[19] *See* 22 U.S.C. 611(c)(1).

subjective on its face and that the Department's interpretation of the term ''directly promote'' in various advisory opinions fails to provide the regulated community with a clear and consistent standard to facilitate public understanding and compliance.

The Department agrees that the use of the word ''directly'' in conjunction with ''promotes'' has led to many questions about the distinction between the direct and indirect promotion of a foreign government's or foreign political party's interests. The Department proposes to address this issue by deleting the word ''directly'' from the regulations relating to the exemptions at 22 U.S.C. 613(d)(1) and (d)(2).

The exemption at 22 U.S.C. 613(d)(1) creates a test for determining whether commercial activities are ''private'' when state-owned enterprises are at issue. Besides eliminating the ambiguity these commenters referenced, deleting the word ''directly'' is consistent with the legislative history. For example, the House Report on FARA recognized that a foreign government's otherwise private or commercial activities would not be exempt if ''the foreign agent promotes the political and public interests of a foreign governmental principal.'' H.R. Rep. No. 89–1470, at 10 (emphasis added); *see also* S. Rep. No. 89–143, at 11 (same). The report nowhere distinguishes between direct and indirect promotion.

Accordingly, the Department proposes to revise the regulation's language to exclude from the exemption activities that promote—rather than directly promote—the public or political interests of the foreign government or political party.

The Department also proposes to delete the modifier ''directly'' from the regulation applicable to the exemption at 22 U.S.C. 613(d)(2), which covers activities not predominantly serving a foreign interest. Some commenters expressed concern that the ''directly promote'' test—which forms a key part of the section 613(d)(2) regulation—may require, as one commenter noted, a ''privately held and controlled business'' to analyze ''whether its efforts to advance its own commercial interests could 'directly promote . . . public or political interests' '' of a foreign government or foreign political party. By deleting the word ''directly'' from the proposed rule, the Department has eliminated this concern with respect to such privately held commercial enterprises unless the intent or purpose of their activities is to promote foreign government or foreign political party interests, or a foreign government or foreign political party is the principal beneficiary of the activities. Rather, under the Department's proposed rule, only activities on behalf of an entity that is directed or supervised by a foreign government or political party, such as a state-owned enterprise, that promote the political or public interests of a foreign government or political party would render the agent subject to the exclusion. As with the section 613(d)(1) exemption, removal of the modifier ''directly'' will remove the ambiguity present in the current regulation.

Question 5: What other changes, if any, should the Department make to the current regulations at 28 CFR 5.304(b) and (c) relating to the exemptions in 22 U.S.C. 613(d)(1) and (2)?

Commenters from the nonprofit community suggested revising the regulations implementing section 613(d)(1) and (2) to explicitly include nonprofit activity. For example, one commenter suggested that the Department make clear that the section 613(d)(2) exemption applies equally to charities and commercial organizations. Another commented that the current regulation fails to make clear how a nonprofit organization without trade or commercial operations, as those terms are commonly understood, could benefit from the section 613(d)(2) exemption.

In another instance one commenter stated that the regulation should clarify that the section 613(d)(2) exemption applies in the context of a tax-exempt organization conducting activities in furtherance of its bona fide purpose.

The Department agrees that the proposed rule should make clear that the section 613(d)(2) exemption applies to nonprofit and commercial entities alike, so long as the activities do not serve predominantly foreign interests. The proposed regulatory text at 28 CFR 5.304(c) reflects this change.

2. Exemption for Religious, Scholastic, or Scientific Pursuits

Question 6: Should the Department issue additional or clarified regulations regarding this [bona fide religious, scholastic, academic and scientific pursuits or of the fine arts] exemption to clarify the circumstances in which this exemption applies? If so, how should those additional regulations clarify the scope of the exemption?

The seven commenters who offered a view on the section 613(e) exemption primarily wrote to express the view that the exemption should cover a broader scope of activity. One commenter urged the Department to narrow the definition of ''political activities'' to ensure that term does not capture legitimate and reasonable scholastic, academic, and scientific pursuits.

One commenter suggested that the regulation exempt all architecture, sculpture, painting, music, performing arts, literature, and fictional films. Furthermore, the commenter suggested broadening the applicability of the exemption to include those who engage in political speech, stating that doing so would provide more breathing room to civil society, and would not harm the government's core interest because of parallel protections found in 18 U.S.C. 951.

One commenter suggested that new regulations were not necessary, but that the Department should issue more detailed non-binding interpretive guidance that focuses this exemption on the direction or influence of a foreign government or political party.

The Department does not believe new regulations are necessary to address this exemption. The scope of the exemption has not been a frequently raised question during the advisory-opinion process, as demonstrated by the fact that there have been only five opinions issued on this topic in the last seven years. Given the often context-dependent nature of the inquiry, the Department agrees that it must exercise care and provide reasonable guidance, including through the advisory opinions process, concerning religious, scholastic, academic, and scientific pursuits, and the fine arts. FARA seeks to provide transparency for the U.S. public as to the activities of foreign agents in the United States so that the public can better assess messaging in light of the speaker's status as a foreign agent. The Department encourages the invocation of this exemption for bona fide religious, scholastic, academic and scientific pursuits, or fine arts activity, and encourages parties who are unclear about application of the exemption to their specific circumstances to use the advisory-opinion process pursuant to 28 CFR 5.2.

3. Exemption for Persons Qualified To Practice Law

Question 7: Should the Department amend 28 CFR 5.306(a) to clarify when activities that relate to criminal, civil, or agency proceedings are ''in the course of'' such proceedings because they are within the bounds of normal legal representation of a client in the matter for purposes of the exemption in 22 U.S.C. 613(g)? If so, how should the Department amend the regulation to address that issue?

Multiple law firms or commenters representing the interests of attorneys submitted comments suggesting that the Department clarify the scope of 28 CFR 5.306(a), which interprets the

exemption found at 22 U.S.C. 613(g) for persons qualified to practice law. One respondent commented that the current regulations would appear to require registration for statements to the media that could be made in substantially equivalent form in court without triggering a registration requirement.

Another commenter suggested that the Department identify the types of activities it considers as occurring ''in the course'' of legal proceedings, proposing that public relations, jury selection, media and social media efforts, and other out-of-court proceedings ancillary to in-court representation would not make a lawyer ineligible for the exemption.

One commenter suggested that it was unclear whether, under the current regulations, requesting an advisory opinion from the Department would qualify for the section 613(g) exemption. Under 22 U.S.C. 611(c)(1), however, an attorney seeking an advisory opinion from the FARA Unit about the applicability of the Act to the attorney's client is not in and of itself an act that requires registration under FARA.

One commenter suggested that the changes referenced in the question were unnecessary, however, and that such a change could be counterproductive in the long term because perspectives could shift over time regarding what kinds of activities by lawyers are within the bounds of normal legal representation.

The Department agrees with the majority of commenters who felt that it should clarify § 5.306(a). As revised, the proposed rule would clarify how the exemption applies in light of the realities of modern legal practice. First, proposed § 5.306(a) rephrases for clarity the language of the statutory exemption for persons qualified to practice law who are engaged in legal representation. Second, and in line with one commenter's suggestion, proposed § 5.306(b) would define the statutory term ''legal representation,'' clarifying that it includes activities commonly considered part of client representation in the underlying proceeding so long as they do not constitute political activities; for example, making statements outside of the courtroom or agency hearing room could qualify. The proposed rule is therefore consistent with current guidance in the Frequently Asked Questions section of the Department's FARA website. This guidance notes that the legal representation exemption ''once triggered, may include an attorney's activities outside [judicial or administrative] proceedings so long as those activities do not go beyond the bounds of normal legal representation of a client within the scope of that matter.'' U.S. Dep't of Just., *FARA: Frequently Asked Questions* (April 10, 2023), *https://www.justice.gov/nsd-fara/frequently-asked-questions.* Finally, proposed § 5.306(c) would retain the requirement from the existing regulation that the attorney must disclose that the attorney's representation is on behalf of a specific foreign principal to the court or agency decision maker regardless of whether any court or agency procedures require it.

Question 8: What other changes, if any, should the Department make to 28 CFR 5.306 to clarify the scope of the exemption in 22 U.S.C. 613(g)?

Two commenters commented on the applicability of FARA to non-attorneys. One suggested that non-attorney legal professionals should be eligible for the section 613(g) exemption. That commenter explained that it excludes paralegals and other non-attorney professionals from working on some matters based on a view that otherwise the non-attorney would need to register under FARA. Another commenter opined that registration appears to, but should not be, required for non-attorney researchers who had neither contact with the foreign client nor any role in public outreach on behalf of the foreign client.

The Department does not believe a rule is necessary to address whether non-attorney professionals and other legal support staff engaged in activities supervised by an attorney for or in the interests of a foreign principal are required to register under FARA. To date, no request for an advisory opinion has sought guidance on this issue, and staff supporting exempt legal representation do not commonly register under FARA. The Department also notes that questions regarding activities that are registrable under the Act turn to a significant degree on the nature of the activities themselves rather than the job title(s) of the person(s) engaging in them. While the Department believes that non-attorney legal professionals may fall within an attorney's section 613(g) exemption when providing support services for the exempt work, specific questions about the applicability of the statute to particular facts in such scenarios may be addressed through a request for an advisory opinion rather than formal rulemaking.

4. Additional Clarifications of Statutory Exemptions

Question 9: Are there other aspects of the statutory exemptions that the Department should clarify, whether to make clear additional circumstances in which registration is, or is not, required?

Many commenters who responded to Question 9 requested that the Department clarify the 22 U.S.C. 613(h) exemption from registration under FARA for agents properly registered under the LDA. For example, one commenter stated that the Department had inappropriately narrowed the section 613(h) exemption through its guidance and advisory opinions.

Another commenter wrote to urge the Department to clarify the scope of the section 613(h) exemption. That was especially urgent, the commenter claimed, because of a recent Advisory Opinion noting that the section 613(h) exemption might not apply where a foreign government or political party is one of multiple principal beneficiaries of lobbying activities, which the commenter claimed had engendered significant confusion. The Department acknowledges the confusion to which the commenters refer, and the footnote in the Advisory Opinion to which the commenter referred does not reflect the present enforcement intentions of the Department.[20] The governing standard remains as it is written in the current regulation: ''In no case where a foreign government or foreign political party is the principal beneficiary will the exemption under 3(h) be recognized.'' [21]

One commenter suggested that the Department sharpen its interpretation of the LDA exemption by eliminating the ''principal beneficiary'' standard from its regulations and replacing it with a purpose-based test. The Department declines to propose this approach for the section 613(h) exemption for the same reasons the Department declined to propose it for the section 613(d)(2) exemption. A purpose-based test would shift the burden to a great extent to the Department to ascertain the purpose of certain activity, as viewed from the outside, when it would be the agent who would possess critical probative evidence: the subjective knowledge as to the purpose of its activities. Such a test would frustrate FARA enforcement and undercut transparency under the Act. Rather, the Department will continue to deny the exemption in 613(h) in any situation where a foreign government or foreign political party is the principal beneficiary of the lobbying activity. This language is a good indicator of direction or control by a foreign government or foreign political party. In other words, in instances where a foreign government

[20] *See* 28 CFR 5.2(h) (providing that advisory opinions reflect the ''present enforcement intention'' of the Department).

[21] 28 CFR 5.307.

or political party is the principal beneficiary of the activities, that principal benefit provides circumstantial evidence supporting the fact that the foreign government or foreign political party is likely, in fact, requesting, ordering, directing, or otherwise controlling the activities.

Additionally, commenters suggested changes to one other exemption and an exclusion under the Act. First, one commenter representing the interests of nonprofit organizations suggested that the humanitarian exemption in 22 U.S.C. 613(d)(3) should be read broadly to include not just soliciting or collecting funds for medical aid, food, or clothing, but a broader array of charitable activities. The statutory language, however, is clear that the exemption applies to ''the soliciting or collecting of funds and contributions within the United States to be used *only* for medical aid and assistance, or for food and clothing to relieve human suffering[.]'' [22] The Department cannot expand the scope of a statutory exemption through regulation. *See, e.g., Nat. Res. Def. Council, Inc.* v. *EPA,* 25 F.3d 1063, 1070 (D.C. Cir. 1994).

A second commenter suggested that the Department clarify the exception at 22 U.S.C. 611(d). Under that provision, certain news organizations are excluded from the definition of ''agent of a foreign principal'' when they are engaged in news or journalistic activities including certain activities related to advertising and subscriptions, as long as they are at least 80 percent beneficially owned by U.S. citizens, their directors and officers are U.S. citizens, and they are not influenced in certain ways by a foreign principal or by an agent of a foreign principal. The commenter suggested clarifying that this provision applies to online media platforms that provide news or press services.

The Department agrees with the commenter that there is no sound statutory or policy reason to distinguish between online and traditional print media with respect to this exclusion, and the statutory language does not in fact compel any such distinction. While it is true that an online-only media entity cannot qualify as a publication having mail privileges with the U.S. Postal Service and so cannot rely on that particular criterion in the exclusion, such a media entity could still qualify for the exclusion so long as it otherwise complies with the remaining criteria set forth in section 611(d).[23] Given the plain language of the statute and the generally straightforward interpretation, the Department does not believe that there is any need to clarify section 611(d) by regulation.

C. Inquiries Concerning Application of the Act

The Department asked three questions about the Rule 2 advisory opinion process.

Question 10: Should the Department revise 28 CFR 5.2(i) to allow the National Security Division longer than 30 days to respond to a Rule 2 request, with the time to begin on the date it receives all of the information it needs to evaluate the request? If so, what is a reasonable amount of time?

Those commenters who answered Question 10 were generally opposed to lengthening the 30-day time frame provided in the current iteration of 28 CFR 5.2(i). That said, one commenter offered that a 45- or 60-day response deadline, while problematic for time-sensitive business decisions, would be more realistic if the FARA Unit consistently could issue advisory opinions within those time frames. After considering these comments, the Department is not proposing changes to the current 30-day time frame to respond to advisory opinion requests. The Department notes, however, that 28 CFR 5.2(i) makes clear that the 30-day time frame is tolled for any period when the Department awaits any materials necessary to provide its current enforcement intention.

Question 11: Should the Department include with its published Rule 2 advisory opinions the corresponding request, with appropriate redactions to protect confidential commercial or financial information, so that the public may better understand the factual context of the opinion?

Commenters were generally in favor of the Department publishing the corresponding request with Rule 2 advisory opinions, with six commenters responding that publishing the request would be beneficial. Specifically, one commenter agreed that publishing the corresponding request would provide context helpful for the regulated community. Another responded that releasing the redacted versions of opinion requests would greatly assist the regulated community, but noted the importance of sufficient redactions to protect any trade secrets or similar confidences. On the other hand, one commenter found the current process—in which the Department summarizes the request in the text of the Advisory Opinion—to provide sufficient context without publication of the corresponding request.

After considering comments and reevaluating our current process, the Department is not proposing the publication of incoming requests for advisory opinions. The Department believes doing so would not provide enough benefit to account for the possible drawbacks of the proposed change. Anonymizing and publishing incoming requests would take significant staff hours and would delay the publication online of the redacted advisory opinions as FARA Unit staff consulted with the requester about the proposed redactions. Also, after redaction, this proposed practice is unlikely to provide the regulated community with significantly more material information than the Department's current practice of summarizing all the relevant portions of the incoming request in the published advisory opinion. Finally, the Department is concerned that the possibility of a request being published, with the attendant risk of inadvertent release of confidential business information, could chill interested parties from seeking opinions and thus frustrate the Department's goal of obtaining voluntary compliance with FARA.

Question 12: What other changes, if any, should the Department make to the current process for using advisory opinions pursuant to 28 CFR 5.2?

One commenter suggested that the Department set a specific timeline for posting an advisory opinion after it is issued to a requestor, and that the Department post more conspicuous notices on its website to alert interested parties when new opinions are published online.

The Department already announces publication of new advisory opinions through an announcement on FARA.gov as well as via social media alert, so a new regulation to that effect is unnecessary. And, while the Department believes that a regulation setting a schedule for publishing Rule 2 opinions is also unwarranted because they are already posted in a sequence that appropriately balances expedition with flexibility to accommodate administrative and other particular concerns, the Department is considering setting such a schedule as a matter of internal policy.

Multiple commenters also suggested that the Department should make it easier to search the published advisory opinions for specific text or topics or to access data uploaded to the FARA

[22] 22 U.S.C. 613(d)(3) (emphasis added).

[23] *See, e.g.,* Mar. 14, 2023 Advisory Opinion at 3–4, *https://www.justice.gov/nsd-fara/media/1355041/dl?inline* (finding an online platform to be a news or press service or association within the section 611(d) exclusion).

Unit's website. Again, while the Department does not believe a regulation is necessary to effect this change, it will consider this proposal as part of its efforts to modernize the way such data are made available to the public.

Apart from the commenters' proposals, the Department is also proposing amending its regulations regarding the issuance of advisory opinions to update the method for requesting an advisory opinion, clarify language related to requests for advisory opinions, and expand the information required to be provided with each request for an advisory opinion. The proposed rule would update and streamline the process by requiring that a portal on the FARA website be used for requesting an advisory opinion. In light of some requesters' confusion on this point, the proposed rule would also clarify the current language to emphasize that the Department will not respond to any request for its present enforcement intention that is not in compliance with the regulations. To provide the Department with the context necessary to assess the request, the proposed rule would also expand the information to be provided with each request to include, where applicable, a list of partners, officers, or directors or persons performing the functions of an officer or director, and relevant and material information regarding current or past affiliation(s) with a foreign government or foreign political party. Further, to clarify the required elements of a request for an advisory opinion, the Department is proposing dividing the subparagraphs in the regulation by transferring to its own subparagraph the requirement that all submissions be certified to be true, correct, and complete.

D. Labeling Informational Materials

In the ANPRM, the Department posed a series of questions about defining the term ''informational materials'' as that term appears in 22 U.S.C. 614, labeling informational materials in various contexts, and changing the content of the conspicuous statement on those materials.

Question 13: Should the Department define by regulation what constitutes ''informational materials''? If so, how should it define the term?

Recognizing the broad scope of ''informational materials'' in 22 U.S.C. 614, most commenters responded with only minor suggestions for regulations. For example, one commenter opined that there is no significant confusion about the meaning of ''informational materials'' at present and encouraged the Department to propose a broad definition if it chooses to propose one at all. Two commenters specifically referenced the need for the Department to address electronic forms of information, including websites, instant messaging, and social media content, especially given the statute's use of the term ''prints,'' which would seem to exclude electronic materials. Another commenter suggested that the Department should generally provide more guidance as to the types of materials requiring labelling and filing with the Department, and specifically suggested including details as to the content and formats falling within the definition, as well as illustrative examples. Finally, one commenter suggested adopting a definition that, consistent with FARA's original goal of targeting propaganda, focuses on whether the communication is reasonably adapted or intended to influence the recipient or the public with respect to U.S. policy or the interests or foreign relations of a foreign government or political party.

The Department appreciates commenters' suggestions on how best to define ''informational materials,'' and proposes a new regulation at § 5.100(g) that would tie the definition to the statutory definition of political activities. ''Political activities'' consists of certain efforts to influence the U.S. public or Government regarding U.S. policies or the interests of foreign governments or political parties.[24] The proposed definition of ''informational materials'' would also make clear that materials can qualify as informational materials regardless of how they are transmitted. Other proposed regulations about how to label informational materials distributed through a wide array of media also make that point clear. The Department does not propose a regulation that would exhaustively list the myriad ways informational materials may be transmitted in the modern age, however, because such a list would become outdated through technological innovation. Further, in agreement with some commenters, § 5.401(h) of the proposed rule would confirm that the term ''political propaganda,'' where still found in the Act, is defined to mean the same thing as ''informational materials.''

Finally, the proposed rule would also clarify the term ''request'' in 22 U.S.C. 614(e). Section 614(e) generally requires that information furnished to an agency or official of the Government in the interest of a foreign principal contain a statement that the person is registered under the statute as an agent of that foreign principal. The proposed rule specifies that all communications related to an agent's request regarding information or advice, such as communications to schedule a meeting to discuss the request, are covered by section 614(e). In this way, these ''scheduling'' communications would also require a conspicuous statement about the agent's relationship to the foreign principal.

Question 14: What changes, if any, should the Department make to the current regulation, 28 CFR 5.402, relating to labeling informational materials to account for the numerous ways informational materials may appear online? For example, how should the Department require conspicuous statements on social media accounts or in other communications, particularly where text space is limited?

Many commenters suggested that the Department issue a regulation requiring conspicuous statements on social and electronic media, but respondents were split on the specific instances where such statements were necessary and on ideas for implementation. For instance, one respondent recommended adopting a flexible, standards-based approach applicable across all media platforms, and providing illustrative examples to assist regulated parties. However, that respondent and several others recommended against requiring a conspicuous statement on every digital communication because doing so would preclude the use of certain digital media platforms with limited space for each communication.

More than one commenter recommended looking to practices of other agencies with similar labeling requirements, including the disclaimer requirements for the digital context adopted by the Federal Election Commission and the Federal Trade Commission.

One commenter specifically suggested adopting a two-pronged approach, in which firms distributing digital communications on behalf of a foreign principal would be required to include a conspicuous statement on the account or profile distributing the propaganda, like the one suggested in a recent legislative initiative by Sens. Shaheen and Young, and would also be required to place a marker like a checkmark on each individual communication indicating that it is being distributed on behalf of a foreign principal. Another commenter suggested that the Department should adopt different requirements for different media. For streaming media like audio and video, the conspicuous statement would need to be included at the beginning and end

[24] 22 U.S.C. 611(o).

of every communication. For social media accounts, the conspicuous statement would need to appear on the user's profile and on all posts. For longer form digital media, the conspicuous statements should be included in any biographical information about the writer and at the beginning and end of each post.

In response to the commenters' suggestions, the Department considered the practices of other agencies with respect to social media labeling requirements. While it has incorporated best practices from those agencies' various guidance documents into its proposed rule, the Department did not find any regulations that were appropriate to import wholesale into the FARA context. Instead, in light of the comments received and based on the Department's own analysis of labeling concerns, § 5.401 of the proposed rule would provide a standard labeling requirement for all informational materials that is subject to other requirements in specifically enumerated contexts. Under § 5.401(b) of the proposed rule providing the generally applicable default requirements, the standard label must satisfy the requirements of the conspicuous statement, including a new requirement that it contain the country (or state, territory, or principality) in which the foreign principal is located, and be set forth at the beginning of the materials in the same language as the rest of the materials and in a font and color that are easy to read.

The proposed rule then sets out other contexts that require a different labelling approach. First, as one commenter discussed, for materials that contain the author's byline or biographical information, or the identifying information of a digital author or account, there is a need for transparency through a conspicuous statement in that location. Second, with television and broadcasts (including internet-based audio/visual transmission or television), the Department proposes that different rules need to apply, as set forth in response to Question 15 below. Third, the Department also proposes that still or motion picture films also require different rules to enable the public to see and understand the conspicuous statement in those formats. Fourth, the Department is proposing different requirements to apply when the informational materials are posted on internet websites or platforms. The proposed rule varies depending on whether the registrant has administrative rights (and thus an ability to post conspicuous statements in different parts of the website or platform). In either case, however, the proposed rule would account for situations where the internet platform or website does not provide sufficient space for the full conspicuous statement by requiring that the internet post include an embedded image of the conspicuous statement instead.

Question 15: Should the Department amend the current regulation, 28 CFR 5.402(d), relating to ''labeling informational materials'' that are ''televised or broadcast'' by requiring that the conspicuous statement appear at the end of the broadcast (as well as at the beginning), if the broadcast is of sufficient duration, and at least once per hour for each broadcast with a duration of more than one hour, or are there other ways such information should be labeled?

Two commenters were in favor of amending the regulations as described in Question 15. One commenter opined that additional regulations are unnecessary because existing regulations adequately inform recipients about how to find information about the foreign principal.

The Department considered these views and its own experience administering and enforcing the labeling provisions in this context when drafting the proposed rule. Proposed 28 CFR 5.401(d) would add a requirement that informational materials that are broadcast must be both introduced with and concluded by a statement that reasonably conveys that the person responsible for the materials is an agent; in contrast, the current regulation only requires that such a statement introduce such material. This proposed change would account for the fact that viewers or listeners of real-time broadcasts may tune into the programming when it is already underway, thus missing the initial conspicuous statement. Bookending the statements at the beginning and end of programming would increase the likelihood the conspicuous statements will be viewed or heard by consumers of the content. Similarly, the Department proposes adding a requirement that programming which lasts longer than one hour include a conspicuous statement every hour that the programming runs to increase the likelihood that a viewer or listener will see or hear the statement.

Question 16: Should any changes to regulations relating to the labeling of ''televised or broadcast'' informational materials also address audio and/or visual informational materials carried by an online provider? And, if so, should the regulations addressing labeling of such audio and/or visual information materials be the same as for televised broadcasts or should they be tailored to online materials; and, if so, how?

The few respondents who submitted a comment on this question generally thought that the regulations should be updated so that the requirements for modern information platforms were harmonized with legacy media types. One respondent recommended that the Department strive for parity between digital and analog content so that the resulting filing requirements would be as neutral as possible with respect to technology and platform. Another suggested that the Department update its regulations to account for the growing use of social media influencers in foreign principals' attempts to influence the U.S. public. Finally, another commenter argued that the regulations should require at least the same level of notification for streaming media as they do for traditional televised or broadcast media.

Having considered the foregoing comments, the Department has proposed regulations that would clarify that labeling requirements for ''broadcasts'' include audio-video transmittals made through internet-based websites and other electronic platforms that are reasonably calculated to reach an audience in the United States.

Question 17: Should the Department amend 28 CFR 5.402 to ensure that the reference to the ''foreign principal'' in the conspicuous statement includes the country in which the foreign principal is located and the foreign principal's relation, if any, to a foreign government or foreign political party; and, if so, how should the regulations be clarified in this regard?

Neither of the two commenters who responded specifically to Question 17 believed that the benefit that such a change would have on increased transparency outweighed the burden on registrants. Both noted that the information referenced was already on file and publicly available with DOJ.

Despite these comments, the Department assesses that disclosure of the country (or state, territory, or principality) wherein the foreign principal is located is justified in service of FARA's transparency goals. Corporate foreign principals may have business names that provide no context as to the work of the corporation or its geographic location. Adding the name of the country where the principal is located does not make the disclosures significantly more onerous and does provide important information at the point of viewing for those in the

audience that do not follow up by viewing the information on the public record. Accordingly, the Department proposes a regulation that would require such location information as part of the conspicuous statement.

E. FARA eFile

Question 18: What changes, if any, should the Department make to its regulations to account for the eFile system that was adopted after the regulations were last updated in 2007?

One commenter responded that the Department should undertake a ''comprehensive review'' of its regulations and update them to account for eFile. Several other respondents gave suggestions for improvements to eFile itself and how the information should be submitted to the Department (*e.g.,* in structured data fields to make searches easier).

The Department greatly appreciates these practical recommendations for improvement of its FARA eFile system. The Department has continued to improve upon the eFile system, moving to a web-form fillable format for new registrants in September 2019; that system streamlines the inputting of information, provides for the collection of data in structured data fields, and increases search functionality. The Department finished migration of all active legacy registrants (*i.e.,* those registered prior to September 23, 2019), who had been uploading fillable PDFs to comply with their registration obligations, to the new structured data format for all future filings (*e.g.,* amendments, supplemental statements, exhibits, short forms, informational materials) as of May 28, 2022. The Department agrees that some regulatory changes are necessary to account for technological advancements. Accordingly, proposed §§ 5.3, 5.5, and 5.206 would change how registration statements and other documents are filed as well as how registration fees are paid.

Additionally, the proposed rule would clarify that visits to the FARA Public Office are by appointment only. The FARA Public Office is open to the public for review of certain public records, including whether someone is registered. The vast bulk of those records, however—including the FARA Unit's holdings pertaining to active registrations from 1991 to the present, except for certain short form registration statements containing personally identifiable information—are readily available, at no cost to the public, through the Department's FARA website.

Question 19: Should the Department amend 28 CFR 5.1 to require—separate from the registration statements, supplements, and related documentation—that agents provide their business telephone numbers and business email addresses to facilitate better communications with the FARA Unit?

Commenters were generally in favor of this proposal, and two commenters specifically noted, to the extent business contact information was required, the underlying ostensible need for residential contact information would disappear. The Department believes that it needs both business contact information and residential addresses for effective administration and enforcement of the Act, however. In the Department's experience, having such information is necessary to ensure that the Department can effectively seek overdue filings and the curing of deficient ones. Under the proposed rule, the business contact information would be provided to the Department separately from the registration statement and supplements.

IV. Summary of Proposed Changes to the Regulations

The Department has undertaken a review of the current regulations to identify areas in need of clarification and modernization. Based on the comments received in response to the ANPRM and as discussed in greater detail above, the Department proposes to issue new regulations to provide additional guidance in key areas and to revise, clarify, and modernize existing provisions. The proposed changes to the regulations are summarized below in topic-oriented fashion; for additional detail, see the material accompanying the various questions from the ANPRM set forth above.

The Department proposes new regulations regarding (i) exemptions to FARA's registration requirement; (ii) the filing and labeling of informational materials; and (iii) miscellaneous issues largely to ensure the regulations keep pace with technological changes.

A. Exemptions

FARA contains eight exemptions that allow a person engaging in otherwise covered activities for or in the interests of a foreign principal to be exempt from registration if certain criteria are met. The Department proposes two changes to § 5.304, addressing exemptions for bona fide trade and commerce, or activity that does not serve predominantly a foreign interest, 22 U.S.C. 613(d), and changes to § 5.306 addressing the exemption for activity by attorneys in connection with certain proceedings, investigations, and inquiries, 22 U.S.C. 613(g).

1. 22 U.S.C. 613(d) Exemptions

FARA provides exemptions for persons who engage or agree to engage only in either ''(1) private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal; or (2) in other activities not serving predominantly a foreign interest.'' [25] With regard to the first exemption, the Department proposes two changes to the regulation. The first, to § 5.304(b), would delete the word ''directly'' in the phrase ''directly promote'' to clarify that the exemption does not apply when the agent engages in political activities or where the activities promote—rather than ''directly promote,'' as the current language reads—the political or public interests of a foreign government or foreign political party. Doing so would remove the ambiguity flagged by commenters and would be consistent with legislative history, as explained in Section III.B.1 of this preamble.

The second proposed change affecting § 5.304(b) of the regulation implementing section 613(d)(1) would allow a person or employee of such person who engages or agrees to engage only in promoting bona fide recreational or business travel to a foreign country to come within this exemption where the agent's relationship to a foreign principal is apparent to the public. In the past, the Department has taken the position that such activities are political because recreational tourism ''creates an influx of capital and a host of jobs'' for the local population and has therefore required registration for such activities.[26] The Department has reconsidered that position in the course of analyzing revisions to the FARA regulations. The Department now believes that the promotion of recreational or business tourism is too attenuated from the definition of political activities to warrant imposing FARA registration obligations on agents who promote only recreational or business tourism in foreign countries. Moreover, given that ''[f]oreign governments engage in private activities of a commercial nature'' that—as is the case with promoting recreational tourism—''may not[ ] involve political or policy matters,'' [27] the Department concludes that persons engaged only in

[25] 22 U.S.C. 613(d)(1), (2).

[26] *See, e.g.,* Jan. 20, 1984 Advisory Opinion, *https://www.justice.gov/nsd-fara/page/file/1046156/dl?inline=*.

[27] S. Rep. No. 89–143, at 11.

promoting bona fide recreational or business tourism to foreign countries are engaged in private activities ''in furtherance of the bona fide trade or commerce'' of a foreign principal. 28 CFR 5.304(b). Those activities do not, for purposes of section 613(d)(1), promote the public or political interests of the foreign government or foreign political party. Even without FARA registration for these persons, however, the Department expects the foreign interests to be apparent to the American public because the activities will necessarily identify the specific country to which recreational or business tourism is being promoted and because entities engaged in such work typically incorporate the name of that country into their own brand names.

Regarding the exemption in section 613(d)(2), the Department proposes substantial revisions to the current regulation, 28 CFR 5.304(c), based on both the public comments and our own experience applying the current regulation over the past two decades. There are three proposed changes. The first change would make explicit that, consistent with the plain meaning of the statutory language, the exemption applies to noncommercial interests as well as commercial interests. The public comments were consistent in their request for such clarity. *See* Section III.B.1 of this preamble.

The second change would create a set of four exclusions to the exemption. The exclusions focus only on the relationship (if any) between the activities and a foreign government or foreign political party, which is the key relationship animating the need for FARA registration. The Department has selected specific exclusionary circumstances that are appropriate proxies for the statute's predominant-interest test. Under the proposed rule, an agent would be considered to serve a predominantly foreign interest and categorically precluded from qualifying for the exemption if (1) the intent or purpose of the activities is to benefit the political or public interests of the foreign government or political party; (2) a foreign government or political party influences the activities; (3) the principal beneficiary is a foreign government or political party; or (4) activities on behalf of a state-owned enterprise (or an entity that is directed or supervised by a foreign government or political party) promote the political or public interests of that foreign government or political party.

The third change would apply when none of these exclusions are triggered. In those circumstances, the Department is proposing to replace its current test, which applies only when state-owned enterprises are involved. The Department is instead proposing to adopt a totality-of-the-circumstances test to determine whether the activities in question predominantly serve a foreign or domestic interest. To guide that test, the Department is proposing a set of non-exhaustive common factors that it may consider in future cases. The Department declines to propose a bright-line rule; the subjective test offered by commenters is problematic for the reasons explained in Section III.A.B.1(b) of this preamble, and a test that accounts for all scenarios could not otherwise be identified. The Department also declines to propose a series of tests that would apply separately in particular contexts (*e.g.,* separate tests for the commercial and non-commercial contexts or for cases where a state-owned enterprise was or was not involved) because the Department concluded that these tests quickly became too numerous and unwieldy.

To guide its totality-of-the-circumstances inquiry, the Department proposes factors drawn from components of the legislative history of section 613(d)(2) as well as the Department's decades of experience evaluating this issue. The Department proposes the following non-exhaustive factors: (i) whether the public and relevant government officials already know about the relationship between the agent and the foreign principal; (ii) whether the commercial activities further the interests of the domestic commercial entity more or less than the foreign commercial entity; (iii) the degree of influence (including through financing) that foreign sources have over domestic non-commercial entities such as nonprofits; (iv) whether the activities concern laws and policies applicable to domestic or foreign interests; and (v) the extent to which any foreign principal influences the activities.

2. 22 U.S.C. 613(g) Exemption

FARA provides for an exemption to registration for persons qualified to practice law who engage or agree to engage in legal representation of a disclosed foreign principal before a court or any agency proceedings, investigations, or inquiries.[28] Practitioners have expressed frustration with the regulation's lack of clarity about when activities outside of the courtroom, agency hearing room, or investigation or inquiry may still be covered by the exemption. The proposed rule in § 5.306 would clarify that the attorney of record in any of the covered proceedings, investigations, or inquiries can also provide certain information about the activities to others, such as the press, without losing the exemption. Those hearing or reading the information the attorney provides will recognize that the attorney is acting as the agent of the client and can consider that fact in evaluating the information without the need for the attorney to register.

The proposed rule in § 5.306(b) also would clarify that, to stay within the parameters of the exemption, the attorney's activities outside of the proceeding, investigation, or inquiry must not constitute ''political activities'' within the meaning of FARA. This means, for example, that the attorney could not qualify for the exemption while seeking to persuade persons who are not involved in the proceeding, investigation, or inquiry—such as the public or Congress—to adopt or change foreign or domestic U.S. policy. Doing so goes beyond the bounds of normal legal representation of a specific client in a specific matter and goes to the heart of the transparency goals of FARA and thus requires registration.

B. Informational Materials

The Department is proposing a comprehensive overhaul of FARA regulations regarding ''informational materials,'' largely to keep pace with technological advances.[29] FARA states that any agent who distributes ''informational materials'' [30] to two or more persons must file two copies of those materials with the Department within 48 hours and that, regardless of the number of persons who receive the materials, those materials must contain a conspicuous statement that discloses that they are being distributed on behalf of the foreign principal.[31] Based on the comments received to the ANPRM, as well as the Department's own analysis of the need for regulatory changes, the Department proposes four key changes.

First, in § 5.100(g), the Department proposes defining ''informational materials'' by regulation (for the first time) as any material that the person disseminating it believes or has reason to believe will, or which the person intends to in any way, influence any

[28] *See* 22 U.S.C. 613(g).

[29] The current regulations for filing and labeling informational materials are 28 CFR 5.400 and 5.402, respectively.

[30] In 1995, Congress amended FARA and deleted the statute's antiquated definition of ''political propaganda'' and replaced that term with ''informational materials,'' without providing a definition. *See* 22 U.S.C. 611(j); Lobbying Disclosure Act of 1995, Public Law 104–65, § 9(1)(A), 109 Stat. 699. There is no definition in the current regulations either.

[31] 22 U.S.C. 614(a), (b).

agency or official of the Government of the United States or any section of the public within the United States, with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party. Informational materials that satisfy the proposed definition would require a conspicuous statement that they are being distributed on behalf of the foreign principal.[32] The definition also makes clear that the way the materials are distributed—in print, online, or by any other method—has no bearing on the statutory requirement to file and label them.

Second, in §§ 5.3–5.5 and 5.206, the Department proposes changes to reflect that the Department has adopted a FARA eFile system that makes it easier for new registrants to keep their registrations current and for the public to search for and download information about FARA registrants. One key change, in § 5.400, is that, absent special circumstances, agents will be required to file their informational materials through the eFile system.

Third, in response to frequent calls to update FARA regulations due to technological advances in how informational materials are disseminated (such as over social media), the Department proposes in § 5.401 significant changes relating to how informational materials must be labeled.[33] To enhance transparency, the Department proposes that the conspicuous statement itself include the name of the country or territory where the foreign principal is located because that information may not be evident from the registration materials. The proposed labeling regulations then set forth a standard labeling requirement that will vary slightly depending on the medium through which the materials are disseminated, such as through television, radio, or social media platforms. Each labeling requirement is intended to maximize transparency while considering the nature and limitations of the medium by which the informational materials are disseminated.

Fourth and finally, the Department proposes in § 5.401(h)(2) to clarify that, when an agent requests information or advice from any agency or official of the government (including Congress), those communications—even when they pertain only to scheduling meetings to discuss the request—must contain a statement about the agent's relationship with a foreign principal.[34] This proposed rule would fill a current gap that allows agents to schedule meetings to discuss a request with government officials without ever having to identify the foreign principal for which the request is going to be made until the agent raises the foreign principal's request at the meeting.

C. Other Proposed Changes to the Regulations

The Department proposes two other categories of regulatory changes and various miscellaneous changes to the existing regulations. The first, in § 5.2, relates to the Department's issuance of advisory opinions.[35] The current regulations provide that a person may submit an inquiry to the Department and obtain, for a small fee, a determination of whether FARA applies to current or contemplated activities. Among other changes, the proposed rule would require the inquiries be submitted through the FARA website, expand the information required to be submitted, and clarify who should sign the inquiry.

The second category, in §§ 5.212, 5.600, and 5.800, is a series of proposed provisions necessitated by recent technological changes. These include how registration statements are filed, how registration fees are paid, the limited need for in-person public examination of registration statements when they are available online, and the Department's need for an agent's business email address to expedite communications with the agent.

In addition, the Department proposes a number of conforming changes to the regulations in light of the other changes proposed in this NPRM.

To the extent not already discussed above, these additional proposed changes are as follows, in the order in which they appear in the proposed rule:

(1) For uniformity, all references to the ''FARA Registration Unit'' in part 5 would be replaced by the ''FARA Unit.''

(2) Section 5.1(c) would be amended to add that copies of the Act, and of the rules, regulations, and non-fillable exemplars of forms, may be obtained from the Department's FARA website in addition to, as is currently the case, in hard-copy form upon request without charge from the FARA Unit.

(3) Section 5.2(c) would be amended to require that payment of the filing fee for a Rule 2 advisory opinion must be made electronically via the Department's FARA website.

(4) Section 5.2(d) would be amended to require that a request for a Rule 2 advisory opinion be submitted in writing to the FARA Unit via the Department's FARA website rather than sent to the Assistant Attorney General for National Security.

(5) Section 5.2(e)(4) would be amended for clarity to require the party to include the statutory or regulatory basis for the exemption claimed only in instances in which the party is claiming such an exemption.

(6) New § 5.2(e)(5) would be added to require that, when a request for a Rule 2 advisory opinion is not regarding an individual, the request must include a list of partners, officers or directors or persons performing the functions of an officer or director of the entity and all relevant and material information regarding their current or past affiliation with a foreign government or foreign political party.

(7) Section 5.2(f), previously titled ''Certifications,'' would be retitled ''Required Signatures.'' The substance of the final sentence of current § 5.2(f), which deals with the certification that a request for a Rule 2 advisory opinion is true, complete, and correct, would be incorporated into new § 5.2(h).

(8) The final sentence of § 5.2(g) would be amended to clarify that all subsequent submissions by a party in connection with a request for a Rule 2 advisory opinion should be signed by the same person or persons who signed the original request ''except for good cause,'' to ensure consistency of attestation as to the contents of the submissions.

(9) New § 5.2(h), ''Certifications,'' would be added to incorporate the substance of the sentence that is currently at the end of § 5.2(f), as noted above, and to clarify that the required certification must be made in connection with the initial request for a Rule 2 advisory opinion pursuant to § 5.2(f) and any subsequent submissions of additional information pursuant to § 5.2(g).

(10) New § 5.2(o) would be added to make clear that the Department will not respond to a request for a Rule 2 advisory opinion that is not in compliance with all of the requirements of § 5.2.

(11) Section 5.3 would be revised to remove the requirement that all filings be made in hard copy. Instead, all

[32] 22 U.S.C. 614(b).

[33] The ''Attorney General may by rule define what constitutes a conspicuous statement.'' 22 U.S.C. 614(b).

[34] *See* 22 U.S.C. 614(e) (requiring information furnished by, or a request for information by, an agent of a foreign principal to an agency or official of the Government, including Congress, to contain a statement that the person is an agent of a foreign principal).

[35] *See* 28 CFR 5.2.

filings would be required to be made electronically through the FARA eFile system, which is available through the Department's FARA website. Documents would be deemed filed upon their submission electronically and the payment of registration fees, all through the FARA eFile system.

(12) Section 5.5 would be revised to require that all registration fees shall be paid electronically through the FARA eFile system, doing away with the requirement of payment by cash, check, or money order.

(13) Section 5.100(a) would be amended to add new subsection (13), establishing ''FARA Unit'' as a defined term.

(14) Section 5.202(e) would be amended to eliminate the reference to ''Form OBD–66'' and to state instead that a short form registration statement shall be filed on a form provided by the Department; to require that a short form registrant must file a separate Short Form Registration Statement for each foreign principal represented by such registrant; and that any changes affecting information previously furnished shall be filed as an amendment to the short form registration statement rather than via a new short form registration statement.

(15) Section 5.206(b) would be amended to eliminate typewritten or handwritten filings of registration statements and related documents and to require that all such filings be made through the Department's FARA eFile system.

(16) New § 5.206(e) would be added to specify the circumstances under which a registrant may disclose required information via the uploading of a spreadsheet to the Department's FARA eFile system.

(17) New § 5.212 would be added to require that each registrant provide a business email address and business telephone number, in order to facilitate easier communications with the FARA Unit.

(18) Section 5.302 would be amended to replace the outdated reference to ''Notification of Status with a Foreign Government (Form D.S. 394)'' with ''Notification of Appointment of Foreign Government Employee via the Department of State's electronic system (eGov) or equivalent successor system.''

(19) Section 5.600 would be amended to eliminate the reference to ''political propaganda,'' to state that registration statements and related material required to be filed by a registrant will be available to the public via the Department's FARA website, and to state that to the extent any registration statements or any other publicly available materials filed pursuant to FARA are not available on the FARA website, they may be viewed at the FARA Unit by appointment, during the posted public hours of operation on an official business day.

(20) To eliminate a discontinuity in the numbering of the regulations, current § 5.402 would be re-numbered as § 5.401.

(21) Section 5.800 would be amended to replace the requirement of deposit in the U.S. mails with submission through the Department's FARA eFile system.

(22) Section 5.1101 would be amended to state that copies of the Report of the Attorney General to the Congress on the Administration of the Foreign Agents Registration Act of 1938, as amended, shall be made available to the public on the Department's FARA website free of charge, rather than being sold to the public.

D. The Department's Inability To Redact, via Regulation, Residential Address Information From Online Registration Materials

Although this topic did not come up in the public comments to the ANPRM, the Department examined whether it would be possible to propose a regulation that would allow FARA Unit personnel to redact the residential addresses of FARA registrants from the registration statements and supplements prior to making them publicly available online. Continuing to make this information available online may create privacy and safety concerns for registrants lawfully complying with the requirements of the Act and may discourage registration.

While these privacy and safety issues are of great concern to the Department, the language of the Act does not permit the redaction of residential address information prior to the posting of registration information online. 22 U.S.C. 612(a) sets forth certain information that must be included in a registration statement. Among other things, that provision requires registration statements to include registrants' residential addresses.[36] 22 U.S.C. 616(d)(1) states that the ''Attorney General shall maintain, and make available to the public over the internet . . . an electronic database that includes *the information* contained in registration statements and updates filed under this subchapter; and is searchable and sortable, at a minimum, by *each* of the categories of information described in Section 612(a) of this title'' (emphases added). Section 616(d)(1)(B) requires the database to be searchable and sortable by ''each'' category of information described in section 612(a),[37] which includes the registrant's residential address.[38]

V. Regulatory Certifications

A. Regulatory Flexibility Act

The Attorney General, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and, by approving it, certifies that it would not have a significant economic impact upon a substantial number of small entities. FARA registrants typically tend to fall into several different categories of businesses: law firms, tourist offices operated by foreign governments, advertising agencies, public relations firms, consulting firms, nonprofit organizations, trade associations, foreign political parties, individuals (*e.g.,* consultants, activists) not associated with any formal organization, non-governmental organizations, media outlets, and government relations lobbying firms. As of the publication of this NPRM, there are only about 517 active FARA registrants. Dividing these FARA registrants into the various categories of businesses, and then into the number of such registrants that also qualify as small entities within each category, reveals that the FARA registrants would represent a minuscule percentage of entities in each category that qualify as small entities.

FARA is an important transparency tool used to address foreign influence in the United States. As noted more fully in Section II of this preamble, FARA ensures that the Government and the American people are aware of persons who are acting within this country as agents of foreign principals and are informed about the activities undertaken by such agents to influence public opinion or governmental action on political or policy matters. Congress enacted FARA as a comprehensive legislative framework to be applied uniformly to all persons and activities that fall within its jurisdiction, *i.e.,* to all persons engaging in registrable activities. All FARA registrants bear the same statutory burden because they have chosen to engage in activities that are subject to the jurisdiction of the Act.

The Department took the economic impact of its proposed rule into account during the drafting of this NPRM, with the intent that any incremental economic burden on agents would be outweighed by the clarity and certainty the rule would give to agents and the

[36] 22 U.S.C. 612(a)(1), (2).

[37] 22 U.S.C. 616(d)(1).

[38] *See* 22 U.S.C. 612(a)(1).

transparency they would give to the American public and to American policymakers. For example, the proposed rule would streamline the process of filing registration materials, paying fees, and filing informational materials with the FARA Unit by requiring that all such filings be made via FARA eFile. Additionally, one of the proposed revisions would redound to the benefit of small entities because it would clarify that those who engage only in transparently promoting bona fide recreational or business travel to a foreign country—typically small entities—do not need to register under FARA. And, finally, the proposed rule about labeling informational materials, particularly online, was carefully crafted to require no more labelling than the Department has determined is necessary to ensure adequate transparency, such that it would not unduly burden any FARA registrant, of any size, that is endeavoring to comply with the requirements of the Act.

For these reasons, the Attorney General certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The Department of Justice solicits comments regarding this determination.

B. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Congressional Review Act

This proposed rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

D. Executive Orders 12866, 13563, and 14094 (Regulatory Review)

The Office of Management and Budget (''OMB'') has determined that this rulemaking is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this proposed rule has been submitted to OMB for review. This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation; in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation; and in accordance with Executive Order 14094, ''Modernizing Regulatory Review.''

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

The Department estimates that the proposed revisions and modernization of the implementing regulation will provide greater clarity for all registrants and potential registrants. As discussed in reference to the Regulatory Flexibility Act above, the Department assesses that any incremental economic burden on some agents would be outweighed by the clarity and certainty the regulation would give to all agents and potential agents, and by the transparency the regulation would give to the American public and to American policymakers. For example, the proposed rule will reduce the regulatory burden on those who engage only in transparently promoting bona fide recreational or business travel to a foreign country and will no longer have to register. Likewise, a more detailed system for labeling and filing informational materials will benefit both registrants who disseminate these materials and members of the public who view them.

E. Executive Order 13132 (Federalism)

This proposed rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to specify provisions in clear language.

G. Paperwork Reduction Act of 1995

This proposed rule would call for collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20). 5 CFR 1320.3(c) defines the ''collection of information'' to include reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The requirements introduced by this proposed rule would be related to the existing collections covered by OMB Numbers 1124–0001, 1124–0002, 1124–0003, 1124–0004, 1124–0005 and 1124–0006. Additionally, this proposed rule would result in a one-time decrease in paperwork burdens of FARA applications due to persons who engage only in transparently promoting bona fide recreational or business travel to a foreign country no longer having to register under FARA. There are currently approximately 56 such registrants, and the total number of FARA registrants will therefore decrease on a one-time basis by 56 as a result, although each such respondent would need to file a statement terminating their registration. As the required frequency of the filing of the six forms listed below varies by form and not all 56 such registrants necessarily file all such forms in a typical year, except as expressly provided otherwise with respect to form OMB Number 1124–0002, it is not possible to accurately estimate the differential impact of this one-time reduction in the number of FARA registrants on the aggregate time burden associated with each of these forms.

OMB Number 1124–0001, Registration Statement of Foreign Agents, is filed once, when the respondent initially registers under FARA. Based on historical data from July 2022 to July 2023, if an estimated 119 respondents register annually, with an estimated time burden of 0.75 hours (45 minutes) per respondent, the total estimated annual time burden on these respondents would be approximately 89 hours.

OMB Number 1124–0002, Supplemental Statement to Registration Statement of Foreign Agents, is filed twice annually as assigned by the FARA Unit. The current number of registrants

is approximately 517. If, on a one-time basis, an estimated 56 current registrants who engage only in transparently promoting bona fide recreational or business travel to a foreign country terminate their registrations as a result of this proposed rulemaking, then an estimated 461 respondents would file this form twice annually in the year immediately following the effective date of the final rulemaking. Given an estimated time burden of 1.17 hours (70 minutes) per filing, the total estimated time burden on these respondents would be approximately 1,079 hours in the year immediately following the effective date of the final rulemaking.

OMB Number 1124–0003, Amendment to Registration Statement of Foreign Agents, is filed as needed by respondents. Based on historical data from July 2022 to July 2023, if in a typical year all respondents combined file this form a total of 630 times, with an estimated time burden of 0.75 hours (45 minutes) per filing, the total estimated time burden on these respondents would be approximately 473 hours.

OMB Number 1124–0004, Exhibit B to Registration Statement of Foreign Agents, is filed as needed by respondents. Based on historical data from July 2022 to July 2023, if in a typical year all respondents file this form a total number of 451 times combined, with an estimated time burden of 0.33 hours (20 minutes) per filing, the total estimated time burden on these respondents would be approximately 149 hours.

OMB Number 1124–0005, Short Form to Registration Statement of Foreign Agents, is filed as needed by respondents. Based on historical data from July 2022 to July 2023, if in a typical year all respondents file this form a total of 1,149 times combined, with an estimated time burden of 0.23 hours (14 minutes) per filing, the total estimated time burden on these respondents would be approximately 264 hours.

OMB Number 1124–0006, Exhibit A to Registration Statement of Foreign Agents, is filed as needed by respondents. Based on historical data from July 2022 to July 2023, if in a typical year all respondents file this form a total of 451 times combined, with an estimated time burden of 0.22 hours (13 minutes) per filing, the total estimated time burden on these respondents would be approximately 99 hours.

List of Subjects in 28 CFR Part 5

Aliens, Foreign relations, Reporting and recordkeeping requirements, Security measures.

Accordingly, for the reasons set forth above, the Attorney General proposes to amend part 5 of chapter I of title 28 of the Code of Federal Regulations as follows:

PART 5—ADMINISTRATION AND ENFORCEMENT OF THE FOREIGN AGENTS REGISTRATION ACT OF 1938, AS AMENDED

■ 1. The authority citation for 28 CFR part 5 continues to read as follows:

Authority: 28 U.S.C. 509, 510; Section 1, 56 Stat. 248, 257 (22 U.S.C. 620); title I, Pub. L. 102–395, 106 Stat. 1828, 1831 (22 U.S.C. 612 note).

■ 2. Amend § 5.1 by revising paragraph (c), to read as follows:

§ 5.1 Administration and enforcement of the Act.

* * * * *

(c) Copies of the Act, the rules, regulations, non-fillable exemplars of forms prescribed pursuant to the Act, and information concerning the foregoing may be obtained on the Department's FARA website and upon request without charge from the National Security Division, FARA Unit, Department of Justice, Washington, DC 20530.

* * * * *

■ 3. Amend § 5.2 by:
■ a. Changing the designations of paragraphs (h) through (m) to paragraphs (i) through (n);
■ b. Revising paragraphs (c), (d), (e)(4), (f), and (g); and by
■ c. Adding new paragraphs (e)(5), (h), and (o).

The revisions and additions read as follows:

§ 5.2 Inquiries concerning application of the Act.

* * * * *

(c) *Fee.* All requests for statements of the Department's present enforcement intentions must be accompanied by a non-refundable filing fee submitted in accordance with § 5.5. Payment of the filing fee shall be made electronically via the Department's FARA website.

(d) *Submission.* A review request must be submitted in writing to the FARA Unit through the Department's FARA website.

(e) * * *

(4) In cases where a party is seeking an exemption or exclusion, the applicable statutory or regulatory basis for the exemption or exclusion claimed.

(5) In cases where a request is not for or regarding an individual, a list of partners, officers or directors or persons performing the functions of an officer or director of the entity and all relevant and material information regarding their current or past affiliation with a foreign government or foreign political party.

(f) *Required Signatures.* If the requesting party is an individual, the review request must be signed by the prospective or current agent, or, if the requesting party is not an individual, the review request must be signed on behalf of each requesting party by an officer, a director, a person performing the functions of an officer or a director of, or an attorney for, the requesting party.

(g) *Additional information.* Each party shall provide any additional information or documents the National Security Division may thereafter request in order to review a matter. Any information furnished orally shall be confirmed promptly in writing. All submissions shall be signed by the same person or persons who signed the initial review request, except for good cause.

(h) *Certifications.* Each such person signing a review request pursuant to § 5.2(f) or a submission of information pursuant to § 5.2(g) must certify that the document(s) contain a true, correct, and complete disclosure with respect to the proposed conduct or additional information described.

* * * * *

(o) The Department will not respond to any request for its present enforcement intentions that is not in compliance with the provisions of this section.

* * * * *

■ 4. Revise § 5.3 to read as follows:

§ 5.3 Filing of a registration statement.

All registration statements and supplements, amendments, exhibits thereto, and other documents and papers filed pursuant to the Act are required to be filed using the Department's FARA eFile system, which can be accessed through the Department's FARA website. Documents shall be deemed to be filed upon submission and payment of registration fees through FARA eFile.

* * * * *

■ 5. Amend § 5.5 by:
■ a. Revising paragraph (a);
■ b. In paragraph (b) removing ''FARA Registration Unit'' where it appears and adding in its place ''FARA Unit.''
■ c. In paragraphs (b), (c), (e), (f), and (g), removing ''Registration Unit'' each place it appears and adding in its place ''FARA Unit.''

The revision reads as follows:

§ 5.5 Registration fees.

(a) A registrant shall pay a registration fee with each initial registration statement (including an Exhibit A for one foreign principal) filed under § 5.200 and each supplemental registration statement filed under § 5.203 at the time such registration statement is filed. The registration fee shall be paid through the Department's FARA website using the FARA eFile system.

* * * * *

■ 6. Amend § 5.100 by:

■ a. In paragraph (a)(6) removing ''Registration Unit'' each place it appears and adding in its place ''FARA Unit''; and

■ b. Adding paragraphs (a)(13) and paragraph (g).

The additions read as follows:

§ 5.100 Definition of terms.

* * * * *

(13) The term *FARA Unit* means the Foreign Agents Registration Act Unit, National Security Division, U.S. Department of Justice.

* * * * *

(g) The term *informational materials,* as used in section 4 of the Act, shall be deemed to include any material that the person disseminating it believes or has reason to believe will, or which the person intends to in any way, influence any agency or official of the Government of the United States or any section of the public within the United States, with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party. The manner or form of dissemination, whether in print, electronic, or otherwise, does not change whether material falls under this definition.

§§ 5.200 and 5.201 [Amended]

■ 7. Amend §§ 5.200(b), 5.201(a)(1), 5.201(a)(2), and 5.201(b) by removing ''Registration Unit'' each place it appears and adding in its place ''FARA Unit.''

■ 8. Amend § 5.202 by revising paragraph (e), to read as follows:

§ 5.202 Short form registration statement.

* * * * *

(e) The short form registration statement shall be filed on a form provided by the Department. When required to file a short form registration statement, the person rendering services shall file a separate short form registration statement for each foreign principal represented by the person. Any change affecting the information furnished with respect to the nature of the services rendered by the person filing the statement, or the compensation the person receives, shall require the filing of an amendment to the short form registration statement within 10 days after the occurrence of such change. There is no requirement to file exhibits or supplemental statements to a short form registration statement.

§§ 5.204 and 5.205 [Amended]

■ 9. Amend §§ 5.204(a) and 5.205(a) by removing ''Registration Unit'' each place it appears and adding in its place ''FARA Unit.''

■ 10. Amend § 5.206 by revising paragraph (b) and adding paragraph (e) to read as follows:

§ 5.206 Language and wording of registration statement.

* * * * *

(b) A statement, amendment, exhibit, or notice required to be filed under the Act shall be filed through the Department's FARA eFile system.

* * * * *

(e) Any response to an item on each pertinent form that allows a registrant to disclose information by uploading a comma-separated-value (''csv'') spreadsheet to the Department's FARA eFile system shall be made using a csv spreadsheet template provided on the Department's FARA website. Registrants may populate the spreadsheet template in advance and upload the information into the Department's FARA eFile system. Only spreadsheets provided on the Department's website may be uploaded to the Department's FARA eFile system.

■ 11. Add § 5.212, to read as follows:

§ 5.212 Provision of business contact information.

Each registrant shall provide, separate from the registration statement, a business email address and business telephone number, to facilitate easier communications with the FARA Unit.

■ 12. Revise § 5.302 to read as follows:

§ 5.302 Exemptions under sections 3(b) and (c) of the Act.

The exemptions provided by sections 3(b) and (c) of the Act shall not be available to any person described therein unless such person has filed with the Secretary of State an accepted Notification of Appointment of Foreign Government Employee via the Department of State's electronic system (eGov) or equivalent successor system.

■ 13. Amend § 5.304 by:

■ a. Revising paragraphs (b) and (c);

■ b. Redesignating paragraph (d) as paragraph (e); and

■ c. Adding a new paragraph (d).

The addition and revisions read as follows:

§ 5.304 Exemptions under section 3(d) of the Act.

* * * * *

(b) For the purpose of section 3(d)(1) of the Act:

(1) Activities of an agent of a foreign principal as defined in section 1(c) of the Act, in furtherance of the bona fide trade or commerce of such foreign principal, shall be considered ''private,'' even though the foreign principal is owned or controlled by a foreign government, so long as the activities do not promote the public or political interests of the foreign government.

(2) Any person or employee of such person who engages or agrees to engage only in transparently promoting bona fide recreational or business travel to a foreign country shall be deemed to be engaging or agreeing to engage in private and nonpolitical activities in furtherance of the bona fide trade or commerce of a foreign principal.

(c) For purposes of section 3(d)(2) of the Act, this exemption is available to an agent of a foreign principal engaged in activities for or in the interests of commercial and non-commercial entities alike, so long as the activities do not serve predominantly a foreign interest.

(d) For purposes of section 3(d)(2) of the Act:

(1) The activities of an agent of a foreign principal serve predominantly a foreign interest, and the exemption is unavailable, where any of the following is true:

(i) The intent or purpose of the activities is to promote the political or public interests of a foreign government or foreign political party;

(ii) A foreign government or foreign political party influences the activities;

(iii) The principal beneficiary of the activities is a foreign government or foreign political party; or

(iv) In the case of a person whose activities are directly or indirectly supervised, directed, controlled, or financed in whole or in substantial part by a government of a foreign country or a foreign political party, the activities promote the public or political interests of a foreign government or of a foreign political party; and

(2) In cases in which the exclusions in paragraph (d)(1) of this section do not preclude the exemption, additional factors will inform an analysis as to whether the activities nonetheless serve predominantly a foreign interest. Such factors include:

(i) Whether the relationship to and identity of any foreign principal is open and obvious to the public and explicitly disclosed to any agency or official of the United States with whom such activities are conducted;

(ii) Whether, in the case of a domestic commercial entity, the activities further the bona fide commercial, industrial, or financial interests of that domestic entity as much or more than the commercial, industrial, or financial interests of a related foreign commercial entity;

(iii) In the case of an agent of a non-commercial or nonprofit organization located in the United States, the extent to which the activities of the organization are influenced by a foreign entity or concern a foreign jurisdiction, including the extent to which domestic sources rather than foreign ones fund the activities of the organization;

(iv) Whether the activities concern laws or policies applicable to the U.S. operations or interests of the domestic person; and

(v) The extent to which a foreign principal influences the activities of the domestic person.

* * * * *

■ 14. Revise § 5.306 to read as follows:

§ 5.306 Exemption under section 3(g) of the Act.

(a) Any person qualified to practice law who engages or agrees to engage in the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States may be entitled to the section 3(g) exemption provided such representation does not extend beyond the bounds of normal legal representation as described in paragraph (b) of this section.

(b) ''Legal representation'' includes:

(1) Activities by retained and disclosed counsel intended to influence or persuade agency personnel or officials in the course of judicial proceedings; criminal law or civil enforcement inquiries, investigations, or proceedings; or agency proceedings conducted on the record, concerning the disclosed foreign principal; and

(2) Activities other than political activities, by the same counsel, that fall within the bounds of normal legal representation and involve providing information about the aforementioned proceeding, inquiry, or investigation, during the pendency of that proceeding, inquiry, or investigation to persons other than the agency or official decision-makers.

(c) Regardless of whether court or agency procedures require it, the attorney engaged in legal representation on behalf of a foreign principal before a court of law or an agency of the Government of the United States must disclose the attorney's foreign principal to the court or agency personnel or officials before whom the attorney appears.

■ 15. Amend § 5.400 by

■ a. In paragraphs (a), (b), and (c), removing ''Registration Unit'' each place it appears and adding in its place ''FARA Unit''; and

■ b. Adding paragraphs (d) and (e).

The additions read as follows:

§ 5.400 Filing of informational materials.

* * * * *

(d) Unless the format of the informational materials is incompatible with the Department's FARA eFile system and the Department has granted permission to file the materials by an alternative and approved method, informational materials shall be filed with the Attorney General through the Department's FARA eFile system.

(e) Unless otherwise directed by the Assistant Attorney General, screen captures, or contemporaneous reproductions of all informational materials referenced in § 5.401(f)–(g), shall be filed as a PDF or other standard electronic file format compatible with the Department's FARA eFile system.

■ 16. Add § 5.401 to read as follows:

§ 5.401 Labeling of informational materials; other requirements.

(a) *Definition of a ''conspicuous statement.''* Except as set forth specifically in paragraphs (b) through (g) of this section, a conspicuous statement placed on informational materials must contain the language set forth in section 4(b) of the Act as well as the name of the foreign principal, the country (or state, territory, or principality) in which the foreign principal is located, the FARA registration number, and note that further information is available via the FARA website of the Department of Justice.

(b) *Default labeling requirement.* Subject to the additional or different requirements set forth in paragraphs (c) through (g) of this section when applicable, informational materials shall be deemed to contain a conspicuous statement if they contain a label satisfying the requirements of section 4(b) of the Act and paragraph (a) of this section at the beginning of the materials in the language or languages used therein and in a font size and color that are easy to read.

(c) *Author.* When informational materials contain an author's byline, signature block, or biographical information, the conspicuous statement must be placed in the byline, signature block, or biographical information in addition to the beginning of the materials, as set forth in paragraph (b) of this section.

(d) *Televised or broadcast.* (1) When informational materials are televised or broadcast, they must contain a conspicuous statement at the beginning and the end of the informational materials. If the running time for the informational materials exceeds one hour, then the conspicuous statement must be repeated once per hour in addition to occurring at the beginning and at the end of the informational materials. If the informational materials are presented in audio only, then the conspicuous statement must be made audibly in a cadence that is easy for listeners to comprehend. If the informational materials are presented in an audio-visual format, then the conspicuous statement must be made audibly in a cadence that is easy for listeners to comprehend and must appear on the screen long enough to be noticed, read, and understood by the viewer.

(2) As used in this part, the term ''broadcast'' includes, but is not limited to, transmittal reasonably calculated to reach an audience in the United States through an internet-based website, mobile application, television network or radio frequency, cable or satellite service, or telephonic message.

(e) *Still or motion picture film.* An agent of a foreign principal who transmits or causes to be transmitted in the U.S. mails or by any means or instrumentality of interstate or foreign commerce a still or motion picture film which contains informational materials shall insert at the beginning, or, if it is a motion picture film, at the beginning and at the end, a statement that satisfies the requirements of section 4(b) of the Act and paragraph (a) of this section. For a still, the conspicuous statement shall be in a font size and color that are easy to read. For a motion picture, the conspicuous statement must be made audibly in a cadence that is easy for listeners to comprehend, must appear in a font size and color that are easy to read and that stand out against the background, and must appear on the screen long enough to be noticed, read, and understood by the viewer.

(f) *Internet website or platform for which registrant has administrative rights.* Informational materials posted by a registrant on an internet platform or website, which is hosted or controlled by the registrant, or for which the registrant otherwise has administrative rights, shall contain a conspicuous statement that satisfies the requirements

of section 4(b) of the Act and paragraph (a) of this section, in a font size and color that are easy to read and that stands out against the background, on the website ''home'' page and on the website ''about'' page. The conspicuous statement on these pages shall also include a hyperlink to the registrant's filings on the Department's FARA website. Each individual post to the website for or in the interests of the registrant's foreign principal shall bear the conspicuous statement, with a hyperlink to the registrant's filings on the Department's FARA website. If the internet platform or website does not provide sufficient space for the full conspicuous statement, as set forth in section 4(b) of the Act and paragraph (a) of this section, the registrant or anyone acting on the registrant's behalf must include in each comment or post on the internet platform or website an embedded image of the conspicuous statement on the face of the comment or post; that image shall contain the term ''FARA,'' the registrant's registration number, and an electronic link to the registrant's filings on the Department's FARA website. The conspicuous statement in the embedded image must be in a font size and color that are easy to read and that stand out against the background.

(g) *Internet website or platform for which registrant does not have administrative rights.* Informational materials posted by a registrant on an internet platform or website, which is not hosted or controlled by the registrant, or for which the registrant does not otherwise have administrative rights, shall include the conspicuous statement as set forth in section 4(b) of the Act and paragraphs (a) and (b) of this section. Each individual post to the website for or in the interests of the registrant's foreign principal shall bear the conspicuous statement, with a hyperlink to the registrant's filings on the Department's FARA website. If the internet platform or website does not provide sufficient space for the full conspicuous statement, as set forth in section 4(b) of the Act and paragraph (a) of this section, the registrant or anyone acting on the registrant's behalf must include in each comment or post on the internet platform or website an embedded image of the conspicuous statement on the face of the comment or post along with the term ''FARA'' with the registrant's registration number containing an electronic link to the registrant's filings on the Department's FARA website. The conspicuous statement in the embedded image must be in a font size and color that are easy to read and that stand out against the background.

(h) *Defined terms.* For the purpose of section 4(e) of the Act:

(1) The term ''political propaganda'' has the same meaning as ''informational materials,'' the labeling of which is governed by paragraphs (a) through (g) of this section;

(2) Any ''request'' made to any agency or official of the Government for or in the interests of a foreign principal includes all communications related to that request even if the communication itself does not contain a specific request for information or advice within the meaning of section 4(e); for example, all communications, oral or written, involved in scheduling a meeting to discuss the requested information or advice must be prefaced with or accompanied by a true and accurate statement to the effect that such a person is registered as an agent of a foreign principal, as required by section 4(e);

§ 5.402 [Removed]

■ 17. Remove § 5.402.

■ 18. Revise § 5.600 to read as follows:

§ 5.600 Public examination of records.

Registration statements and supplements, amendments, exhibits thereto, informational materials, and Dissemination Reports are available to the public on the Department's FARA website. To review any such statements or any publicly available materials filed pursuant to FARA not available on the Department's FARA website, members of the public shall schedule an appointment through the FARA Unit to examine such records on an official business day, during the posted public office hours of operation.

§ 5.601 [Amended]

■ 19. In § 5.601 amend paragraphs (a), (b), and (c) by removing ''Registration Unit'' each place it appears and adding in its place ''FARA Unit.''

■ 20. Revise § 5.800 to read as follows:

§ 5.800 Ten-day filing requirement.

The 10-day filing requirement provided by section 8(g) of the Act shall be deemed satisfied if the amendment to the registration statement is submitted through the Department's FARA eFile system no later than the 10th day of the period.

■ 21. Revise § 5.1101 to read as follows:

§ 5.1101 Copies of the report to Congress.

Copies of the report to Congress mandated by 22 U.S.C. 621 shall be made available to the public on the Department's FARA website free of charge.

Dated: December 19, 2024.

Merrick B. Garland,

Attorney General.

[FR Doc. 2024–30871 Filed 12–31–24; 8:45 am]

BILLING CODE 4410–PF–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 14 and 64

[CG Docket Nos. 23–161, 10–213, 03–123; FCC 24–95; FR ID 268783]

Access to Video Conferencing

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) seeks comment on whether to amend the accessibility rules for interoperable video conferencing services (IVCS) to include additional performance objectives addressing text-to-speech and speech-to-speech functionality; automatic sign-language interpretation; additional user interface control functions; access to video conferencing for people who are blind or have low vision; and access to video conference for people with cognitive or mobility disabilities. The Commission also seeks further comment on whether and how the telecommunications relay services (TRS) Fund should support team interpreting in video conferences and whether additional rules are needed to facilitate the integration and appropriate use of TRS with video conferencing.

DATES: Comments are due February 3, 2025. Reply comments are due March 3, 2025.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 23–161, 10–213, and 03–123 by the following method:

• *Federal Communications Commission's Website: https://www.fcc.gov/ecfs/filings.* Follow the instructions for submitting comments.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–2716, or *William.Wallace@fcc.gov;* or Ike Ofobike, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–1028, or *Ike.Ofobike@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*), document FCC 24–95, adopted on September 26, 2024, released on September 27, 2024, in CG Docket Nos. 23–161, 10–213, and 03–123. This summary is based on document FCC 24–95, the full text of which can be accessed electronically via the Commission's Electronic Document Manage System website at *https://www.fcc.gov/edocs,* or via the Commission's Electronic Comment Filing System (ECFS) website at *https://www.fcc.gov/ecfs.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments. Comments may be filed using ECFS.

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.
- To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

Ex Parte Rules. This proceeding shall be treated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Providing Accountability Through Transparency Act: The Providing Accountability Through Transparency Act, Public Law 118–9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of the *FNPRM* is available at *https://www.fcc.gov/proposed-rulemakings.*

Initial Paperwork Reduction Act of 1995 Analysis

Document FCC 24–95 may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

Background

1. Under section 716 of the Communications Act, as amended (the Act), 47 U.S.C. 617, providers of advanced communications services (ACS) and manufacturers of equipment used for ACS must make such services and equipment accessible to and usable by people with disabilities, if achievable. Service providers and manufacturers may comply with section 716 of the Act either by building accessibility features into their services and equipment or by choosing to use third-party applications, peripheral devices, software, hardware, or customer premises equipment (CPE) that are available to individuals with disabilities at nominal cost. If accessibility is not achievable through either of these means, then manufacturers and service providers must make their products and services compatible with existing peripheral devices or specialized CPE commonly used by people with disabilities to achieve access, subject to the achievability criterion. The Commission is directed to adopt ''performance objectives to ensure the accessibility, usability, and compatibility of advanced communications services and the equipment used for such services.''

2. The Act defines *advanced communications services* as: (A) interconnected Voice over internet Protocol (VoIP) service; (B) non-interconnected VoIP service; (C) electronic messaging service; (D) interoperable video conferencing service; and (E) any audio or video communications service used by inmates for the purpose of communicating with individuals outside of the correctional facility where the inmate is held, regardless of technology used. 47 U.S.C. 153(1). *Interoperable video conferencing service,* in turn, is defined as: A service that provides real-time video communications, including audio, to enable users to share information of the user's choosing. 47 U.S.C. 153(27).

3. *Telecommunications Relay Services and Interoperable Video Conferencing Services.* Enacted in 1990, Title IV of the Americans With Disabilities Act (ADA), codified as section 225 of the Act, directs the Commission to ''ensure that interstate and intrastate

telecommunications relay services are available, to the extent possible and in the most efficient manner,'' to people in the United States with hearing or speech disabilities. TRS are defined as ''telephone transmission services'' enabling such persons to communicate by wire or radio ''in a manner that is functionally equivalent to the ability of [a person without hearing or speech disabilities] to communicate using voice communication services.'' There are currently three forms of internet-based TRS: Video Relay Service (VRS) ''allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment and a live communications assistant (CA);'' Internet Protocol Relay Service (IP Relay) allows an individual with a hearing or speech disability to communicate with voice telephone users by transmitting text via the internet; and internet Protocol Captioned Telephone Service (IP CTS) permits a person with hearing loss to have a telephone conversation while reading captions of what the other party is saying on an internet-connected device. The provision of internet-based TRS is supported by the Interstate TRS Fund, maintained through mandatory contributions from providers of telecommunications service, interconnected VoIP service, and non-interconnected VoIP service. Three non-internet-based forms of TRS—traditional TRS using text telephony (TTY), Captioned Telephone Service (CTS), and Speech-to-Speech Relay (STS)—are also supported in part by the TRS Fund and are available through state TRS programs.

4. To address concerns about the availability of TRS on video conferencing platforms, the Commission requested the Disability Advisory Committee (DAC) to study the matter. In its 2022 report, the DAC recommended that the FCC resolve these concerns by: facilitating a technical mechanism for TRS providers to natively interconnect TRS services, including video, audio, captioning, and text-based relay to video conferencing platforms; ensuring that users can seamlessly initiate TRS from the provider of their choice on any video conferencing platform; addressing the integration of CAs and the overall accessibility challenges of video conferencing platforms; and, clarifying the legal ability of TRS providers to seek compensation for service provided for video conferences from the TRS Fund.

5. In 2023, the Commission proposed IVCS-specific amendments to the performance objectives in the part 14 rules on accessibility of ACS and amendments to the TRS rules to authorize and facilitate the provision of TRS in video conferences. 88 FR 52088, September 7, 2023 (*2023 Video Conferencing Notice*). Specifically, the Commission proposed to require IVCS providers to include speech-to-text (*i.e.,* captioning of all voice communications) and text-to-speech capability, to enable the use of sign language interpreting, and to include accessibility settings in the user interface controls.

6. Regarding its TRS rules, the Commission proposed to clarify that the integrated provision of TRS in video conferences can be supported by the Interstate TRS Fund. The Commission also proposed additional rule amendments specific to video conferences, addressing VRS user validation and call detail supporting compensation requests; participation of VRS CAs and the use of multiple CAs and multiple VRS providers; and the ability of VRS users and CAs to turn off their cameras when not actively participating in a video conference. Regarding TRS generally, the Commission proposed to amend the confidentiality requirements for TRS CAs and providers in the context of video conferences and prohibit exclusivity agreements between TRS providers and IVCS providers. Finally, the Commission sought comment on how to avoid TRS substituting for accommodations for individuals with disabilities that employers, educational institutions, health care organizations, and government agencies are required to provide under other applicable laws, including whether to allow TRS users to reserve a CA in advance of a video conference.

7. On September 27, 2024, the Commission released the *2024 Video Conferencing Second Report and Order (2024 Video Conferencing Order),* published at 89 FR 100878, December 13, 2024, adopting new or modified performance objectives to define the outcomes needed for IVCS accessibility.

Part 14 Issues

8. In the *FNPRM,* the Commission seeks additional comment on whether to adopt certain performance objectives proposed in the *2023 Video Conferencing Notice* or in comments on that *Notice,* for which the current record is insufficient to enable a full assessment.

9. Given the emergence of video conferencing as a basic communication vehicle for almost all Americans, and the inconsistent implementation of accessibility to date in the video conferencing environment, the Commission seeks to assess whether additional, more specific performance objectives are needed for ensuring accessibility and usability in the specific context of IVCS. Like all the performance objectives currently included in part 14 of the Commission's rules, these performance objectives, if adopted, would further define what ''accessible'' and ''usable'' mean in the IVCS context. IVCS service providers and manufacturers would be required to meet these objectives to the extent that they are achievable. However, the Commission also seeks to ensure that any additional IVCS performance objectives it adopts are relevant to various types of IVCS and are currently achievable by at least some IVCS providers. The Commission seeks to avoid limiting the incentives and opportunities for innovative design in this rapidly developing industry sector, or adopting rules so specific as to constitute *de facto* mandatory technical standards. In this regard, the Commission notes that § 14.20(b)(1) of its rules requires ACS providers and manufacturers to ''consider performance objectives set forth in § 14.21 of its rules at the design stage as early as possible.'' 47 CFR 14.20(b)(1). In some instances, adopting more specific performance objectives may help focus the accessibility design processes of IVCS providers on solutions that are most likely to be relevant, effective, and achievable. In other instances, more specific performance objectives might unnecessarily constrain design choices.

10. Regarding each of the proposals discussed below, the Commission seeks further comment on the specific benefits and costs of the proposal, including: How would the proposed performance objective promote accessibility of IVCS for people with disabilities? Is the relevant accessibility problem already sufficiently addressed by the more general performance objectives set forth in the existing rules? Is the proposed performance objective likely to be achievable for at least some IVCS providers? For example, are there commercially available products or services that would meet the performance objective? Would the proposed performance objective unduly constrain the design of video conferencing platforms and services—and if so, how, specifically would it do so?

11. The Commission emphasizes that commercial availability, or lack thereof, is not dispositive of whether a performance objective is likely to be achievable. However, it may be relevant, along with other information, to a preliminary assessment of the overall likelihood that a performance objective

can be accomplished by at least some IVCS providers with reasonable effort or expense.

12. The Commission also seeks comment on whether each proposed performance objective is relevant and applicable to all IVCS, or only certain subcategories of IVCS? The IVCS subcategory encompasses a wide variety of video communication services. Some, like Zoom, Google Meet, Microsoft Teams, or Facebook Messenger, are globally popular platforms with millions of active daily users. Others, like Discord, Signal, or Slack, have smaller customer bases and may cater to more targeted audiences. Some video conferencing applications are designed primarily for one-to-one video calling. For example, Slack's ''Huddles'' feature allows for video conference calls, but the free version of the service limits the call to two participants. Other possible examples include dating apps like Tinder, Bumble, and Hinge. Some of the proposed performance objectives may not be relevant on such platforms. The relevance of certain kinds of accessibility solutions also may vary depending on the type of device used to access a video conference. In determining whether to adopt a specific performance objective, to what extent should the Commission consider its relevance and applicability to a wide range of video conferencing services? The Commission also invites commenters to submit information about the range of video conferencing services currently offered or under development and how they currently address accessibility. For example, are there video conferencing platforms that exclusively offer one-on-one communication, without the ability to allow group calls? Are there platforms that operate exclusively on particular kinds of devices, such as mobile phones?

13. In addition to these general questions, which apply to all the part 14 of the Commission's rules proposals discussed herein, the Commission seeks comment on certain aspects of individual proposals and particular accessibility issues, as discussed below.

14. *Addressing Speech Disabilities.* In the *2023 Video Conferencing Notice,* the Commission proposed to amend § 14.21(b)(1)(ix) of its rules, which specifies that ACS be operable in ''at least one mode that does not require user speech,'' by adding the further specification stating: ''For interoperable video conferencing services, provide at least text-to-speech functionality.''

15. The Commission seeks further comment on whether a more specific performance objective is needed to ensure accessibility for people with speech disabilities, if achievable. The record reflects that there is more than one mode in which IVCS can potentially be made accessible for people with speech disabilities, for example, by providing text-to-speech functionality, or providing speech-to-speech functionality. Regarding the latter solution, the record indicates that automatic speech recognition technology has been applied to develop products that automatically convert speech that is difficult to understand to speech that is more understandable. In addition, the Commission notes that enabling a connection to VRS or other sign language interpretation services can also address accessibility for people with speech disabilities who also know ASL. The Commission seeks further comment on whether to modify this rule to specify text-to-speech functionality, speech-to-speech functionality, or both.

16. To what extent are text-to-speech and speech-to-speech products and services commercially available and widely used by people with speech disabilities? What are the potential benefits and costs of implementing text-to-speech and speech-to-speech functionality? How can such products or services be integrated with videoconferencing platforms? How do text-to-speech and speech-to-speech functionalities compare, as accessibility solutions?

17. *Sign Language Interpretation.* The Commission seeks further comment on whether additional specificity is needed in the performance objective for sign language interpretation. A commenter argues that this performance objective should not merely specify that IVCS enable the use of sign language interpretation, but actually provide it (or more specifically, provide ASL interpretation). The Commission seeks further comment on the need for and feasibility of this proposal. If VRS and video remote interpreting (VRI) are generally available to IVCS users on an integrated basis, to what extent would there be a need for IVCS providers to also provide sign language interpretation? Would such a performance objective likely be achievable for IVCS providers, *e.g.,* by using automated sign language interpretation software? While ASR speech-to-text technology has been in development since 1952 and has seen widespread commercial adoption across various sectors, automatic sign language interpretation is a nascent technology. To what extent has the accuracy and reliability of automatic sign language interpretation been established?

18. *User Control of Accessibility Features.* In the *2024 Video Conferencing Order,* recognizing that user control of features is often necessary for accessibility, the Commission adopted a new performance objective specifying that IVCS and covered equipment and software used with such services shall: (i) provide user interface control functions that permit users to activate and adjust the display of captions, speakers, and signers, and other features for which user interface control is necessary for accessibility.

19. Some commenters sought a more detailed performance objective that would list the specific aspects of captions, participant windows, and other features that must be subject to user control. For example, a commenter recommended that the Commission specify that users be able to customize the appearance of captions, including options for font size, font edges (*i.e.,* outline, shadow, *etc.* to work without background) color and background (color and transparency level).

20. The performance objective adopted in the *2024 Video Conferencing Order* requires IVCS providers to allow video conference participants to independently alter the font, size, location, color, and opacity of the captions and caption backgrounds appearing on the participant's screen. It also requires, where relevant, participant access to pinning and multi-pinning, spotlighting, and video window reconfiguration features. The Commission seeks comment on whether additional user-control performance objectives are necessary to further ensure accessibility of IVCS.

21. A commenter recommends that IVCS performance objectives should explicitly address the need for screen-reader verbosity controls. The Commission notes that the adopted performance objective specifies that users be able to activate and adjust features for which user interface control is necessary for accessibility. Thus, verbosity controls, among other user controls, are included in the performance objective to the extent that they are necessary for accessibility. The Commission seeks additional comment on the particular aspects of screen-reader verbosity control that are most important in the video conference setting, and any other considerations that should be taken into account in framing a performance objective that specifically addresses verbosity control.

22. A commenter also suggests that IVCS users' accessibility preferences should be stored and retained within the IVCS platform, so users will not

have to change the settings each time they use the service. To what extent is this capability necessary for accessibility? Are there technical challenges to implementing such a feature? If so, what, and how severe, are those challenges? Should the settings be tied to the video conferencing service, or to the type of device used to access it? For example, should accessibility settings on a mobile version of an IVCS platform be retained when accessing the platform's web application?

23. *Other Accessibility Proposals.* A commenter recommends performance objectives specifying that IVCS provide a gallery view mode and ensure that a sufficient number of videos is supported without degrading the quality of the video or audio. The Commission seeks comment on these proposals. In what respect are such performance objectives necessary for accessibility? What variables, if any, could impact the quality of a user's video or audio if a user elects to have numerous video windows displayed? What variables, if any, could impact an IVCS provider's ability to provide high-quality videos?

24. The commenter also suggests a performance objective requiring that video functionality, screen sharing, video window re-sizing, and video sharing be compatible with tablets. The commenter states that the performance objective can be achieved by designing the IVCS user interface to be tablet-friendly, *i.e.,* able to adapt between different screen sizes and allow for multi-touch gestures and split-screen multitasking. Another commenter objects to this proposal, contending that tablet compatibility represents a *de facto* technical mandate. The Commission does not mandate that any particular IVCS must be able to be used on a tablet. However, the Commission recognizes that many IVCS providers choose to make their products available on tablets. Accordingly, the Commission seeks comment on whether to adopt a performance objective specifying that, where IVCS is available on tablets, it provide the functionalities described in the earlier commenter's proposal. Would provision of the functionalities the commenter describes, pose unusually difficult design or technical challenges? To what degree do current IVCS offerings provide such device-specific functionality? Should the Commission consider device-specific performance objectives?

25. The Commission also seeks further comment on a commenter's proposal to require IVCS providers to offer dedicated text and video side channels. According to the commenter, these additional channels are necessary to facilitate communication between sign language interpreters and sign language users, and between multiple interpreters in ''team interpreting'' scenarios. Another commenter objects to this proposal, countering that some IVCS platforms do not offer text-based communication, and requiring them to do so would constitute a technical mandate and an economic burden. Additionally, the commenter contends that because side channels are only tangentially related to the video conference call itself, the absence of those channels should not affect compliance with the video conferencing rules. The Commission seeks comment on these arguments, as well as comments on the need for and feasibility of this proposal.

26. *Accessibility for People Who Are Blind or Have Low Vision.* Part 14 of the Commission's rules currently includes a generally applicable performance objective addressing the availability of visual information for people who are blind or have low vision, which specifies that visual information be provided through at least one mode in auditory form. 47 CFR 14.21(b)(2)(i).

27. The Commission seeks comment on whether to amend this performance objective to specify the provision of audio description and visual image descriptive functionality, as well as compatibility with third-party visual image descriptive services. The term *audio description* refers to a feature that is required for some television and other video programming pursuant to the Commission's part 79 rules. Under those rules, an audio description of a program's key visual elements must be inserted into natural pauses in the program's dialogue. The term ''visual image description'' refers to a related feature, described by a commenter as functionality that generates real-time descriptions of visual information for people who are blind or low vision. The Commission seeks comment on the extent to which these terms refer to different functions in the context of IVCS.

28. Additionally, the Commission seeks comment on other ways that relevant visual information could be provided in auditory form. Is the provision of audio description of video and visual images implicit in the existing performance objective? Would a rule directly specifying the provision of audio description or visual image description, or both, be helpful as a way of clarifying IVCS provider's obligations under the existing rule? To what extent should the FCC mandate compatibility with third-party description services, such as AIRA and Be My Eyes, if at all? To what extent are third-party description services currently being used in conjunction with IVCS, if at all?

29. The Commission also seeks comment on the scope of visual information that should be provided through audio description in IVCS. Section 14.21(b)(2) of the Commission's rules currently provides that it covers all information necessary to operate and use the product, including but not limited to, text, static or dynamic images, icons, labels, sounds, or incidental operating cues. Does § 14.21(b)(2) of the Commission's rules sufficiently describe the kinds of visual information that an IVCS provider is or should be required to make available in auditory form, or should we amend it to provide greater clarity? For example, should the Commission adopt a commenter's recommendation to add ''shared documents,'' to the list of information that must be made accessible? Should shared videos be included? Should coverage of shared documents or videos be affected by the extent to which a video conferencing service enables such sharing of visual information by participants?

30. The Commission also seeks comment on the potential costs and benefits of integrating audio description and visual image description into IVCS platforms. Are audio description and visual image descriptive third-party services commercially available? What are the technical or financial challenges, if any, of integrating these services? How would conference call participants access this function?

31. *Tactile Mode.* Two commenters request that performance objectives be adopted or amended to provide that IVCS (and other types of ACS) be operable and visual information be available in tactile mode. Section 14.21(b)(1)(i) of the Commission's rules currently states that, to be accessible, the input, control, and mechanical functions advanced communications services, equipment and software must provide *at least one mode* that does not require user vision. One of these commenters urges the Commission to modify this performance objective to read: ''Provide *auditory and tactile modes* that do not require user vision.''

32. In addition, § 14.21(b)(2)(i) of the Commission's rules states that, to be accessible, advanced communications services, equipment and software must: ''Provide visual information through at least one mode in auditory form.'' The same advocacy organization urges the Commission to modify this performance objective to read: ''Provide visual information *in both auditory and tactile forms.*''

33. These changes would make clearer what is required to make IVCS (and other types of ACS) accessible to people who are deafblind or who otherwise require that controls and information be accessed tactilely. The Commission seeks comment on the benefits and costs of these proposed changes, including specific examples of how they would improve the accessibility of covered services and the equipment and software used to access them.

34. *Accessibility for People with Cognitive and Mobility Disabilities.* The Commission seeks comment on whether more specific performance objectives are needed to address the challenges people with cognitive and mobility disabilities face when attempting to access video conferencing services.

35. *Cognitive Disabilities.* Currently, the performance objectives set forth in § 14.21 of the Commission's rules include a performance objective specifying that IVCS should: ''Provide at least one mode that minimizes the cognitive, memory, language, and learning skills required of the user.'' 47 CFR 14.21(b)(1)(x). A commenter urges the Commission to adopt a more specific performance objective specifying the provision of ''a simplified secure modality for initiating, authenticating and interfacing with a video conferencing session.'' What would such a feature entail, and what is its likely cost?

36. The Commission also seeks comment on a commenter's recommendation to adopt a usability-related performance objective for people with cognitive disabilities, specifying the provision of ''plain and simple language and iconography on instructional materials on how to activate a video conferencing session,'' to supplement the current, more general usability objective specifying that people with disabilities ''have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation and technical support functionally equivalent to that provided to individuals without disabilities.'' 47 CFR 14.21(c). Commenters are invited to submit examples of instruction manuals, tutorials, or guides for other products and services that have been produced for people with cognitive disabilities.

37. *Usability Generally.* The Commission also seeks comment on whether any other amendments to the usability provision of the rules, § 14.21(c) of the Commission's rules, are needed to ensure that people with disabilities have access to the ''full functionality and documentation'' for IVCS, including ''instructions, product information (including accessible feature information), documentation and technical support functionally equivalent to that provided to individuals without disabilities.''

38. *Mobility Disabilities.* Currently, part 14 of the Commission's rules prescribes several performance objectives specifying that ACS be operable in various ways by users with mobility disabilities. The Commission seeks comment on whether any more specific performance objectives are needed to ensure that people with mobility disabilities can access and use IVCS. For example, a commenter recommends that IVCS user controls be accessible via voice activation or other hands-free technologies. The Commission seeks comment on the likely costs and benefits of such a requirement. Is this performance objective likely to be achievable independently of the devices available to the user? For example, could an IVCS provider develop or purchase a voice-activation application for its user controls that is compatible with commonly used user devices (*e.g.,* smartphones, tablets, and PCs), and make it available for downloading at no charge, or a nominal charge? What would be the likely cost of such a solution? Alternatively, could an IVCS provider ensure that its service is compatible with existing peripheral devices or specialized customer premises equipment offering voice activation?

39. *Application to Covered Equipment and Software.* Manufacturers of equipment used for IVCS are required to ensure that their equipment and software meets the performance objectives of § 14.21 of the Commission's rules, except to the extent that is not achievable. *See* 47 CFR 14.20(a)(1). The Commission seeks comment on whether additional amendments to its part 14 rules are needed to ensure the accessibility of equipment and software that is used to provide or use IVCS. What kinds of equipment- and software-related challenges do people with disabilities currently face in using end-user equipment and software to access and use IVCS? Are such challenges sufficiently addressed by the current part 14 of the Commission's rules? Are there specific performance objectives that are uniquely or peculiarly applicable to such equipment and software (as opposed to services), such that the Commission should amend § 14.21 of its rules to include them, to ensure the accessibility of such equipment and software?

Part 64 Issues

40. *VRS—Team Interpreting and Other CA-Related Issues.* The Commission seeks further comment on whether to authorize the TRS Fund to support team interpreting by two VRS CAs from the same provider participating simultaneously in a video conference, and on what criteria should be applied for allowing such additional support. Under the current rules, providers are free to provide team interpreting as they deem necessary, but are only compensated for a single CA per call. While guidelines for professional interpreters issued by the Registry of Interpreters for the Deaf (RID) reference a number of factors, those factors are stated in very general terms, leaving much room for subjective or discretionary judgment in their application. Specifically, RID considers the length and complexity of the assignment; unique needs of the persons being served; physical and emotional dynamics of the setting; and avoidance of repetitive stress injuries for interpreters. The Commission believes it would be preferable to adopt a bright-line rule in this area. Two commenters assert that the duration and complexity of a call are two important factors in determining when team interpreting is needed, but no commenter proposes specific, bright-line criteria for assessing these or other relevant factors.

41. With respect to the considerations that may support team interpreting, there appear to be significant differences between VRS and traditional community interpreting. With community interpreting, which is arranged by appointment, there is usually advance knowledge of the likely duration and complexity of an assignment. In addition, the assigned interpreter(s) cannot be quickly replaced, if that proves necessary, after a meeting has begun. Therefore, a community interpreting agency usually needs to determine in advance, based on the likely duration and complexity of the assignment, how many interpreters may be needed, and commit the time of those interpreters for the duration. By contrast, with VRS, CAs can be added, as needed, to a call or video conference whose duration is not known in advance. The Commission seeks comment on these assumptions and how they should affect its selection of criteria for authorizing team interpreting in VRS.

42. In light of the above assumptions, would the duration of a video conference, standing alone, ever justify

assignment of a second VRS CA to be present simultaneously with the first, regardless of the complexity of the video conference? For example, for a video conference with only two participants, would team interpreting ever be warranted, given that the CA can easily be replaced on a long-duration call?

43. To address call complexity, if the Commission allows team interpreting, should it set a minimum number of participants that must be present in a video conference, to warrant compensation for a second simultaneous VRS CA? If so, what number should that be? Alternatively, should the Commission require a minimum number of registered VRS users—or of hearing individuals, or both? For video conferences with the requisite number of users, should the Commission also set a minimum period of time that should elapse before a second VRS CA is added? For example, should the Commission set 10 minutes, 30 minutes, or another period as the minimum threshold for adding a second simultaneous CA to a call? Under current Commission rules, a VRS CA assigned to a call must stay with the call for a minimum of 10 minutes, unless the call ends earlier. Meanwhile, a commenter cites research suggesting that a significant loss of accuracy occurs after approximately thirty minutes of interpretation due to mental fatigue and also notes that ASL interpretation has an additional physical demand that is especially pronounced during long calls. Other studies have found that 87.5% of interpreters sampled suffered from some form of repetitive stress injury, and that ASL interpretation was one of the highest-risk professions for ergonomic injury. Additionally, the commenter states that IVCS calls are on average seven times longer than VRS telephone calls.

44. Are there other indicia of complexity that lend themselves to a bright-line rule addressing compensation for an additional CA? What call scenarios might be better served by having two CAs remain on the call taking turns, rather than having a brand new CA enter the call to relieve the current CA? Complexity of subject matter may be a significant factor influencing whether there is a need for two simultaneous CAs; but the subject matter of a video conference will not be known to the VRS provider or the CA before it starts. Are there objective factors that could be used to define the complexity of the subject matter, and which, after a call begins, could be communicated by the CA (without violating the Commission's TRS confidentiality rule) to indicate to the provider that team interpreting is warranted for the video conference?

45. The Commission also seeks comment on whether the TRS Fund should provide compensation for the assignment of additional VRS CAs when video conferences are split into breakout groups. The Commission seeks comment on the extent to which these scenarios are likely to occur, and whether they would justify a special rule. It also seeks comment on how to most effectively address such scenarios. For example, should the Commission modify the rule which allows a VRS provider to respond to only one service request for a video conference (until the first requester drops off)—to allow additional CA(s) to be assigned if a second VRS user (or more) so requests after ending up in a breakout room without a CA? How should the provision of additional service to a breakout room be documented in call detail records (CDRs) submitted to the TRS Fund administrator? And, how would a second VRS CA find out which room to join?

46. Finally, the Commission seeks comment on whether to amend its rules (1) to provide more specific guidance on how a video conference participant who is a registered VRS user may request VRS (if the initially requesting VRS user has disconnected) and (2) to enable a participant to request the assignment of an additional CA (should the user find the number of CAs on the call insufficient for effective communication). The rules allow a registered VRS user to request that VRS be extended if the requesting user drops off; however, a commenter asserts that its system for automatically processing requests for VRS in video conferences does not allow such a request while a CA is already serving the video conference. Are there alternative, non-automated means by which such requests could be efficiently made and fulfilled, without causing a significant risk of waste, fraud, and abuse? Could such a method be adapted to enable a participant to request the assignment of an additional CA to a complex video conference?

47. *VRS—Use of Specialized CAs in Video Conferences.* The Commission seeks further comment on whether to amend its rules to permit VRS providers to assign the provision of integrated VRS in video conferences to CAs that have been specially trained to handle video conferences, rather than to the first available CA, as is otherwise required. In the *2024 Video Conferencing Order,* the Commission finds the current record insufficient to support such a rule, noting that not every video conference may be sufficiently complex to require a specially trained CA, and that speed of answer, as well as the quality of TRS provided for traditional telephone calls could be affected if the Commission were to authorize the assignment of specially trained CAs from a select group to handle the provision of VRS in video conferences.

48. A commenter contends that assigning video conferences to specialist CAs will provide a more functionally equivalent experience for VRS users participating in video conferences because those CAs will be trained on the mechanics and features of various video conferencing platforms, and so, will be able to more quickly and efficiently interpret for the VRS user. The commenter adds that specially trained CAs would be proficient in interpreting in large group settings as well as navigating the accessibility features of each specific IVCS platform, and that it would not be feasible to train every CA on these factors. Another commenter agrees, that handling VRS calls in a video conference setting requires CAs to possess specific skills, such as the ability to manage multiple users in a video conference and familiarity with various IVCS features and functionalities.

49. The Commission seeks additional comment on the proposal. Currently, all VRS calls must be answered in the order received—a requirement that is intended to ensure that VRS providers do not discriminate against, or in favor of, particular VRS users. The Commission recognizes that the assignment of CAs who are specially trained to handle video conferences could raise the quality of VRS provided in video conferences. On the other hand, it seems reasonable to assume that, in general, CAs who qualify for assignment to video conferences are also likely to have above-average skills and experience in handling and interpreting for traditional telephone calls. The FCC seeks comment on this assumption. It also seeks comment on the specific challenges of video conferences that require special training for CAs? Do all types of video conferences present such challenges, or only those video conferences with many participants? How would the benefits of improving service quality for video conferences compare with the potential harm resulting from removal of highly qualified CAs from the queue for voice calls? What steps could the Commission take to minimize such potential harm? To limit such potential harm, should the Commission require that specially trained CAs participate in both call

queues, so that they can be available to interpret for voice-only calls when not needed for a video conference? What other steps could the Commission take to limit potential harm to service quality for traditional voice calls?

50. Further, if only a limited number of CAs are trained to handle video conferences, what impact would such a limitation have on the speed of answer for video conferences? What percentage of VRS minutes do providers estimate will involve video conferences, and what percentage of CAs would need to receive special training to avoid a significant decline in average speed-of-answer for video conferences, relative to traditional telephone calls? To avoid excessive delays, should the Commission require that a minimum number or percentage of CAs be trained to handle video conferences? The Commission notes that its speed-of-answer rule for VRS is substantially less strict than the rule for other relay services. For most forms of TRS, providers must answer 85% of all calls within 10 seconds, measured daily. 47 CFR 64.604(b)(2)(ii). For VRS, by contrast, providers must answer 80% of all VRS calls within 120 seconds, measured on a monthly basis. 47 CFR 64.604(b)(2)(iii). However, service-quality competition among providers generally has resulted in a substantially lower average delay in answering VRS calls.

51. The Commission also seeks comment on the specific amount of training that is necessary to ensure acceptable service quality for video conferences. What is the estimated cost of such training, on a per-CA basis? What would be the cost of training all of a provider's CAs to handle video conferences?

52. Finally, there is some likelihood that, over time, the use of VRS in video conferences may increase to a substantial percentage of total VRS minutes. If the Commission were to authorize the use of a specialist CA queue for video conferences, should it do so as a pilot program with a sunset date, to ensure that the impact of this practice and the need for it to continue can be assessed before deciding whether to adopt a more permanent rule?

53. *Integrated Provision of IP CTS.* IP CTS is currently available for use in video conferences where participants can connect by dialing a telephone number. The Commission's part 14 rules now provide that, unless it is not achievable to do so, IVCS providers ''shall enable users to connect with third-party captioning services''—a category that includes IP CTS—''so that captions provided by such services appear on the requesting user's video conference screen.'' The Commission also affirms that the TRS Fund supports the provision of TRS—including IP CTS—in video conferences on an integrated basis, as long as the service is provided in compliance with the TRS rules. The Commission seeks comment on whether additional amendments to the rules are needed to facilitate the integrated provision of IP CTS on a video conferencing platform, that is, to participants who do not connect to a video conference by dialing a telephone number, and to prevent waste, fraud, or abuse of the TRS Fund.

54. As a preliminary matter, the Commission seeks comment on the extent to which IP CTS is currently used in video conferences, as well as the extent of demand and additional benefits likely to result from its availability on an integrated basis. There are a number of captioning solutions that are now or may soon be available in the video conferencing context for people with hearing loss, including captions provided by the IVCS provider, CART and other fee-based captioning services, and captioning applications provided by various large and small technology companies. The Commission seeks comment on the extent of additional demand and additional benefits likely to result from the availability of integrated IP CTS in video conferences. What factors would lead a video conference participant to request integrated IP CTS captions when the IVCS platform offers native captioning and participants can view captioning from another source on their own screen? To what extent do video conference participants who need captioning currently use IP CTS rather than other sources of captioning, and to what extent would they be likely to use integrated IP CTS, if available? If a video conference participant invites IP CTS captioning on an integrated basis to the call, will participants be able to control the size, font, and placement of the captions? Should the Commission adopt any other restrictions on the use of integrated IP CTS captions to prevent waste, fraud, and abuse?

55. The Commission seeks comment on whether any amendments to the current call detail requirements of the Commission's rules are necessary to facilitate review and approval of compensation requests for the provision of IP CTS in video conferences on an integrated basis.

56. To prevent billing of the TRS Fund for duplicative captioning, the Commission proposes to adopt a similar rule to that adopted for VRS in the *2024 Video Conferencing Order.* Specifically, the Commission proposes that, if the captions supplied by an IP CTS provider can be viewed by all video conference participants (rather than only by the individual who requested captioning from an IP CTS provider), then the provider shall not submit more than one CDR for that video conference and shall not be paid for more than one instance of captioning to that video conference. In other words, the total compensation received by a single IP CTS provider for captioning a video conference would not exceed the applicable compensation rate multiplied by the number of minutes in the video conference. The Commission seeks comment on this proposal. The Commission also seeks comment on whether to allow compensation for the provision of IP CTS in a video conference to an individual registered user, on a non-integrated basis, if the provider is already providing IP CTS to all participants on an integrated basis, at the request of another registered user. Further, are there any circumstances in which more than one IP CTS provider is needed to provide integrated IP CTS captioning in a video conference? If not, how can the Commission prevent duplicative captioning?

57. *Integration of Other Forms of TRS.* The Commission seeks further comment on whether and how it should amend its rules to facilitate the provision in video conferences of non-internet-based TRS—TTY-based TRS, CTS, and STS. These services, offered through state TRS programs, are intended for use on an ordinary telephone line. While users of these services may be able to participate in a video conference call over a voice connection (where available), it is unclear whether or how these forms of TRS could be integrated with video conferencing platforms. Further, given the availability of IP CTS, which provides the functionality of CTS and TTY-based TRS for users with internet access, it seems unlikely that there would be significant demand for integrated provision of these services in internet-based video conferences. The Commission seeks comment on this assessment.

58. IP Relay is a service often used with refreshable braille devices and screen readers and by the deafblind community. Would integration of IP Relay with video conferencing service platforms improve the ability of these or other consumers to participate in video conferencing calls? Are there other steps the Commission should take to facilitate an IP Relay user's participation in video conferences? The Commission seeks comment on these issues and any rule changes that may be necessary to

facilitate the integrated provision of IP Relay in video conferencing platforms.

59. *Advancing Equity, Diversity, and Inclusion.* The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits, if any, that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

Initial Regulatory Flexibility Analysis

60. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in document FCC 24–95. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines provided in the item. The Commission will send a copy of the entire *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

61. *Need for, and Objective of, Proposed Rules.* In document FCC 24–95, the Commission proposes to adopt additional requirements in part 14 of its rules to improve the accessibility of IVCS, a form of ACS. First, the Commission seeks comment on whether to add a part 14 performance objective to its rules for video conferencing services to provide text-to-speech and speech-to-speech capability for individuals with speech disabilities, and whether to require IVCS platforms to provide sign language interpretation, and the costs and benefits of such actions. The Commission also seeks comment on additional part 14 performance objectives of its rules for user controls, video window characteristics, and audio description and visual image description services. Further, the Commission seeks comment on part 14 of its rules requirements on IVCS platforms for persons with cognitive and motor disabilities. Finally, the Commission seeks comment on whether additional performance objectives are necessary to ensure that equipment and covered software are accessible to people with disabilities.

62. The Commission seeks comment on additional requirements in part 64 of its rules to facilitate the integration of TRS with video conferencing services. The Commission seeks comment on whether there are objective, bright-line guidelines that it could use to determine when it would be warranted to compensate a VRS provider for sending a team of two or more sign language interpreters to a video conference call. The Commission also seeks comment on whether it should adopt additional amendments to its rules to facilitate the integrated provision of IP CTS for participants within a video conferencing platform and how to prevent waste, fraud, or abuse of the Interstate TRS Fund. Finally, the Commission seeks comment on whether and how it could adopt rules to facilitate use of analog forms of TRS and IP Relay on video conferencing calls.

63. In proposing these amendments to part 14 and part 64 of the Commission's rules, the Commission addresses comments in the record that recommend specific accessibility requirements for video conferencing platforms to enable individuals with hearing, speech, vision, cognitive, and mobility disabilities to participate in video conference in a manner equivalent to the experience of individuals without such disabilities.

64. *Legal Basis.* The proposed action is authorized pursuant to §§ 1, 2, 3, (4)(i), (4)(j), 225, and 716 of the Act, as amended, 47 U.S.C. 151, 152, 153, 154(i), 154(j), 225, 617.

65. *Description and Estimate of the Number of Small Entities Impacted.*

66. If the proposed rules are adopted, the rules will affect the obligations of providers of IVCS and providers of TRS. IVCS can be included within the broad economic category of All Other Telecommunications.

67. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.* dial-up ISPs) or VoIP services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

68. *(TRS) Providers.* TRS enables individuals who are deaf, hard of hearing, deafblind, or who have a speech disability to communicate by telephone in a manner that is functionally equivalent to using voice communication services. Internet-based TRS connects an individual with a hearing or a speech disability to a TRS communications assistant using an internet Protocol-enabled device via the internet, rather than the public switched telephone network. VRS one form of internet-based TRS, enables people with hearing or speech disabilities who use sign language to communicate with voice telephone users over a broadband connection using a video communication device. IP CTS another form of internet-based TRS, permits a person with hearing loss to have a telephone conversation while reading captions of what the other party is saying on an internet-connected device. A third form of internet-based TRS, IP Relay, permits an individual with a hearing or a speech disability to communicate in text using an internet Protocol-enabled device via the internet, rather than using a TTY and the public switched telephone network. Providers must be certified by the Commission to provide VRS and IP CTS and to receive compensation from the TRS Fund for TRS provided in accordance with applicable rules. Analog forms of TRS, TTY, Speech-to-Speech Relay Service, and Captioned Telephone Service, are provided through state TRS programs, which also must be certified by the Commission.

69. Neither the Commission nor the SBA have developed a small business size standard specifically for TRS Providers. All Other Telecommunications is the closest industry with a SBA small business size standard. ISPs and VoIP services, via client-supplied telecommunications connections are included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those

firms, 1,039 had revenue of less than $25 million. Based on Commission data there are 14 certified internet-based TRS providers and two analog forms of TRS providers. The Commission however does not compile financial information for these providers. Nevertheless, based on available information, the Commission estimates that most providers in this industry are small entities.

70. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* The proposed changes, if adopted, would impose new or modified reporting, recordkeeping or other compliance obligations on certain small entities that provide TRS, IVCS, or manufacturer equipment and software for use with IVCS. Although, the Commission cannot, at present, determine whether small entities will have to hire professionals to implement and comply with the proposed requirements, nor can it quantify the cost of compliance for small entities, the Commission anticipates the information received in comments, including cost and benefit analyses where requested, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries the Commission makes. The Commission expects that the approaches it proposes will have minimal cost implications for covered entities because many of these requirements are part of existing reporting processes for these entities. Further, the rules themselves include a safeguard to ensure that the burden and cost of compliance will not be unreasonable: compliance is conditioned on each objective being ''achievable,'' *i.e.,* ''with reasonable effort or expense.'' An achievability determination must consider the nature and cost of the steps needed to meet the requirement, the technical and economic impact on the company's operation, the type of operations of the company, and the extent to which accessible services or equipment are already being offered by the company.

71. *Accessibility of IVCS Equipment.* Part 14 of the Commission's rules requires that providers of ACS—including IVCS—and manufacturers of equipment used with ACS ensure that their services and equipment (including associated software) are accessible and usable by people with disabilities, unless these requirements are not achievable. The Commission seeks comment on performance standards for ensuring equipment used with IVCS are accessible and usable by people with disabilities. Such performance objectives if adopted could modify reporting, recordkeeping, and compliance obligations of such entities.

72. *IVCS Recordkeeping.* The Commission's existing rules require that each provider of ACS (including IVCS) and each manufacturer of equipment used to provide IVCS maintain, in the ordinary course of business and for a reasonable period, records documenting the efforts taken by such manufacturer or service provider to implement section 716 of the Act: information about the manufacturer's or provider's efforts to consult with individuals with disabilities; descriptions of the accessibility features of its products and services; and information about the compatibility of such products and services with peripheral devices or specialized customer premise equipment commonly used by individuals with disabilities to achieve access. If the Commission adopts additional performance objectives under Part 14 of its rules, it may increase the amount of information that entities must retain and report under the recordkeeping requirement. The time and resources needed to fulfill this additional recordkeeping should be minimal given the ongoing obligation to retain such records.

73. *IVCS Reporting.* The Commission's existing rules require that an officer of each provider of ACS (including IVCS) and an officer of each manufacturer of equipment (including software) used to provide ACS submit to the Commission an annual certificate that records are being kept in accordance with the above recordkeeping requirements, unless such manufacturer or provider has been exempted from compliance with section 716 of the Act under applicable rules. The Commission anticipates that the form and content of the reporting will be unchanged, but the office may require additional time to confirm the records for any new performance objectives are kept in accordance with the reporting requirements.

74. *TRS Amendments.* The proposed amendments to the Commission's rules governing TRS are designed to facilitate the use of TRS communications assistants CAs in video conferences, while minimizing the risk of waste, fraud, and abuse of the TRS Fund. These modifications would only apply to an entity that provides TRS to the extent that users of that entity opts to participate in video conference calls. Otherwise, the TRS compliance and reporting requirements remain consistent with existing reporting obligations and the Commission's proposals would only clarify those obligations without changing the burden to small entities.

75. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* Document FCC 24–95, seeks comments on a number of alternatives that may impact small entities. The proposed part 14 of the Commission's performance objectives would be subject to options to make a product or service accessible by incorporating accessibility features into the product or service itself or by relying on third party applications, peripheral devices, software, hardware, or CPE that are available to the consumer at nominal cost. All Part 14 performance objectives of the Commission's rules are also subject to an ''achievability'' standard that takes into account the cost of compliance and the nature of the impact of compliance on a specific entity. In addition, the rules provide an exemption for customized services and equipment and authorize the grant of waivers for multipurpose services and equipment. These flexibility and achievability conditions apply equally to all covered entities, including small entities.

76. The proposed requirements would apply equally to all IVCS providers and are necessary to ensure video conferencing is accessible to and usable by people with disabilities. The amendments to the TRS rules will only apply to the extent a small entity TRS provider allows its users to participate in integrated IVCS calls. The Commission seeks comment on multiple alternatives to ensure it is able to implement rules to facilitate the availability of and compensation for multiple communications assistants during a video conference call, while minimizing the potential risk of waste, fraud, and abuse to the TRS Fund in allowing such practices. Further developing this record will allow the Commission to minimize potential burdens to small entities, while protecting the integrity of the TRS Fund.

77. Document FCC 24–95 seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined. The Commission expects to consider the economic impact on, and alternatives for, small entities as identified in comments filed in response to document FCC 24–95, in reaching its final conclusions and taking action in this proceeding.

78. *Federal Rules Which Duplicate, Overlap, or Conflict with, the Commission's Proposals.* None.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–30501 Filed 12–31–24; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 90, No. 1
Thursday, January 2, 2025

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–61–2024]

Foreign-Trade Zone (FTZ) 29, Notification of Proposed Production Activity; GoPro, Inc; (Camera Bundles); Louisville, Kentucky

Arvato USA, LLC, on behalf of GoPro, Inc (GoPro), submitted a notification of proposed production activity to the FTZ Board (the Board) for the GoPro facility in Louisville, Kentucky, within FTZ 29. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on December 19, 2024.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products include digital camera activity bundles consisting of various combinations of digital cameras, camera mounts and mounting poles, camera cases, lenses, rechargeable lithium-ion batteries and battery chargers, camera accessories, USB hubs, and branded promotional and souvenir merchandise (duty rate is duty-free).

The proposed foreign-status materials/components include: silicon dioxide anti-fog inserts; plastic components (protective lens film; camera housing doors; adhesive mounts; folding fingers; handheld camera mounts; camera multi-purpose mounts; suction cup camera mounts; head strap camera mounts; tripods); glass lens protectors; flexible plastic components (camera mounts; camera mount with clamps); silicone camera sleeves with lanyards; rubber components (seals for water housing doors; camera floatation sleeves; quick release plugs); dog harness camera mounts; nylon components (lightweight camera cases with soft tricot lining; compression molded camera cases with soft tricot lining; backpacks with water resistant coating; crossbody bags with water resistant coating; camera body harness mounts; camera wrist harness mounts; vented helmet strap mounts); molded plastic camera housings; waterproof camera covers with lanyards; instruction guides; warranty cards; stickers; knitted shirts of cotton and polyester blend; T-shirts of cotton and polyester blend; sweatshirts of combed and ring spun cotton blend; 100% polyester anorak-style jackets; brushed cotton twill hats; polyester mesh, moisture wicking hats; steel components (knob thumbscrews; non-threaded screws; nuts; washers; bolts); iron and steel alloy components (screws; bolts; nuts; rivets; cotter pins; washers); stainless steel nuts; aluminum components (insulated drinking bottles; handheld camera mounts; tripods); wrench and bottle opener hybrid tools; screwdrivers; micro SD to USB adapters; multi-port USB hubs; lithium battery chargers (with and without rechargeable batteries); rechargeable lithium-ion batteries; battery charging handheld camera grips; external microphones; micro SD cards; digital still image cameras; flip up camera screen monitors; waterproof protective camera housings; micro HDMI to HDMI cables; microphone stand mounts; 3.5 mm mic adaptors; protective lenses for cameras; lens filters; graphite tripods; magnetic latch mounts; magnetic door and power cable kits; magnetic latch ball joints; camera mounts with flexible plastic ties; Bluetooth camera remote controls; portable lamps for cameras; and, magnetic swivel mounts (duty rate ranges from duty-free to 32.0%). The request indicates that certain materials/components are subject to duties under section 232 of the Trade Expansion Act of 1962 (section 232) or section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 232 and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is February 11, 2025.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: December 24, 2024.

Juanita Chen,

Acting Executive Secretary.

[FR Doc. 2024–31442 Filed 12–31–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–226–2024]

Foreign-Trade Zone 55; Application for Subzone; Century Arms, Inc.; Georgia, Vermont

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Greater Burlington Industrial Corporation, grantee of FTZ 55, requesting subzone status for the facility of Century Arms, Inc., located in Georgia, Vermont. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on December 26, 2024.

The proposed subzone (2.30 acres) is located at 236 Bryce Boulevard, Georgia, Vermont. A notification of proposed production activity will be submitted and published separately for public comment. The proposed subzone would be subject to the existing activation limit of FTZ 55.

In accordance with the FTZ Board's regulations, Juanita Chen of the FTZ Staff is the designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is February 11, 2025. Rebuttal comments in response to material submitted

during the foregoing period may be submitted during the subsequent 15-day period to February 26, 2025.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: December 26, 2024.

Juanita Chen,

Acting Executive Secretary.

[FR Doc. 2024–31443 Filed 12–31–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping duty (AD) or countervailing duty (CVD) order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the U.S. Department of Commerce (Commerce) conduct an administrative review of that AD or CVD order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review (POR). We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating AD rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*i.e.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity to Request a Review: Not later than the last day of January 2025,[2] interested parties may request administrative review of the following orders, findings, or suspended

[1] *See* Trade Preferences Extension Act of 2015, Public Law No. 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, Federal holiday or any other day when Commerce is closed.

investigations, with anniversary dates in January for the following periods:

	Period to be reviewed
Antidumping Duty Proceedings	
BELARUS: Carbon and Alloy Steel Wire Rod, A–822–806	1/1/24–12/31/24
BRAZIL: Prestressed Concrete Steel Wire Strand, A–351–837	1/1/24–12/31/24
CANADA: Softwood Lumber, A–122–857	1/1/24–12/31/24
FRANCE: Certain Preserved Mushrooms, A–427–833	1/1/24–12/31/24
GERMANY: Forged Steel Fluid End Blocks, A–428–847	1/1/24–12/31/24
INDIA: Prestressed Concrete Steel Wire Strand, A–533–828	1/1/24–12/31/24
Polyester Textured Yarn, A–533–885	1/1/24–12/31/24
ITALY: Forged Steel Fluid End Blocks, A–475–840	1/1/24–12/31/24
MEXICO: Prestressed Concrete Steel Wire Strand, A–201–831	1/1/24–12/31/24
REPUBLIC OF KOREA: Prestressed Concrete Steel Wire Strand, A–580–852	1/1/24–12/31/24
RUSSIA: Carbon and Alloy Steel Wire Strand, A–821–824	1/1/24–12/31/24
SOUTH AFRICA: Ferrovanadium, A–791–815	1/1/24–12/31/24
THAILAND: Prestressed Concrete Steel Wire Strand, A–549–820	1/1/24–12/31/24
THE PEOPLE'S REPUBLIC OF CHINA: Calcium Hypochlorite, A–570–008	1/1/24–12/31/24
Carbon and Certain Alloy Steel Wire Rod, A–570–012	1/1/24–12/31/24
Crepe Paper Products, A–570–895	1/1/24–12/31/24
Ferrovanadium, A–570–873	1/1/24–12/31/24
Folding Gift Boxes, A–570–866	1/1/24–12/31/24
Certain Hardwood Plywood Products, A–570–051	1/1/24–12/31/24
Polyester Textured Yarn, A–570–097	1/1/24–12/31/24
Potassium Permanganate, A–570–001	1/1/24–12/31/24
Wooden Bedroom Furniture, A–570–890	1/1/24–12/31/24
UNITED ARAB EMIRATES: Carbon and Alloy Steel Wire Rod, A–520–808	1/1/24–12/31/24
Countervailing Duty Proceedings	
ARGENTINA: Biodiesel, C–357–821	1/1/24–12/31/24
CANADA: Softwood Lumber, C–122–858	1/1/24–12/31/24
GERMANY: Forged Steel Fluid End Blocks, C–428–848	1/1/24–12/31/24
INDIA: Polyester Textured Yarn, C–533–886	1/1/24–12/31/24
Forged Steel Fluid End Blocks, C–533–894	1/1/24–12/31/24
INDONESIA: Biodiesel, C–560–831	1/1/24–12/31/24
ITALY: Forged Steel Fluid End Blocks, C–475–841	1/1/24–12/31/24
THE PEOPLE'S REPUBLIC OF CHINA: Calcium Hypochlorite, C–570–009	1/1/24–12/31/24
Carbon and Certain Alloy Steel Wire Rod, C–570–013	1/1/24–12/31/24
Circular Welded Carbon Quality Steel Line Pipe, C–570–936	1/1/24–12/31/24
Forged Steel Fluid End Blocks, C–570–116	1/1/24–12/31/24
Certain Hardwood Plywood Products, C–570–052	1/1/24–12/31/24
Oil Country Tubular Goods, C–570–944	1/1/24–12/31/24
Polyester Textured Yarn, C–570–098	1/1/24–12/31/24
Tool Chests and Cabinets, C–570–057	1/1/24–12/31/24

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that Commerce conduct an administrative review. For both AD and CVD reviews, the interested party must specify the individual producers or exporters covered by an AD finding or an AD or CVD order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires Commerce to review those particular producers or exporters. If the interested party intends for Commerce to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for Commerce to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an AD

[3] *See* the Enforcement and Compliance website at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

administrative review.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of AD orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an AD administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov*.[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of January 2025. If Commerce does not receive, by the last day of January 2025, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[8] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[9] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[10]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS and, on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [11]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[12] Accordingly, Commerce will update the annual inquiry service lists for the above-listed AD and CVD proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) new interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule,*[13] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

[8] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[10] *Id.*

[11] This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[12] *See Procedural Guidance,* 86 FR 53206.

[13] *See Final Rule,* 86 FR 52335.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [14] Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 12, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–31481 Filed 12–31–24; 8:45 am]

BILLING CODE 3510–DS–P

[14] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–871]

Finished Carbon Steel Flanges From India: Final Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV) during the period of review (POR) August 1, 2022, through July 31, 2023.

DATES: Applicable January 2, 2025.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Theodora Mattei, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–4834, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2017, Commerce published in the **Federal Register** the antidumping duty order on finished carbon steel flanges from India.[1] On September 7, 2023, Commerce published the *Preliminary Results* of the 2022–2023 administrative review and invited interested parties to comment. This administrative review covers 14 producers and/or exporters of the subject merchandise. Commerce selected R.N. Gupta & Co. Ltd. (RNG) and Norma Group [2] for individual examination. The producers/exporters not selected for individual examination are listed in the Appendix II section of this notice.[3] On October 22, 2024, Norma Group and RNG each submitted a case brief.[4] No other party submitted case or rebuttal briefs. On December 9, 2024, Commerce tolled the deadline to issue the final results in this administrative review by 90 days.[5] Accordingly, the deadline for these final results is now April 11, 2025.

Scope of the Order

The merchandise covered by the *Order* is finished carbon steel flanges. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[6]

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Act. Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these final results, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised, and to which we responded in the Issues and Decision Memorandum, follows in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of the comments received, and for the reasons explained in the Issues and Decision

[1] *See Finished Carbon Steel Flanges from India and Italy: Antidumping Duty Orders,* 82 FR 40136 (August 24, 2017) (*Order*).

[2] In prior segments of this proceeding, we determined that Norma (India) Limited, USK Exports Private Limited, Uma Shanker Khandelwal & Co., and Bansidhar Chiranjilal were affiliated and should be treated as a single entity (Norma Group). *See, e.g., Finished Carbon Steel Flanges from India: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 82 FR 9719 (February 8, 2017), and accompanying Preliminary Decision Memorandum, at 4–5, unchanged in *Finished Carbon Steel Flanges from India: Final Determination of Sales at Less Than Fair Value,* 82 FR 29483 (June 29, 2017). In this review, Norma (India) Limited and its affiliated entities have affirmed that the factual basis on which Commerce made its prior determinations has not changed. *See* Norma Group's Letter, ''2nd Supplemental Response Section A, C and D of Anti-Dumping duty Original Questionnaire,'' dated June 26, 2024, at S2–3. Therefore, Commerce continues to treat these four companies as a single entity.

[3] *See* Appendix II for a list of companies not selected for individual examination.

[4] *See* Norma Group's Letter, ''Case Brief,'' dated October 22, 2024; *see also* RNG's Letter, ''Case Brief of R.N. Gupta & Company Limited,'' dated October 22, 2024.

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated December 9, 2024.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2022–2023 Administrative Review of the Antidumping Duty Order on Finished Carbon Steel Flanges from India,'' dated December 23, 2024 (Issues and Decision Memorandum).

Memorandum, Commerce made certain changes to the preliminary weighted-average dumping margins for RNG and Norma Group. As a result of these changes, we have also revised the rate applicable companies not selected for individual examination.

Rate for Non-Selected Companies

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this administrative review, we preliminarily calculated weighted-average dumping margins for Norma Group and RNG that are not zero, *de minimis* (*i.e.,* less than 0.5 percent), or determined entirely on the basis of facts available. Accordingly, consistent with guidance in section 735(c)(5)(A) of the Act, Commerce is preliminarily assigning to the companies not individually examined a margin of 2.54 percent, which is the weighted average of Norma Group's margin and RNG's margin based on publicly ranged U.S. sales values.[7] The companies not selected for individual examination are listed in Appendix II.

Final Results of Administrative Review

For these final results, we determine that the following estimated weighted-average dumping margins exist for the period August 1, 2022, through July 31, 2023:

Exporter/manufacturer	Weighted-average dumping margin (percent)
Norma (India) Limited/USK Exports Private Limited/Uma Shanker Khandelwal & Co./Bansidhar Chiranjilal	0.89
R.N. Gupta & Company Limited	3.60
Review-Specific Rate for Non-Selected Companies	2.54

Disclosure

Commerce intends to disclose the calculations performed for these final results to parties in this proceeding within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margin for a mandatory respondent is not zero or *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1).[8] If the weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[9] For entries of subject merchandise during the period of review produced by the respondents for which they did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries pursuant to the reseller policy, *i.e.,* the assessment rate for such entries will be the all-others rate established in the investigation if there is no rate for the intermediate company(ies) involved in the transaction.[10]

For the companies which were not selected for individual examination, we intend to assign an antidumping duty assessment rate equal to the weighted-average dumping margin determined for the non-examined companies in the final results of review.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future cash deposits of estimated antidumping duties, where applicable.[11]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the producer is, then the cash deposit rate will be the rate established in the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 8.91 percent, the all-others rate established in the less-than-

[7] *See* Memorandum, ''Calculation of Margin for Respondents Not Selected for Individual Examination,'' dated concurrently with this notice.

[8] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[9] *Id.,* 77 FR 8102–03; *see also* 19 CFR 351.106(c)(2).

[10] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[11] *See* section 751(a)(2)(C) of the Act.

fair-value investigation.[12] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: December 23, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Changes Since the *Preliminary Results*
V. Discussion of the Issues
Comment 1: Incorrect Window Period
Comment 2: Incorrect Cash Deposit Instructions
Comment 3: Calculation of Constructed Value Profit and Selling Expenses
VI. Recommendation

Appendix II

List of Companies Not Selected for Individual Examination

1. Balkrishna Steel Forge Pvt. Ltd.
2. C.D. Industries
3. Cetus Engineering Private Limited
4. Echjay Industries Pvt. Ltd.
5. JAI Auto Private Limited
6. Jiten Steel Industries.
7. Munish Forge Private Limited
8. R.D. Forge
9. Renin Piping Products
10. Rollwell Forge Engineering Components and Flanges
11. Rollwell Forge Pvt. Ltd.
12. Tirupati Forge Pvt. Ltd.; Tirupati Forge

[12] *See Order,* 82 FR 40138.

[FR Doc. 2024–31480 Filed 12–31–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–162]

Certain Glass Wine Bottles From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain glass wine bottles (wine bottles) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation (POI) April 1, 2023, through September 30, 2023.

DATES: Applicable January 2, 2025.

FOR FURTHER INFORMATION CONTACT: Carolyn Adie, Frank Schmitt, or Jacob Waddell, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6250, (202) 482–4880, or (202) 482–1369, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2024, Commerce published in the **Federal Register** its preliminary affirmative determination in the LTFV investigation of wine bottles from China.[1] We invited interested parties to comment on the *Preliminary Determination.*

A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are wine bottles from China. For a complete description of the scope of this investigation, *see* Appendix I to this notice.

Scope Comments

On August 19, 2024, Commerce published the final scope memorandum for this investigation.[3] Commerce is not modifying the scope language as it appeared in the *Initiation Notice* and *Preliminary Determination* for the final determination.[4] *See* the scope in Appendix I to this notice.

Final Affirmative Determination of Critical Circumstances, in Part

Commerce preliminarily determined, in accordance with section 733(e)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206(c)(1), that critical circumstances exist with respect to imports of wine bottles for the China-wide entity.[5] For the final determination, pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206, we find that critical circumstances exist for Shandong Changyu, the non-selected separate rate companies, and the China-wide entity.[6]

Verification

As provided in section 782(i) of the Act, Commerce conducted verification of the sales and factors of production

[1] *See Certain Glass Wine Bottles from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination and Extension of Provisional Measures,* 89 FR 65331 (August 9, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Glass Wine Bottles from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Glass Wine Bottles from the People's Republic of China, Chile, and Mexico: Final Scope Decision Memorandum,'' dated August 19, 2024.

[4] *See Certain Glass Wine Bottles from Chile, the People's Republic of China, and Mexico: Initiation of Less-Than-Fair-Value Investigations,* 89 FR 4911 (January 25, 2024) (*Initiation Notice*).

[5] *See Preliminary Determination,* 89 FR at 65331.

[6] *See* Issues and Decision Memorandum at 2–4.

information submitted by Shandong Changyu Glass Co., Ltd. (Shandong Changyu), Qinhuangdao Ruiquan Glassware Co., Ltd. (Ruiquan), and Guangdong Huaxing Glass Co., Ltd. (Guangdong Huaxing), using standard verification procedures.[7]

Analysis of Comments Received

The issues raised in the case and rebuttal briefs by the parties in this investigation are discussed in the Issues and Decision Memorandum. For a list of the issues raised by interested parties and addressed in the Issues and Decision Memorandum, *see* Appendix II.

Changes Since the Preliminary Determination

Based on our review and analysis of the information at verification and comments received from interested parties, we made certain changes to the calculations of Shandong Changyu and Ruiquan's estimated weighted-average dumping margins. We also corrected the name of Chongqing Hoson Glass Co., Ltd. For a discussion of these changes, *see* the Issues and Decision Memorandum.

China-Wide Entity and Use of Adverse Facts Available

Consistent with the *Preliminary Determination,*[8] Commerce continues to find, pursuant to sections 776(a) and (b) of the Act, that the use of facts otherwise available, with adverse inferences, is warranted in determining the dumping rate for the China-wide entity. For this final determination, as adverse facts available (AFA), we have continued to assign a rate of 218.15 percent, which is the highest calculated individual dumping margin of any respondent in the investigation, to the China-wide entity.[9]

Separate Rates

Other than one comment concerning the spelling of Chongqing Hoson Glass Co., Ltd.'s name, no interested party commented on Commerce's preliminary separate rate determinations,[10] and we have no basis to reconsider those determinations. Accordingly, we continue to find that Shandong Changyu and Ruiquan, and certain non-individually examined companies that are listed in the rate table below, are eligible for a separate rate.

In calculating the rate for non-individually examined respondents that received a separate rate in a non-market economy LTFV investigation, Commerce normally looks to section 735(c)(5)(A) of the Act, which pertains to the calculation of the all-others rate in a market economy LTFV investigation, for guidance. Pursuant to section 735(c)(5)(A) of the Act, normally this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for those companies individually examined, excluding any dumping margins that are zero, *de minimis,* or based entirely on facts available under section 776 of the Act. The statute further provides that, where all calculated dumping margins are zero, *de minimis,* or based entirely on facts available under section 776 of the Act, Commerce may use ''any reasonable method'' for assigning the rate to non-selected respondents.

Commerce has calculated an estimated weighted-average dumping margin for the two mandatory respondents that are eligible for a separate rate, Shandong Changyu and Ruiquan, that is not zero, *de minimis,* or based entirely on facts available. Therefore, in accordance with section 735(c)(5)(A) of the Act, we have assigned Shandong Changyu and Ruiquan's calculated estimated weighted-average dumping margin to the non-individually examined respondents that received a separate rate.

Combination Rates

Consistent with the *Preliminary Determination,* and Policy Bulletin 05.1,[11] Commerce calculated combination rates for the respondents that are eligible for a separate rate.

Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist:

Producer	Exporter	Weighted-average dumping margin (percent)
Guangdong Huaxing Glass Co., Ltd	Qinhuangdao Ruiquan Glassware Co., Ltd	29.31
Foshan Huaxing Glass Co., Ltd	Qinhuangdao Ruiquan Glassware Co., Ltd	29.31
Qinhuangdao Fangyuan Packaging Glass Co., Ltd	Qinhuangdao Ruiquan Glassware Co., Ltd	29.31
Qinhuangdao Suokun Glassware Co., Ltd	Qinhuangdao Ruiquan Glassware Co., Ltd	29.31
Shandong Changyu Glass Co., Ltd./Yantai Changyu Glass Co., Ltd./Yantai Changyu Glass Printing Co., Ltd.[12]	Shandong Changyu Glass Co., Ltd./Yantai Changyu Glass Co., Ltd./Yantai Changyu Glass Printing Co., Ltd.	31.24
Chongqing Lanya Glass Co., Limited	Chongqing Jewhui Packaging Co., Ltd	30.99
Chongqing Hoson Glass Co., Ltd	Chongqing Hoson Glass Co., Ltd	30.99
Xuzhou Huihe International Trade Co., Ltd	Xuzhou Huihe International Trade Co., Ltd	30.99
Shandong Huapeng Shidao Glass Products Co., Ltd	Zibo Creative International Trade Co., Ltd	30.99
Shandong Jingbo Group Co., Ltd	Zibo Creative International Trade Co., Ltd	30.99
Yantai NBC Glass Packaging Co., Ltd	Zibo Creative International Trade Co., Ltd	30.99
Shandong Jingbo Group Co., Ltd	Zibo Sunfect International Trade Co., Ltd	30.99
Yantai NBC Glass Packaging Co., Ltd	Zibo Sunfect International Trade Co., Ltd	30.99
China-Wide Entity		* 218.15

* Rate based on adverse facts available.

[7] *See* Memoranda, ''Verification of the Sales Response of Qinhuangdao Ruiquan Glassware Co., Ltd.,'' dated October 16, 2024; ''Verification of the Factors of Production Response of Guangdong Huaxing Glass Co., Ltd.,'' dated October 16, 2024; and ''Verification of the Responses of Shandong Changyu Glass Co., Ltd.,'' dated October 17, 2024.

[8] *See Preliminary Determination* PDM at 15–18.

[9] *Id.*

[10] *Id.* at 8–15.

[11] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available at *https://access.trade.gov/Resources/policy/bull05-1.pdf.*

[12] Commerce continues to determine that Shandong Changyu Glass Co., Ltd.; Yantai Changyu Glass Co., Ltd.; Yantai Changyu Glass Printing Co., Ltd. comprise a single entity. *See* Issues and Decision Memorandum.

Disclosure

Commerce intends to disclose the calculations performed in this final determination to interested parties within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of subject merchandise, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after August 9, 2024, the date of publication in the **Federal Register** of the *Preliminary Determination.*

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. Commerce finds that critical circumstances exist for imports of subject merchandise produced or exported by Shandong Changyu, the non-selected separate rate companies, and the China-wide entity. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of shipments of subject merchandise from the producer(s) or exporter(s) identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after May 11, 2024, which is 90 days before the publication of the *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), upon the publication of this notice, Commerce will instruct CBP to require a cash deposit for estimated antidumping duties for appropriate entries.

Commerce will instruct CBP to require the following cash deposits of estimated antidumping duties for all appropriate entries: (1) for the producer/exporter combinations listed in the table above, the applicable cash deposit rate is listed in the table for that combination; (2) for all combinations of Chinese producers/exporters of the merchandise under consideration that have not established eligibility for a separate rate, the cash deposit rate will be equal to the cash deposit rate listed for the China-wide entity in the table above; and (3) for all third-country exporters of the merchandise under consideration that are not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination or the China-wide entity that supplied that third-country exporter. These suspension of liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of this final affirmative determination of sales at LTFV. Because the final determination in this investigation is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wine bottles no later than 45 days after this final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded or canceled, and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instructions by Commerce, antidumping duties on all imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: December 23, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain narrow neck glass bottles, with a nominal capacity of 740 milliliters (25.02 ounces) to 760 milliliters (25.70 ounces); a nominal total height between 24.8 centimeters (9.75 inches) to 35.6 centimeters (14 inches); a nominal base diameter between 4.6 centimeters (1.8 inches) to 11.4 centimeters (4.5 inches); and a mouth with an outer diameter of between 25 millimeters (.98 inches) to 37.9 millimeters (1.5 inches); frequently referred to as a ''wine bottle.'' In scope merchandise may include but is not limited to the following shapes: Bordeaux (also known as ''Claret''), Burgundy, Hock, Champagne, Sparkling, Port, Provence, or Alsace (also known as ''Germanic''). In scope glass bottles generally have an approximately round base and have shapes including but not limited to, straight-sided, a tapered slope from shoulder (*i.e.,* the sloping part of the bottle between the neck and the body) to base, or a long neck with sloping shoulders to a wider base. The scope includes glass bottles, whether or not clear, whether or not colored, with or without a punt (*i.e.,* an indentation on the underside of the bottle), and with or without design or functional enhancements (including, but not limited to, embossing, labeling, or etching). In scope merchandise is made of non-''free blown'' glass, *i.e.,* in scope merchandise is produced with the use of a mold and is distinguished by mold seams, joint marks, or parting lines. In scope merchandise is unfilled and may be imported with or without a closure, including a cork, stelvin (screw cap), crown cap, or wire cage and cork closure.

Excluded from the scope of this investigation is: (1) glass containers made of borosilicate glass, meeting United States Pharmacopeia requirements for Type 1 pharmaceutical containers; and (2) glass containers without a ''finish'' (*i.e.,* the section of a container at the opening including the lip and ring or collar, threaded or otherwise compatible with a type of closure, including but not limited to a cork, stelvin (screw cap), crown cap, or wire cage and cork closure).

Glass bottles subject to the investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7010.90.5019. The HTSUS subheading is provided for convenience and customs purposes only. The written description of the scope of the investigations is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background

III. Final Affirmative Determination of Critical Circumstances, in Part
IV. Separate Rates
V. Changes Since the *Preliminary Determination*
VI. Application of Facts Available and Use of Adverse Inference
VII. Discussion of the Issues
Comment 1: Whether Commerce Should Rely on Chilean Data to Value Factors of Production
Comment 2: Whether Reliance on Bulgarian Data is Contrary to Law and Unsupported by Substantial Evidence
Comment 3: Whether Commerce Should Apply Either Total or Partial Adverse Facts Available (AFA) to Both Respondents
3A: Ruiquan's Product Finish Control Number (CONNUM) Characteristic
3B: Ruiquan's Standard Working Hours
3C: Ruiquan's Packaging CONNUM Characteristic
3D: Ruiquan's Labor Reporting
3E: Ruiquan's Identification of In-Scope Products
3F: Shandong Changyu's Factor of Production Reporting and Packaging CONNUM Characteristic
VIII. Recommendation

[FR Doc. 2024–31450 Filed 12–31–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–862]

Certain Glass Wine Bottles From Mexico: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that imports of certain glass wine bottles (wine bottles) from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV) for the period of investigation October 1, 2022, through September 30, 2023.

DATES: Applicable January 2, 2025.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bremer or Maria Teresa Aymerich, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987 or (202) 482–0499, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2024, Commerce published in the **Federal Register** its preliminary affirmative determination in the LTFV investigation of wine bottles from Mexico, in which it also postponed the final determination until December 23, 2024.[1] We invited interested parties to comment on the *Preliminary Determination*.[2] We received no comments from interested parties regarding the preliminary determination of negative critical circumstances. Therefore, we continue to determine that critical circumstances do not exist for all companies.[3]

A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[4] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are wine bottles from Mexico. For a complete description of the scope of this investigation, *see* Appendix I.[5]

Scope Comments

On August 19, 2024, Commerce published the final scope memorandum for this investigation.[6] Commerce is not modifying the scope language as it appeared in the *Initiation Notice* and *Preliminary Determination* for the final determination.[7] *See* the scope in Appendix I to this notice.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in August and October 2024, we verified the sales and cost information submitted by Owens América, S. de R.L. de C.V. (Owens América) and Fevisa Industrial S.A. de C.V./Fevisa Comercial S.A. de C.V./Fábrica de Envases de Vidrio S.A. de C.V./Fábrica de Envases de Vidrio del Potosi, S.A. de C.V (collectively, Fevisa) for use in our final determination.[8] We used standard verification procedures, including an examination of relevant sales and accounting records, and original source documents provided by Owens América and Fevisa.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by interested parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice as Appendix II.

Changes Since the Preliminary Determination

Based on a review of the record and comments received from interested parties regarding our *Preliminary Determination,* we made certain changes to both Fevisa's and Owens America's preliminary weighted-average dumping margin calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping margin for all other producers and exporters not individually investigated shall be equal to the weighted average of the estimated weighted-average dumping margins established for individually investigated exporters and producers, excluding rates that are zero, *de minimis,* or determined entirely under section 776 of the Act, *i.e.,* facts otherwise available.

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[1] *See Certain Glass Wine Bottles from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures,* 89 FR 65317 (August 9, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *Id.,* 89 FR at 65318.

[3] *Id.,* 89 FR at 65317.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less Than Fair Value in the Investigation of Certain Glass Wine Bottles from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See* Appendix I.

[6] *See* Memorandum, ''Glass Wine Bottles from the People's Republic of China, Chile, and Mexico: Final Scope Decision Memorandum,'' dated August 19, 2024.

[7] *See Certain Glass Wine Bottles from Chile, the People's Republic of China, and Mexico: Initiation of Less-Than-Fair-Value Investigations,* 89 FR 4911 (January 25, 2024) (*Initiation Notice*).

[8] *See* Memorandum, ''Verification of Owens América, S. de R.L. de C.V.,'' dated November 21, 2024; Memorandum, ''CEP Verification of Owens América, S. de R.L. de C.V.,'' dated November 21, 2024; Memorandum, ''Verification of the Sales Response of Fevisa Industrial S.A. de C.V./Fevisa Comercial S.A. de C.V./Fábrica de Envases de Vidrio S.A. de C.V./Fábrica de Envases de Vidrio del Potosi, S.A. de C.V. (collectively Fevisa),'' dated November 21, 2024; Memorandum, ''Verification of the Cost Response of Fabrica de Envases de Vidrio S.A. de C.V.,'' dated November 22, 2024; Memorandum, ''Verification of the Cost Response of Owens América, S. de R.L. de C.V.,'' November 22, 2024.

In this investigation, Commerce calculated estimated weighted-average dumping margins for Ownes America and Fevisa that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.[9]

Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist:

Exporter and/or producer	Weighted-average dumping margin (percent)
Fevisa Industrial S.A. de C.V./Fevisa Comercial S.A. de C.V./Fábrica de Envases de Vidrio S.A. de C.V./Fábrica de Envases de Vidrio del Potosi, S.A. de C.V	13.95
Glass & Glass S.A. de C.V	*96.95
JOCOGLASS	*96.95
Owens América S. de R.L. de C.V	22.68
Pavisa Group	*96.95
All Others	16.75

* Rate based on adverse facts available.

Disclosure

Commerce intends to disclose the calculations performed in connection with this final determination to interested parties within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of subject merchandise, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after August 9, 2024, the date of publication of the *Preliminary Determination* in the **Federal Register**. These suspension of liquidation instructions will remain in effect until further notice.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), upon the publication of this notice, we will instruct CBP to require a cash deposit for estimated antidumping duties for such entries as follows: (1) the cash deposit rate for the respondents listed in the table above is the company-specific estimated weighted-average dumping margins listed for the respondents in the table; (2) if the exporter is not a respondent listed in the table above, but the producer is, then the cash deposit rate is the company-specific estimated weighted-average dumping margins listed for the producer of the subject merchandise in the table above; and (3) the cash deposit rate for all other producers and exporters is the all-others estimated weighted-average dumping margins listed in the table above.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of aluminum extrusions no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated, all cash deposits posted will be refunded, and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed in the ''Continuation of Suspension of Liquidation'' section above.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This final determination and notice are issued and published in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: December 23, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain narrow neck glass bottles, with a nominal capacity of 740 milliliters (25.02 ounces) to 760 milliliters (25.70 ounces); a nominal total height between 24.8 centimeters (9.75 inches) to 35.6 centimeters (14 inches); a nominal base

[9] *See* Memorandum, ''All-Others Rate Calculation,'' dated concurrently with this notice. With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sales values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. As complete publicly ranged sales data were available, Commerce based the all others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* the All Others Rate Calculation Memorandum.

diameter between 4.6 centimeters (1.8 inches) to 11.4 centimeters (4.5 inches); and a mouth with an outer diameter of between 25 millimeters (.98 inches) to 37.9 millimeters (1.5 inches); frequently referred to as a ''wine bottle.'' In scope merchandise may include but is not limited to the following shapes: Bordeaux (also known as ''Claret''), Burgundy, Hock, Champagne, Sparkling, Port, Provence, or Alsace (also known as ''Germanic''). In scope glass bottles generally have an approximately round base and have shapes including but not limited to, straight-sided, a tapered slope from shoulder (*i.e.,* the sloping part of the bottle between the neck and the body) to base, or a long neck with sloping shoulders to a wider base. The scope includes glass bottles, whether or not clear, whether or not colored, with or without a punt (*i.e.,* an indentation on the underside of the bottle), and with or without design or functional enhancements (including, but not limited to, embossing, labeling, or etching). In scope merchandise is made of non-''free blown'' glass, *i.e.,* in scope merchandise is produced with the use of a mold and is distinguished by mold seams, joint marks, or parting lines. In scope merchandise is unfilled and may be imported with or without a closure, including a cork, stelvin (screw cap), crown cap, or wire cage and cork closure.

Excluded from the scope of this investigation are: (1) glass containers made of borosilicate glass, meeting United States Pharmacopeia requirements for Type 1 pharmaceutical containers; and (2) glass containers without a ''finish'' (*i.e.,* the section of a container at the opening including the lip and ring or collar, threaded or otherwise compatible with a type of closure, including but not limited to a cork, stelvin (screw cap), crown cap, or wire cage and cork closure).

Glass bottles subject to this investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7010.90.5019. The HTSUS subheading is provided for convenience and customs purposes only. The written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Changes Since the *Preliminary Determination*
IV. Discussion of the Issues
Comment 1: Whether Commerce Should Revise Home Market Warehousing Expenses
Comment 2: Whether Commerce Should Revise Home Market Credit Expenses
Comment 3: Whether Commerce Should Revise Home Market Indirect Selling Expenses (ISE)
Comment 4: Whether Commerce Should Revise Domestic Inland Freight for Certain U.S. Sales
Comment 5: Whether Commerce Should Revise U.S. Brokerage Charges
Comment 6: Whether Commerce Should Account for the Omission of One U.S. Expense
Comment 7: Whether Commerce Should Revise U.S. Credit Expenses
Comment 8: Whether Commerce Should Revise U.S. Bank Charges
Comment 9: Whether Commerce Should Revise U.S. Indirect Selling Expenses
Comment 10: Whether Commerce Should Assign Cost to a New Control Number (CONNUM)
Comment 11: Whether the Differential Pricing Methodology is Unlawful
Comment 12: Whether Fevisa Is Affiliated With Its U.S. Customer
V. Recommendation

[FR Doc. 2024–31451 Filed 12–31–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–122]

Certain Corrosion Inhibitors From the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that the companies under review sold certain corrosion inhibitors (corrosion inhibitors) at prices below normal value (NV) during the period of review (POR) March 1, 2023, through February 29, 2024. Further, Commerce is rescinding this review with respect to one company. Commerce invites interested parties to comment on the preliminary results of this review.

DATES: Applicable January 2, 2025.

FOR FURTHER INFORMATION CONTACT: Dusten Hom or Blair Hood, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5075 or (202) 482–8329, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 2021, Commerce published in the **Federal Register** the antidumping duty (AD) order on certain corrosion inhibitors from the People's Republic of China (China).[1] On March 2, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.[2] On May 8, 2024, based on timely requests for an administrative review, Commerce initiated this administrative review of the *Order*.[3] This administrative review covers 10 companies, including two mandatory respondents, Anhui Trust Chem Co., Ltd. (ATC) and Nantong Botao Chemical Co., Ltd. (Botao).[4] On August 8, 2024, Commerce tolled certain deadlines in this administrative review by seven days.[5] On November 21, 2024, Commerce extended the deadline for issuing the preliminary results of this review until December 23, 2024.[6] On December 9, 2024, Commerce tolled the deadline to issue the preliminary results in this administrative review by 90 days. Accordingly, the deadline for the preliminary results of this review is now March 24, 2025.[7]

For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[8] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* A list of topics discussed in the Preliminary Decision Memorandum is included in Appendix I to this notice. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The products covered by the *Order* are corrosion inhibitors from China. For

[1] *See Certain Corrosion Inhibitors from the People's Republic of China: Antidumping Duty Order,* 86 FR 14869 (March 19, 2021) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 89 FR 15159 (March 1, 2024).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 89 FR 38871 (May 8, 2024) (*Initiation Notice*).

[4] *See* Memorandum, ''Antidumping Duty Administrative Review of Certain Corrosion Inhibitors from the People's Republic of China: ''Respondent Selection,'' dated June 22, 2023.

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated August 8, 2024.

[6] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated November 21, 2024.

[7] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated December 9, 2024.

[8] *See* Memorandum, ''Decision Memorandum for Preliminary Results of the 2023–2024 Antidumping Duty Administrative Review of Certain Corrosion Inhibitors from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.[9]

Rescission of Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation. On June 5, 2024, Wincom Inc. (the petitioner) timely withdrew its request for review of Jiangyin Delian Chemical Co., Ltd. (Delian) within 90 days of the date of publication of the *Initiation Notice*.[10] As a result, Commerce is rescinding this review with respect to Delian, in accordance with 19 CFR 351.213(d)(1).

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). Commerce calculated export price in accordance with section 772 of the Act. Further, because China is a non-market economy (NME) country within the meaning of section 771(18) of the Act, Commerce calculated NV in accordance with section 773(c) of the Act. For a full description of the methodology underlying our preliminary results, *see* the Preliminary Decision Memorandum.

Separate Rates

In all proceedings involving a NME country, Commerce maintains a rebuttable presumption that all companies are subject to government control and, thus, should be assessed a single weighted-average dumping margin unless the company can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports (*i.e.,* can affirmatively demonstrate that it is eligible for a separate rate).[11] Commerce has preliminarily determined that information placed on the record by Gold Chemical Limited (Gold Chemical) demonstrates that this company is eligible for a separate rate.[12]

The statute and Commerce's regulations do not address the establishment of a separate rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate-rate respondents which Commerce did not examine individually in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that Commerce is not to calculate an all-others rate using rates for individually examined respondents which are zero, *de minimis,* or based entirely on facts available. For the preliminary results of this review, Commerce determined the estimated dumping margins for ATC and Botao to be 96.67 and 96.04 percent, respectively. For the reasons explained in the Preliminary Decision Memorandum, we are assigning a 96.46 percent rate to the non-examined respondent, Gold Chemical, which qualifies for a separate rate in this review, consistent with Commerce's practice and section 735(c)(5)(A) of the Act.

China-Wide Entity

Commerce's policy regarding the conditional review of the China-wide entity applies to this administrative review.[13] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review, and the entity's assessment rate (*i.e.,* 241.02 percent) is not subject to change.[14] For the reasons explained in the Preliminary Decision Memorandum, Commerce considers all other companies for which a review was requested (none of which filed a separate rate application), listed in Appendix II to this notice, to be part of the China-wide entity.[15]

Preliminary Results of the Administrative Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the administrative review covering the period March 1, 2023, through February 29, 2024:

Exporter	Weighted-average dumping margin (percent)
Anhui Trust Chem Co., Ltd.; Jiangsu Trust Chem Co., Ltd.; Nanjing Trust Chem Co., Ltd	96.67
Nantong Botao Chemical Co., Ltd	96.04
Gold Chemical Limited	96.46

Disclosure and Public Comment

Commerce intends to disclose to parties to the proceeding the calculations performed for these preliminary results of review within five days of any public announcement of these preliminary results or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of this notice in the **Federal Register**. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[16] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing

[9] See Preliminary Decision Memorandum at the ''Scope'' section for more details.

[10] *See* Petitioner's Letter, ''Withdrawal of Request For Administrative Review,'' dated June 5, 2024.

[11] *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China,* 71 FR 53079, 53082 (September 8, 2006); *see also Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006).

[12] *See* Preliminary Decision Memorandum at the ''Separate Rate Determination'' section for more details.

[13] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[14] *See Order.*

[15] *See* Appendix II for the list of companies that are subject to this administrative review that are considered to be part of the China-wide entity.

[16] *See* 19 CFR 351.309(d); *see also administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

each issue addressed; and (2) a table of authorities.[17]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide, at the beginning of their briefs, a public executive summary for each issue raised in their briefs.[18] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that we will issue for the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[19]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the publication of this notice. Requests should contain (1) the party's name, address, telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce will announce the date and time of the hearing. Issues raised in the hearing by a party will be limited to those raised in the party's case and rebuttal briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Assessment Rates

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review. Upon issuing the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[20]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For ATC and its affiliates, and Botao, Commerce intends to calculate importer or customer-specific assessment rates, in accordance with 19 CFR 351.212(b)(1).[21] Where the respondent reported reliable entered values, Commerce intends to calculate importer or customer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer or customer and dividing this amount by the total entered value of the merchandise sold to the importer or customer.[22] Where the respondent did not report entered values, Commerce will calculate importer or customer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer or customer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer or customer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis*; however, Commerce will use the per-unit assessment rate where entered values were not reported.[23] Where an importer or customer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis,* or an importer or customer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[24]

Pursuant to a refinement to Commerce's assessment practice, where sales of subject merchandise exported by an individually examined respondent were not reported in the U.S. sales data submitted by the respondent, but the merchandise was entered into the United States during the POR, Commerce will instruct CBP to liquidate any entries of such merchandise at the AD assessment rate for the China-wide entity.[25]

For the respondents that were not selected for individual examination in this administrative review, but which qualified for a separate rate, the assessment rate will be based on the weighted-average dumping margin(s) assigned to the respondent(s) selected for individual examination, as appropriate, in the final results of this review.[26]

For Delian, the company for which this review is rescinded with these preliminary results, we will instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period March 1, 2023, through February 29, 2024, in accordance with 19 CFR 351.212(c)(l)(i).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for the subject merchandise exported by the company listed above that has a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this administrative review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found

[17] *See* 19 CFR 351.309(c)(2) and (d)(2); *see also* 19 CFR 351.303 (for general filing requirements).

[18] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[19] *See APO and Service Final Rule.*

[20] *See* 19 CFR 351.212(b)(1).

[21] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification*).

[22] *See* 19 CFR 351.212(b)(1).

[23] *Id.*

[24] *See Final Modification,* 77 FR 8103.

[25] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[26] *See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2014–2015,* 81 FR 29528 (May 12, 2016), and accompanying Preliminary Decision Memorandum at 10–11, unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015,* 81 FR 54042 (August 15, 2016).

to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in case and rebuttal briefs, within 120 days of these preliminary results of review in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during these PORs. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping/and or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

Commerce is issuing and publishing the preliminary results of this review in accordance with sections 751(a)(1)(B), 751(a)(3), and 777(i) of the Act, and 19 CFR 351.213(d)(4) and 351.221(b)(4).

Dated: December 26, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Partial Recission of Administrative Review
V. Affiliation and Collapsing
VI. Discussion of the Methodology
VII. Adjustment Under Section 777A(f) of the Act
VIII. Currency Conversion
IX. Recommendation

Appendix II

Companies Considered To Be Part of the China-Wide Entity

1. Connect Chemicals China Co., Ltd.
2. Connect Chemicals GMBH
3. Kanghua Chemical Co., Ltd. (formerly known as Nantong Kanghua Chemical Co., Ltd.)
4. Relic Chemicals
5. Sagar Specialty Chemicals Pvt., Ltd.
6. Vcare Medicines
7. Yasho Industries Pvt. Ltd.

[FR Doc. 2024–31484 Filed 12–31–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–937, C–570–187]

Overhead Door Counterbalance Torsion Springs From India and the People's Republic of China: Postponement of Preliminary Determinations in the Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable January 2, 2025.

FOR FURTHER INFORMATION CONTACT: Zachary Shaykin at (202) 482–2638 (India); Laurel Smalley at (202) 482–3456 (the People's Republic of China (China)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 2024, the U.S. Department of Commerce (Commerce) initiated countervailing duty (CVD) investigations of U.S. imports of overhead door counterbalance torsion springs (overhead door springs) from India and China.[1] Currently, the preliminary determinations are due no later than January 22, 2025.

Postponement of Preliminary Determinations

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until not later than 130 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, the investigation is extraordinarily complicated, and additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On December 20, 2024, the petitioners[2] submitted timely requests that Commerce postpone the preliminary determinations in the CVD investigations of overhead door springs from India and China.[3] The petitioners requested postponements to provide Commerce with additional time to review and analyze questionnaire responses and accurately determine countervailable subsidy rates.[4]

In accordance with 19 CFR 351.205(e), the petitioners have stated the reasons for requesting a postponement of the preliminary determinations, and Commerce finds no compelling reason to deny the requests. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determinations in these investigations until not later than 130 days after the date on which Commerce initiated these investigations, *i.e.,* March 28, 2025. Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations in these investigations will continue to be 75 days after the date of the preliminary determinations.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

[1] *See Overhead Door Counterbalance Torsion Springs from the People's Republic of China and India: Initiation of Countervailing Duty Investigations,* 89 FR 92901 (November 25, 2024).

[2] The petitioners in these investigations are IDC Group, Inc., Iowa Spring Manufacturing, Inc., and Service Spring Corp. (the petitioners).

[3] *See* Petitioners' Letters, ''Overhead Door Counterbalance Torsion Springs from India—Petitioners' Request for Postponement of Preliminary Determination,'' dated December 20, 2024, and ''Overhead Door Counterbalance Torsion Springs from the People's Republic of China—Petitioners' Request for Postponement of Preliminary Determination,'' dated December 20, 2024.

[4] *Id.* at 2.

Dated: December 26, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–31485 Filed 12–31–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–841]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the Socialist Republic of Vietnam: Amended Preliminary Determination of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is amending its preliminary affirmative determination in the less-than-fair-value (LTFV) investigation of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells) from the Socialist Republic of Vietnam (Vietnam) to correct for a significant ministerial error. The period of investigation (POI) is October 1, 2023, through March 31, 2024.

DATES: Applicable January 2, 2025.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Deborah Cohen, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–4521, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 2024, Commerce published in the **Federal Register** its preliminary affirmative determination in the LTFV investigation of solar cells from Vietnam.[1] On December 9, 2024, the American Alliance for Solar Manufacturing Trade Committee, a coalition of domestic producers of solar cells and modules (collectively, the petitioner), timely alleged that Commerce made a significant ministerial error in calculating Jinko Solar (Vietnam) Industries Co., Ltd.'s (Jinko) estimated weighted-average dumping margin.[2]

Scope of the Investigation

The products covered by this investigation are solar cells from Vietnam. For a complete description of the scope of this investigation, *see* the *Preliminary Determination.*

Legal Framework

A ministerial error is defined as including ''errors in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which {Commerce} considers ministerial.'' [3] A ministerial error is considered to be ''significant'' if its correction, either singly or in combination with other errors, would result in: (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the preliminary determination; or (2) a difference between a weighted-average dumping margin of zero (or *de minimis*) and a weighted-average dumping margin of greater than *de minimis* or vice versa.[4] Pursuant to 19 CFR 351.224(e), Commerce ''will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination.''

Analysis of Significant Ministerial Error

In the *Preliminary Determination,* Commerce made a significant ministerial error within the meaning of section 735(e) of the Act and 19 CFR 351.224(f) and (g)(1) in calculating the estimated weighted-average dumping margin for Jinko. Accordingly, pursuant to 19 CFR 351.224(e), Commerce is amending its *Preliminary Determination* to correct for this significant ministerial error by revising the weighted-average dumping margins for Jinko and the non-individually examined separate rate companies. For a detailed discussion of the alleged ministerial error, as well as Commerce's analysis, *see* the Ministerial Error Memorandum.[5]

Amended Preliminary Determination

As a result of correcting the significant ministerial error, Commerce determines the following estimated weighted-average dumping margins exist:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Jinko Solar (Vietnam) Industries Company Limited.	Jinko Solar (Vietnam) Industries Company Limited.	71.85	71.74
Blue Moon Vina Co	Blue Moon Vina Co	60.02	59.91
Boviet Solar Technology Co., Ltd	Boviet Solar Technology Co., Ltd	60.02	[6] 60.02
Elite Solar Technology (Vietnam) Company Limited.	Elite SNG	60.02	59.91
Letsolar Vietnam Company Limited	Letsolar Vietnam Company Limited	60.02	59.91
Mecen Solar Vina Co., Ltd	Mecen Solar Vina Co., Ltd	60.02	59.91
Nexuns Vietnam Company Limited	Nexuns Vietnam Company Limited	60.02	59.91
Trina Solar Energy Development Company Ltd	Trina Solar Energy Development Company Ltd	60.02	59.91
Vietnergy Co., Ltd. and Tainergy Tech Co., Ltd. (collectively, Vietnergy).	Vietnergy Co., Ltd. and Tainergy Tech Co., Ltd. (collectively, Vietnergy).	60.02	59.91

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination and Extension of Provisional Measures,* 89 FR 96219 (December 4, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Petitioner's Letter, ''Ministerial Error Allegation,'' dated December 9, 2024.

[3] *See* section 735(e) of the Tariff Act of 1930, as amended (the Act); *see also* 19 CFR 351.224(f).

[4] *See* 19 CFR 351.224(g).

[5] *See* Memorandum, ''Less-Than-Fair-Value Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the Socialist Republic of Vietnam: Ministerial Error Allegation Regarding the Preliminary Determination,'' dated concurrently with this notice (Ministerial Error Memorandum), at 2–3.

[6] Commerce assigned Boviet Solar Technology Co., Ltd. a *de minimis* rate in the parallel countervailing duty investigation, and therefore, no subsidy offset was provided to Boviet in the LTFV investigation.

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Vietnam Sunergy Joint Stock Company (f.k.a. Vietnam Sunergy Company Limited).	Vietnam Sunergy Joint Stock Company (f.k.a. Vietnam Sunergy Company Limited).	60.02	59.91

Disclosure

We intend to disclose the calculations performed for this amended preliminary determination to parties within five days after public announcement or, if there is no public announcement, within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Amended Cash Deposits and Suspension of Liquidation

The collection of cash deposits and suspension of liquidation will be revised according to the rates calculated in this amended preliminary determination, in accordance with section 733(d) of the Act. Because this amended preliminary determination results in an increased cash deposit rate, this rate will be effective on the date of publication of this notice in the **Federal Register**. These suspension of liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, Commerce will notify the ITC of our amended preliminary determination.

Notification to Interested Parties

This amended preliminary determination is issued and published in accordance with sections 733(d) and 777(i) of the Act, and 19 CFR 351.224(e).

Dated: December 23, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–31449 Filed 12–31–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2024–FSA–0103]

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, U.S. Department of Education.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of a modified system of records titled ''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22). The EDMAPS system is a data analytics platform that ingests data from multiple Federal Student Aid (FSA) systems of records to perform big-data analytics on FSA data in one common location, produce reports and statistical models, and serve as a centralized repository of information about FSA customers across the full student aid life cycle.

DATES: Submit your comments on this modified system of records notice on or before February 3, 2025.

This modified system of records notice will become applicable upon publication in the **Federal Register** on January 2, 2025, except for new routine use (1)(e) that is outlined in the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES,'' which will become applicable on February 3, 2025, unless it needs to be changed as a result of public comment. The Department will publish any changes to the modified system of records notice resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov*, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''

Privacy Note: The Department's policy is to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Barry Goldstein, Chief Data Officer, Federal Student Aid, U.S. Department of Education, UCP, Room 64E1, 830 First Street NE, Washington, DC 20202–5454. Telephone: (202) 377–4563. Email: *Barry.Goldstein@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: In accordance with the Privacy Act, the Department proposes to modify the system of records notice entitled, ''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22), which was last published in full in the **Federal Register** on July 28, 2023 (88 FR 48824).

The Department is modifying, in its entirety, subparagraph (7) of the second paragraph of the section entitled ''AUTHORITY FOR MAINTENANCE OF THE SYSTEM'' to read as follows: ''Person Authentication Service (PAS) (18–11–12). The collection of personally identifiable information (PII) for the creation and management of a FSA ID (which includes a user ID and a password) in the PAS system of records is authorized programmatically by title IV of the HEA (20 U.S.C. 1070, *et seq.*) and the FAFSA Simplification Act (title VII, division FF of Pub. L. 116–260, the Consolidated Appropriations Act, 2021) (including, but not limited to, section 702(m) that amends section 483 of the HEA and section 703 that amends

section 401 of the HEA), and the FAFSA Simplification Act Technical Corrections Act (division R of Pub. L. 117–103, the Consolidated Appropriations Act, 2022).'' This change is being made to clarify the legal authority pursuant to which records are collected in the PAS system of records.

The Department is modifying the section entitled ''PURPOSE(S) OF THE SYSTEM'' as follows:

(i) Purpose (7) is being updated to remove and replace ''To support Federal budget analysts in the Department, the Office of Management and Budget (OMB), and the Congressional Budget Office (CBO) in the development of budget needs and forecasts'' with ''To support Federal agencies or entities, such as the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO), by providing aggregate, deidentified ad hoc query results on title IV, HEA programs'' to clarify that the EDMAPS data is used to provide aggregate, deidentified ad hoc query results on such programs to Federal agencies and entities;

(ii) New purpose (23) is added to assist in the calculation of measures related to Gainful Employment (GE) and other educational programs under title IV of the Higher Education Act of 1965, as amended (HEA), to implement the Financial Value Transparency (FVT)/GE regulatory requirements; and

(iii) New purpose (24) is added to provide reporting on GE programs to support determinations regarding institutional fiscal responsibility, administrative capability, and educational program eligibility, to implement the FVT/GE regulatory requirements.

The Department is modifying the section entitled ''CATEGORIES OF RECORDS IN THE SYSTEM'' to revise, in its entirety, current category (23) to read as follows: ''For aid recipients who began an educational program, student identifiers including the student's SSN, date of birth, and name; student enrollment information including the Office of Postsecondary Education identification number (OPE ID number) of the institution, and the Classification of Instructional Programs (CIP) code and credential level for the educational program in which the student enrolled; the student's enrollment status, annual cost of attendance (COA), total tuition and fees assessed, tuition residency status, total annual allowance for books, supplies, equipment, housing, and food from their COA, amount of institutional grants and scholarships disbursed, amount of other State, Tribal, or private grants disbursed, and the amount of any private educational loans disbursed; and, if the student completed or withdrew from the program, the completion or withdrawal date, the total amount the student received from private education loans, the student's total amount of institutional debt, the student's total amount of tuition and fees assessed, the student's total amount of allowances for books, supplies, and equipment from the student's COA for each award year, and the total amount of institutional grants and scholarships disbursed to the student.'' This change is being made to implement the institutional and student-level reporting required by the FVT regulation.

The Department is modifying the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' to add routine use (1)(e) to read as follows: ''To support the investigation of possible fraud and abuse and to detect and prevent fraud and abuse in title IV, HEA program funds, the Department may disclose records to institutions of higher education, third-party servicers, and Federal, State, local, or Tribal agencies.'' This change is being made to support the investigation of possible fraud and abuse and to detect and prevent fraud and abuse in title IV, HEA program funds.

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.

Denise Carter,

Acting Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the preamble, the U.S. Department of Education (Department) publishes a notice of a modified system of records to read as follows:

SYSTEM NAME AND NUMBER:

''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Student Aid (FSA), U.S. Department of Education, Union Center Plaza (UCP), 830 First Street NE, Washington, DC 20202–5454.

Amazon Web Services (AWS), 1200 12th Avenue, Suite 1200, Seattle, WA 98114. (This is the Hosting Center for the EDMAPS system's application, where all electronic EDMAPS system information is processed and stored.)

Accenture, 22451 Shaw Road, Sterling, VA 20166–4319. (The EDMAPS system's Sterling cloud-based operations are located here.)

Accenture DC, 810 First Street NE, Washington, DC 20202–4227. (This is the EDMAPS system's operations center.)

SYSTEM MANAGER(S):

System Owner, EDMAPS System, Federal Student Aid, U.S. Department of Education, Union Center Plaza (UCP), Room 102–E5, 830 First Street NE, Washington, DC 20202.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The EDMAPS system is authorized under title I, Part D, and title IV of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1001, 1002, 1018–1018b and 20 U.S.C. 1070 *et seq.*), the Presidential Memorandum entitled ''A Student Aid Bill of Rights to Help Ensure Affordable Loan Repayment'' (March 10, 2015), the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act) (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency), the FAFSA Simplification Act (title VII, division FF of the Consolidated

Appropriations Act, 2021 (Pub. L. 116–260)) (including, but not limited to the following: subsections 701(b) and 702(m), which amends section 483 of the HEA, and section 703, which amends section 401 of the HEA), and the FAFSA Simplification Act Technical Corrections Act (division R of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103)).

The EDMAPS system is largely comprised of records that originate from and are also maintained in, other Department systems of records. Therefore, the Department is also listing the more specific authorities for those systems of records here:

(1) National Student Loan Data System (NSLDS) (18–11–06). The authority under which the NSLDS system of records is maintained includes sections 101, 102, 132(i), 485, and 485B of the HEA (20 U.S.C. 1001, 1002, 1015a(i), 1092, and 1092b), sections 431(2) and (3) of the General Education Provisions Act (20 U.S.C. 1231a(2)–(3)), and the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency). The collection of Social Security numbers (SSNs) of individuals who are covered by this system is authorized by 31 U.S.C. 7701 and Executive Order 9397 (November 22, 1943), as amended by Executive Order 13478 (November 18, 2008);

(2) Common Origination and Disbursement (COD) System (18–11–02). The system of records for the COD System is authorized under title IV of the HEA and the HEROES Act (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency);

(3) Common Services for Borrowers (CSB) (18–11–16). The CSB system of records is authorized by titles IV–A, IV–B, IV–D, and IV–E of the HEA, and the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency);

(4) Health Education Assistance Loan (HEAL) Program (18–11–20). The authority for maintenance of the HEAL Program system of records includes sections 701 and 702 of the Public Health Service Act, as amended (PHS Act) (42 U.S.C. 292 and 292a), which authorize the establishment of a Federal program of student loan insurance; section 715 of the PHS Act (42 U.S.C. 292n), which directs the Secretary of Education to require institutions to provide information for each aid recipient who has a loan; section 709(c) of the PHS Act (42 U.S.C. 292h(c)), which authorizes disclosure and publication of HEAL defaulters; the Debt Collection Improvement Act (31 U.S.C. 3701 and 3711–3720E); and the Consolidated Appropriations Act, 2014, Division H, title V, section 525 of Public Law 113–76, which transferred the authority to administer the HEAL program from the Secretary of Health and Human Services to the Secretary of Education;

(5) Financial Management System (FMS) (18–11–17). The FMS system of records is authorized by title IV of the HEA (20 U.S.C. 1070 *et seq.*);

(6) Postsecondary Education Participants Systems (PEPS) (18–11–09). The PEPS system of records is authorized by sections 481, 487, and 498 of the HEA (20 U.S.C. 1088, 1094, 1099c) and section 31001(i)(1) of the Debt Collection Improvement Act of 1996, Public Law 104–134 (31 U.S.C. 7701);

(7) Person Authentication Service (PAS) (18–11–12). The collection of personally identifiable information (PII) for the creation and management of a FSA ID (which includes a user ID and a password) in the PAS system of records is authorized programmatically by title IV of the HEA (20 U.S.C. 1070, *et seq.*) and the FAFSA Simplification Act (title VII, division FF of Pub. L. 116–260, the Consolidated Appropriations Act, 2021) (including, but not limited to, section 702(m) that amends section 483 of the HEA and section 703 that amends section 401 of the HEA), and the FAFSA Simplification Act Technical Corrections Act (division R of Pub. L. 117–103, the Consolidated Appropriations Act, 2022);

(8) Student Aid Internet Gateway (SAIG), Participation Management (PM) System (18–11–10). The SAIG, PM system of records is authorized by title IV of the HEA. The collection of SSNs of users of the SAIG, PM System is authorized by 31 U.S.C. 7701 and Executive Order 9397, as amended by Executive Order 13478 (November 18, 2008); and

(9) Aid Awareness and Application Processing (AAAP) (18–11–21). The AAAP system of records is authorized under title IV of the HEA (20 U.S.C. 1070 *et seq.*) and 20 U.S.C. 1018(f), and the Higher Education Relief Opportunities for Students Act of 2003 (20 U.S.C. 1098bb) (including any waivers or modifications that the Secretary of Education deems necessary to make to any statutory or regulatory provision applicable to the student financial assistance programs under title IV of the HEA to achieve specific purposes listed in the section in connection with a war, other military operation, or a national emergency).

The collection of SSNs of individuals, and parents of dependent students, who apply for or receive Federal student financial assistance under programs authorized by title IV of the HEA is also authorized by 31 U.S.C. 7701 and Executive Order 9397, as amended by Executive Order 13478 (November 18, 2008).

PURPOSE(S) OF THE SYSTEM:

The information contained in this system of records is maintained for the following purposes (Note: Different parts of the HEA use the terms ''discharge,'' ''cancellation,'' or ''forgiveness'' to describe when an aid recipient's loan amount is reduced, in whole or in part, by the Department. To reduce complexity, this system of records notice uses the term ''discharge'' to include all three terms (''discharge,'' ''cancellation,'' and ''forgiveness''), including, but not limited to, discharges of student loans made pursuant to specific benefit programs. At times, this system of records notice may refer by name to a specific benefit program, such as the ''Public Service Loan Forgiveness'' program; such specific references are not intended to exclude any such program benefits from more general references to loan discharges):

(1) To provide master data management, to serve as a production database, and to provide common naming conventions and standards;

(2) To provide a data warehouse for analytics, reporting, and modeling;

(3) To provide the Data Lake for the storage of large data sets, both structured and unstructured (PDFs and audio files are examples of unstructured data);

(4) To provide analytics and reporting, including querying,

modeling, forecasting, and visualizing, for the purpose of administering the title IV, HEA programs effectively and efficiently;

(5) To improve transparency by publicly releasing information and reports, as required by the Foundations for Evidence-Based Policymaking Act of 2018 and title IV of the HEA;

(6) To support research, analysis, and development, and the implementation and evaluation of education policies in relation to title IV, HEA programs;

(7) To support Federal agencies or entities, such as the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO), by providing aggregate, deidentified ad hoc query results on title IV, HEA programs;

(8) To help aid applicants and recipients achieve better outcomes through outreach to aid applicants and recipients at risk of default and of being defrauded;

(9) To determine aid recipients' eligibility for discharges of loans under title IV of the HEA;

(10) To maintain and process information and documentation, including, but not limited to, loan discharge income eligibility information, associated application information for the purposes of eligibility determination and verification information obtained from applicants, or applicable applicant's parent(s) or spouse, and income verification documentation of an aid recipient or applicable aid recipient's parent(s) or spouse, pertaining to discharge of eligible loans under title IV, HEA and promissory notes and other agreements that evidence the existence of a legal obligation to repay funds disbursed under title IV, HEA programs;

(11) To provide a more flexible data architecture that will allow FSA to respond more efficiently and accurately to complex data requests and changes in title IV, HEA policies and operations;

(12) To provide additional insights into title IV, HEA programs, improve oversight of FSA vendors, and develop a global view of FSA operations;

(13) To facilitate the collection, processing, and transmission of information to aid applicants or aid recipients, postsecondary and financial institutions, lenders, State agencies, and other authorized operational parties;

(14) To identify, prevent, reduce, and recoup improper payments;

(15) To communicate with aid applicants and recipients information regarding financial aid including, but not limited to, the Free Application for Federal Student Aid (FAFSA®) processing timelines, debt counseling references, and Public Service Loan Forgiveness (PSLF) information;

(16) To enforce the conditions or terms of a title IV, HEA obligation;

(17) To investigate possible fraud or abuse or verify compliance with program regulations or contract requirements;

(18) To litigate a title IV, HEA obligation, or to prepare for, provide support services for, or audit the results of litigation on a title IV, HEA obligation;

(19) To verify the identity of FSA aid recipients for the purpose of loan discharge eligibility;

(20) To assist audit and program review planning and reviews;

(21) To conduct testing, analysis, or take other administrative actions needed to prepare for or execute programs under title IV of the HEA;

(22) To maintain the consent/affirmative approval from income-driven repayment (IDR) applicants or recipients to permit the Department to disclose information to the Internal Revenue Service (IRS) for the IRS to disclose Federal Tax Information (FTI) of such individuals under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) and section 6103(l)(13)(A) of the Internal Revenue Code of 1986 (IRC) to the Department as part of a matching program to determine monthly repayment obligation amounts for IDR plans under title IV of the HEA with respect to loans made under part D of title IV of the HEA (the Direct Loan program) and to permit the Department to redisclose the FTI of such individuals pursuant to section 6103(l)(13)(D)(iv) of the IRC, or the revocation of the consent/affirmative approval;

(23) To assist in the calculation of measures related to Gainful Employment and other educational programs under title IV of the HEA; and

(24) To provide reporting on Gainful Employment programs to support determinations regarding institutional fiscal responsibility, administrative capability, and educational program eligibility.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The EDMAPS system maintains records on the following categories of individuals:

(1) Individual recipients of, and applicants for, aid (and their third-party preparers) under one of the programs authorized under title IV of the HEA, including, but not limited to, the: (a) Direct Loan Program; (b) Federal Family Education Loan (FFEL) Program; (c) Federal Insured Student Loan (FISL) Program; and (d) Federal Perkins Loan Program, including National Defense Student Loans, National Direct Student Loans, and Perkins Expanded Lending and Income Contingent Loans (Perkins Loans);

(2) Individuals who serve as endorsers on Direct PLUS loans;

(3) Recipients of Federal Pell Grants, Academic Competitiveness Grants (ACG), National Science and Mathematics Access to Retain Talent (SMART) Grants, Federal Supplemental Educational Opportunity Grants (FSEOGs), Federal Work-Study (FWS) Program earnings, Teacher Education Assistance for College and Higher Education (TEACH) Grants, and Iraq and Afghanistan Service Grants;

(4) Individuals who owe an overpayment on a Federal Pell Grant, an ACG, a National SMART Grant, a FSEOG, an Iraq and Afghanistan Service Grant, a TEACH Grant, or a Federal Perkins Loan;

(5) Individuals who have applied for borrower defense discharges (Note: The system contains case tracking records on these individuals);

(6) Individuals who received aid under the HEAL Program for analysis of their use of the title IV, HEA programs;

(7) Individuals who are title IV, HEA aid applicants or recipients, and parents or spouses of aid applicants or recipients, who submit feedback/complaints to the Department regarding title IV, HEA programs, contractors, or practices or processes of the Department;

(8) Individuals who are not aid applicants or recipients under title IV, HEA programs, but who have submitted feedback or a complaint or whose information has been provided to the Department as part of an interagency agreement or memorandum of understanding to allow analysis of title IV, HEA programs;

(9) Aid applicants and recipients under title IV, HEA programs, the parents of aid applicants and recipients under title IV, HEA programs, spouses of married aid applicants and recipients under title IV, HEA programs, PLUS loan endorsers, third-party preparers, and all other individuals who apply for an FSA user ID and password;

(10) Individuals who are, or once were, the parent(s) of a dependent applicant or aid recipient, or the spouse of a married applicant or aid recipient, under title IV, HEA programs;

(11) Individuals who are, or once were, officials, such as college presidents, college chief financial officers, and college financial aid directors, at postsecondary institutions and who are mentioned in records of their institutions' annual reports and

periodic institutional program reviews and those who serve as contacts at educational institutions listed on the program participation agreement, including, but not limited to, financial aid directors and college presidents; and

(12) Individuals who are title IV, HEA aid recipients and who attended, or who are attending, a gainful employment program at a postsecondary institution.

CATEGORIES OF RECORDS IN THE SYSTEM:

Note: The FTI that the Department will obtain directly from the IRS under the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act will be maintained in a separate system of records, which is covered by the system of records notice entitled ''FUTURE Act System (FAS)'' (18–11–23). This system will continue to maintain both historical and applicant-provided income information (either through a manual FAFSA entry or submission of alternative documentation of income (ADOI) through the IDR process). Any reference to income throughout this system of records notice refers to income information that the Department did not obtain directly from the IRS but obtained from the applicant or from another source.

The EDMAPS system includes, but is not limited to, the following categories of records:

(1) Aid applicant and recipient identifier information, including SSN, FSA ID, name (both current and previous), date of birth, physical mailing address, phone number, email address, and driver's license number and state of issuance;

(2) Information on the aid recipient's loan(s) covering the period from the origination of the loan through final payment, cancellation, consolidation, discharge, or other final disposition, including details such as loan amount, disbursements, balances, loan status, repayment plan payments and related information, collections, lender and guaranty agency claims, deferments, forbearances, refunds, and cancellations, master promissory notes, information collected to determine loan discharge eligibility along with eligibility and income verification consents;

(3) Aid applicant and recipient demographic information from aid applications including, but not limited to, dependency status, citizenship, veteran status, marital status, sex/gender, race/ethnicity, incarceration flag, income and asset information (including income and asset information on the aid applicant's or aid recipient's parent(s), if a dependent aid applicant or recipient, and the aid applicant's or recipient's spouse, if married), and expected family contribution or Student Aid Index;

(4) Demographic information on the spouse of a married aid applicant or aid recipient and the parent(s) of a dependent aid applicant or aid recipient from aid applications, including, but not limited to, U.S. passport number, name (current and previous), date of birth, SSN, FSA ID, driver's license number and state of issuance, marital status, telephone number, email address, income and asset information, and parent highest level of schooling completed and college attendance status;

(5) Information related to an aid applicant or aid recipient's application for an income-driven repayment plan, including information such as current income, family size, repayment plan selection, and, if married, information about the aid applicant's or recipient's spouse;

(6) Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, FSEOG, and Iraq and Afghanistan Service Grant amounts and dates of disbursement, and money earned under the FWS Program;

(7) Federal Pell Grant, ACG, National SMART Grant, Iraq and Afghanistan Service Grant, FSEOG, and Federal Perkins Loan Program overpayment amounts;

(8) Information maintained by a guaranty agency, including, demographic, contact, and identifier information, an aid recipient's FFEL loan(s), and the lender(s), holder(s), and servicer(s) of the aid recipient's FFEL loan(s);

(9) Information concerning the date of any default on loans;

(10) Aid recipient loan information that contains information on financial institutions participating in the loan participation and sale programs established by the Department under the Ensuring Continued Access to Student Loan Act of 2008 (ECASLA) (Pub. L. 110–227), including the collection of ECASLA loan-level funding amounts, dates of ECASLA participation for financial institutions, dates and amounts of loans sold to the Department under ECASLA, and the amount of loans funded by the Department's programs but repurchased by the lender;

(11) Aid recipient enrollment information, such as enrollment status, information on the aid recipient's educational institution, level of study, the Classification of Instructional Programs (CIP) code, published length for the program in which the aid recipient enrolled at a postsecondary institution or programs of studies at the postsecondary institution and approved Prison Education Programs (PEPs) (the FAFSA Simplification Act allows for expanding access to Federal Pell Grants to include Federal and State penal facilities approved PEPs);

(12) Records related to discharge of title IV, HEA obligations on grounds of qualifying service, bankruptcy discharge, death, PSLF (including, but not limited to, employment records), Borrower Defense (including, but not limited to, case decisions, principal and interest discharged, amount refunded, and borrower defense notifications), or other statutory or regulatory grounds for relief;

(13) Case records on complaints and feedback regarding title IV, HEA programs, Department contractors, and the practices and processes of the Department and fraud referrals;

(14) Records on FSA user IDs and passwords, and password recovery questions and answers for individuals covered under the system including aid applicants and recipients, the parents of aid applicants and recipients under title IV, HEA programs, spouses of married aid applicants and aid recipients, PLUS loan endorsers, and third-party preparers;

(15) Records of aid applicant or aid recipient contacts (phone calls and letters);

(16) HEAL Program records, when loaded into the system for analysis of HEAL aid recipients' use of the title IV, HEA programs;

(17) Reference data about lenders and guaranty agencies, such as parent-subsidiary lender relationships, in addition to aggregated financials from lenders and guaranty agencies;

(18) Centralized identifying and contact information received from the FAFSA, origination and disbursement records, loan servicers, and customers (via the studentaid.gov interface), augmented by algorithms to identify the most accurate and/or up-to-date identifying and contact records;

(19) Credit check details, decision, adverse reasons/credit bureau info and credit appeal information on PLUS loan applicants, recipients, and endorsers;

(20) Loan discharge income eligibility information, associated discharge eligibility and income verification consent information from discharge applicants or applicable applicant's parent(s) or spouse, and income verification documentation of an aid recipient or applicable aid recipient's parent(s) or spouse, pertaining to discharge of eligible loans under title IV, HEA programs;

(21) Unstructured data, documentation, and images (such as

PDF files), including, but not limited to, free-text fields, servicer telephone conversations, deferment forms, repayment plan application forms, consolidation application forms, loan discharge application forms, ADOI artifacts used to support IDR plans, and other agreements that may impact a legal obligation to repay funds disbursed under title IV, HEA programs;

(22) Records regarding individuals at postsecondary institutions that participate in aid programs authorized under title IV of the HEA including, but not limited to, the name and taxpayer identification number or SSN of individuals with a substantial ownership interest in the institution, business address, phone numbers, and personal identification numbers assigned by the Department and employees, officials, and authorized representatives/agents of IHEs, and members of boards of directors or trustees of IHEs; employees of foreign entities (*i.e.,* Non-U.S. Medical Evaluating Agency, Authorizing Agency) that evaluate the quality of education; and employees, officials, and authorized representatives/agents of third-party servicers, guaranty agencies, Federal loan servicers, FFEL lenders, FFEL lenders' servicers, and State agencies that participate in aid programs authorized under title IV of the HEA including, but not limited to, their name and taxpayer identification number or SSN. The system also maintains the following information for all individuals covered by this paragraph including business addresses, phone numbers, and personal identification numbers assigned by the Department for analytics and reporting;

(23) For aid recipients who began an educational program, student identifiers including the student's SSN, date of birth, and name; student enrollment information including the Office of Postsecondary Education identification (OPE ID) number of the institution, and the Classification of Instructional Programs (CIP) code and credential level for the educational program in which the student enrolled; the student's enrollment status, annual cost of attendance (COA), total tuition and fees assessed, tuition residency status, total annual allowance for books, supplies, equipment, housing, and food from their COA, amount of institutional grants and scholarships disbursed, amount of other State, Tribal, or private grants disbursed, and the amount of any private educational loans disbursed; and, if the student completed or withdrew from the program, the completion or withdrawal date, the total amount the student received from private education loans, the student's total amount of institutional debt, the student's total amount of tuition and fees assessed, the student's total amount of allowances for books, supplies, and equipment from the student's COA for each award year, and the total amount of institutional grants and scholarships disbursed to the student;

(24) Information provided on third-party preparers, including, but not limited to, first name, last name, SSN or employer identification number, affiliation, address or employer's address, signature, and signature date;

(25) Consent/affirmative approval both to permit the Department to disclose information on IDR applicants or recipients to the IRS for the IRS to disclose FTI under subsection 494(a) of the HEA (20 U.S.C. 1098h(a)) and section 6103(l)(13)(A) and (C) of the IRC to the Department as part of a matching program to determine their monthly repayment obligation amounts for IDR plans under title IV of the HEA with respect to loans made under part D of title IV of the HEA (the Direct Loan program) and to permit the Department to redisclose FTI of such individuals pursuant to clauses section 6103(l)(13)(D)(iv) of the IRC and for the revocation of the consent/affirmative approval; and

(26) Information on individuals who are not aid applicants or recipients under title IV, HEA provided by Federal or State agencies as part of an interagency agreement or memorandum of understanding to allow analysis of title IV, HEA programs.

RECORD SOURCE CATEGORIES:

Information is obtained from other Department systems, or their successor systems, such as the Federal Loan Servicers' IT systems (covered by the system of records titled ''Common Services for Borrowers (CSB)'' (18–11–16)); the Debt Management and Collections System (covered by the system of records titled ''Common Services for Borrowers (CSB)'' (18–11–16)); COD (covered by the system of records titled ''Common Origination and Disbursement (COD) System'' (18–11–02)); FMS (covered by the system of records titled ''Financial Management System (FMS)'' (18–11–17)); SAIG, PM System (covered by the system of records titled ''Student Aid internet Gateway (SAIG), Participation Management System'' (18–11–10)); Postsecondary Education Participants System (covered by the system of records titled ''Postsecondary Education Participants System'' (18–11–09)); NSLDS (covered by the system of records titled ''National Student Loan Data System (NSLDS)'' (18–11–06)); PAS (covered by the system of records titled ''Person Authentication Service (PAS)'' (18–11–12)); HEAL (covered by the system of records titled ''Health Education Assistance Loan (HEAL) Program'' (18–11–20)); and all IT systems covered by the system of records titled ''Aid Awareness and Application Processing'' (18–11–21).

The EDMAPS system receives origination and disbursement records on Federal Pell Grants, ACGs, National SMART Grants, TEACH Grants, Iraq and Afghanistan Service Grants, and Direct Loans; master promissory note records; records of PLUS loan credit checks and credit appeals; annual aggregated Federal Campus-Based Program (FWS, FSEOG, and Perkins Loan) records from post-secondary institutions; consolidation loan application records; repayment plan application records; and financial literacy (entrance and exit) counseling records from COD (covered by the systems of records titled ''Common Origination and Disbursement (COD) System'' (18–11–02)) or any successor system.

Information in this system also may be obtained from other persons or entities from whom or from which information is obtained following a disclosure under the routine uses set forth below.

Information in this system may also be obtained on individuals who are not aid applicants or recipients under title IV, HEA from Federal or State agencies as part of an interagency agreement or memorandum of understanding to allow analysis of title IV, HEA programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information maintained in a record in this system of records under the routine uses listed in this system of records notice without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or pursuant to a computer matching agreement that meets the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a).

(1) *Program Disclosures.* The Department may disclose records from this system of records for the following program purposes:

(a) To promote transparency, and the effective and efficient administration, of title IV, HEA programs, the Department may disclose records to guaranty agencies, educational institutions, financial institutions, and Federal,

State, Tribal, and local government agencies;

(b) To detect, prevent, mitigate, and recoup improper payments in title IV, HEA programs, the Department may disclose records to guaranty agencies, educational institutions, financial institutions, and Federal, State, Tribal, and local government agencies;

(c) To support auditors and program reviewers in planning and carrying out their assessments of title IV, HEA program compliance, the Department may disclose records to guaranty agencies, educational institutions, financial institutions and servicers, and Federal, State, Tribal, and local government agencies;

(d) To assist with the determination of eligibility for loan discharges, the Department may disclose records to holders of loans made under title IV of the HEA; and

(e) To support the investigation of possible fraud and abuse and to detect and prevent fraud and abuse in title IV, HEA program funds, the Department may disclose records to institutions of higher education, third-party servicers, and Federal, State, local, or Tribal agencies.

(2) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a member of Congress or the member's staff when necessary to respond to an inquiry from the member made at the written request of that individual and on behalf of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(3) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate government agency, whether Federal, State, Tribal, or local, charged with investigating or prosecuting that violation or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the following parties listed in subparagraphs (i) through (v) is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records from this system of records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in their official capacity;

(iii) Any Department employee in their individual capacity if the U.S. Department of Justice (DOJ) has been requested to or has agreed to provide or arrange for representation of the employee;

(iv) Any Department employee in their individual capacity when the Department has agreed to represent the employee;

(v) The United States when the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to DOJ.* If the Department determines that disclosure of certain records to DOJ is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that it is relevant and necessary to judicial or administrative litigation or ADR to disclose certain records from this system of records to an adjudicative body before which the Department is authorized to appear or to a person or an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, person, or entity.

(d) *Disclosure to Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(5) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record from this system of records to a Federal, State, Tribal, or local government agency, or to another public agency or professional organization, maintaining civil, criminal, or other relevant enforcement or other pertinent records if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, Tribal, local, or other government or public agency or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(6) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to a grievance, complaint, or disciplinary action involving a present or former employee of the Department, the Department may disclose the record during investigation, fact-finding, or adjudication to any party to the grievance, complaint, or action; to the party's counsel or representative; to a witness; or to a designated fact finder, mediator, or other person designated to resolve issues or decide the matter.

(7) *Labor Organization Disclosure.* The Department may disclose a record to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of a labor organization recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(8) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to DOJ or the OMB if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(9) *Disclosure to DOJ.* The Department may disclose records to DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(10) *Contract Disclosure.* If the Department contracts with an entity to perform any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department shall require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(11) *Research Disclosure.* The Department may disclose records to a researcher if the Department determines that the individual or organization to

which the disclosure would be made is qualified to carry out specific research related to the functions or purposes of this system of records. The Department may disclose records from this system of records to that Federal researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(12) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records from this system of records to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) 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 (c) 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.

(13) *Disclosure in Assisting Another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records 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, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(14) *Disclosure to the OMB for Federal Credit Reform Act (FCRA) Support.* The Department may disclose records to OMB as necessary to fulfill FCRA requirements in accordance with 2 U.S.C. 661b.

(15) *Disclosure to National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The Department electronically stores information at the AWS site referenced in the foregoing section titled ''SYSTEM LOCATION.'' For example, the Department electronically stores, for the entire Federal Student Aid life cycle from application through loan payoff, aid applicant and aid recipient demographic and title IV, HEA aid information such as, but not limited to, FFEL program, FISL program, and Perkins Loan records at the AWS site. The Department also stores electronic master promissory notes, electronic Special Direct Consolidation Loan opportunity applications and promissory notes, electronic requests to repay a Direct Loan under an income-driven repayment plan, and Federal Direct Consolidation Loan applications and promissory notes at the AWS site. Finally, data obtained from the paper promissory notes or the paper loan discharge eligibility form are stored on hard disks at the AWS site. (These are referred to as metadata and are used by the system to link promissory notes or loan discharge eligibility forms to an aid recipient.)

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

With some exceptions, the Department does not generally use the EDMAPS system for the retrieval of individual records. However, system administrators and a handful of privileged users are able to retrieve records from the EDMAPS system by award ID, customer ID, borrower ID, an individual's SSN, last name, first name, and date of birth. Further, the Department uses the EDMAPS system to retrieve individual records to process eligibility information and other information about aid recipients and to send it to Federal Loan Servicers for the discharge of eligible student loans under the title IV, HEA programs. Internal reports also provide a secure vehicle for approved Department employees and Department contractor staff to access samples of individual records, for example as part of performing program reviews.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Department has submitted a retention and disposition schedule that covers the primary records contained in this system to NARA for review. The Department will treat these records as ''permanent records,'' as defined in 36 CFR 1220.18, until such time as a final disposition is approved.

The EDMAPS system may also contain certain records that the Department considers, on a case-by-case basis and with the approval of the Agency Records Officer, to be covered by General Records Schedule 5.2, ''Transitory and Intermediary Records.''

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All users of the system will have a unique user ID and password. In addition to the user ID and password, users must authenticate their Personal Identity Verification (PIV) card to access the system, from within either the Department's Network, the Department's Global Protect Virtual Private Network (VPN), or the Department's vendor's Cisco AnyConnect VPN. Users are required to change their password at least every 60 days in accordance with the Department's information technology standards.

All physical access to the information housed in the EDMAPS system locations is controlled and monitored by security personnel who check each individual entering the building for their employee or visitor badge.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention with firewalls, encryption, and password protection. This security system limits data access to Department and Department contractor staff on a ''need-to-know'' basis and controls individual users' ability to access and alter records within the system. All interactions by users of the system are recorded. Users of the EDMAPS system do not see PII, even when looking at individual records. EDMAPS tokenizes PII, meaning that PII is swapped out for non-sensitive random values. This does not prevent users of EDMAPS from joining tables containing the same PII data element, because tokenization ensures that the same non-sensitive value is swapped out in every table that has that particular data element, for example, SSN or date of birth.

In accordance with the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, every Department system must receive a signed Authorization to Operate (ATO) from a designated Department official. The ATO process includes a rigorous assessment of security and privacy controls, a plan of action and milestones to remediate any identified deficiencies, and a continuous monitoring program.

FISMA controls implemented are comprised of a combination of management, operational, and technical controls, and include the following control families: access control, awareness and training, audit and accountability, security assessment and authorization, configuration management, contingency planning, identification and authentication, incident response, maintenance, media protection, physical and environmental protection, planning, personnel security, privacy, risk assessment, system and services acquisition, system and communications protection, system and information integrity, and program management.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record regarding you in this system of records, contact the system manager at the address listed above. You must provide the system manager with the necessary particulars such as your full legal name, date of birth, address, and any other identifying information requested by the Department while processing the request in order to distinguish between individuals with the same name. Requesters must also reasonably specify the record contents sought. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of your record within the system of records, contact the system manager at the address listed above and provide your full legal name, date of birth, and SSN. Identify the specific items to be changed and provide a written justification for the change. Requests to amend a record must meet the requirements in 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager at the address listed above. You must provide necessary particulars such as your full legal name, date of birth, address, and any other identifying information requested by the Department while processing the request to distinguish between individuals with the same name. Requests must meet the requirements in 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The system of records entitled ''Enterprise Data Management and Analytics Platform Services (EDMAPS)'' (18–11–22) was last published in full in the **Federal Register** on July 28, 2023 (88 FR 48824).

[FR Doc. 2024–31452 Filed 12–31–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES:

Monday, January 27, 2025; 1–4:15 p.m. EST

Tuesday, January 28, 2025; 9 a.m.–4 p.m. EST

ADDRESSES: Emeline Hotel, Hayne Gallery AB, 181 Church Street, Charleston, South Carolina 29401. The meeting will also be streamed on YouTube, no registration is necessary; links for the livestream can be found on the following website: *https://cab.srs.gov/srs-cab.html.*

FOR FURTHER INFORMATION CONTACT: James Tanner, Office of External Affairs, U.S. Department of Energy (DOE), Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 646–2167; or Email: *james.tanner@srs.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda

Monday, January 27, 2025

Chair Update
Agency Updates
Subcommittee Updates
Program Presentations to the Board
Board Business
Public Comments

Tuesday, January 28, 2025

Program Presentations to the Board
Public Comments
Board Business and Voting

Public Participation: The meeting is open to the public. To register for in-person attendance, please send an email to *srscitizensadvisoryboard@srs.gov* no later than 4 p.m. EST on Thursday, January 23, 2025. The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Tanner at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board via email either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should submit their request to *srscitizensadvisoryboard@srs.gov.* Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. Comments will be accepted after the meeting, by no later than 4 p.m. EST on Tuesday, February 4, 2025. Please submit comments to *srscitizensadvisoryboard@srs.gov.* The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make oral public comments will be provided a maximum of five minutes to present their comments. Individuals wishing to submit written public comments should email them as directed above.

Minutes: Minutes will be available by emailing or calling James Tanner at the email address or telephone number listed above. Minutes will also be available at the following website: *https://cab.srs.gov/srs-cab.html.*

Signing Authority: This document of the Department of Energy was signed on December 27, 2024, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters

the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 27, 2024.

Jennifer Hartzell,

Alternate Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–31489 Filed 12–31–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF25–3–000]

Southwestern Power Administration; Notice of Filing

Take notice that on December 19, 2024, Southwestern Power Administration submitted a tariff filing per 10 CFR 903.23: Upper Great Plains Region Pick-Sloan Missouri Basin Program Eastern Division—Western Area Power Administration—217, 20241217 to be effective 10/1/2025.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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.*

Comment Date: 5:00 p.m. Eastern Time on January 21, 2025.

Dated: December 26, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–31474 Filed 12–31–24; 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: EG25–68–000.
Applicants: 59TC 8me LLC.
Description: 59TC 8me LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/23/24.
Accession Number: 20241223–5344.
Comment Date: 5 p.m. ET 1/13/25.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL25–42–000.
Applicants: Midland Cogeneration Venture Limited Partnership.
Description: Midland Cogeneration Venture Limited Partnership submits request for renewal of a temporary waiver of the Commission's qualifying cogeneration facility heightened efficiency standard.
Filed Date: 12/17/24.
Accession Number: 20241217–5301.
Comment Date: 5 p.m. ET 1/7/25.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2178–045; ER10–2192–045; ER12–1223–024; ER12–1829–019; ER13–1536–029; ER16–2363–006.
Applicants: Bluestem Wind Energy, LLC, Exelon Generation Company, LLC, Shooting Star Wind Project, LLC, Wildcat Wind, LLC, Constellation Energy Commodities Group Maine, LLC, Constellation NewEnergy, Inc.
Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Constellation NewEnergy, Inc., et al.
Filed Date: 12/20/24.
Accession Number: 20241220–5524.
Comment Date: 5 p.m. ET 2/18/25.
Docket Numbers: ER10–3079–022.
Applicants: Tyr Energy LLC.
Description: Notice of Change in Status of Tyr Energy, LLC.
Filed Date: 12/20/24.
Accession Number: 20241220–5521.
Comment Date: 5 p.m. ET 1/10/25.
Docket Numbers: ER10–3079–023.
Applicants: Tyr Energy LLC.
Description: Triennial Market Power Analysis for Southwest Power Pool Inc. of Tyr Energy, LLC.
Filed Date: 12/20/24.
Accession Number: 20241220–5523.
Comment Date: 5 p.m. ET 2/18/25.
Docket Numbers: ER20–681–008.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Refund Report: Supplemental Refund Report to be effective N/A.
Filed Date: 12/26/24.
Accession Number: 20241226–5000.
Comment Date: 5 p.m. ET 1/16/25.
Docket Numbers: ER21–1807–005.
Applicants: Hill Top Energy Center LLC.
Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT to be effective N/A.
Filed Date: 12/26/24.
Accession Number: 20241226–5371.
Comment Date: 5 p.m. ET 1/16/25.
Docket Numbers: ER25–734–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2024–12–26_SA 4412 Entergy Louisiana-Entergy Louisiana Sub Original GIA (Nelson) to be effective 12/5/2024.
Filed Date: 12/26/24.
Accession Number: 20241226–5278.
Comment Date: 5 p.m. ET 1/16/25.
Docket Numbers: ER25–804–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA and ICSA, SA Nos. 6947 and 6948; Queue No. AD2–066 to be effective 8/21/2023.
Filed Date: 12/23/24.
Accession Number: 20241223–5321.
Comment Date: 5 p.m. ET 1/13/25.
Docket Numbers: ER25–805–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 7462; AB2–136 to be effective 2/23/2025.
Filed Date: 12/26/24.
Accession Number: 20241226–5001.
Comment Date: 5 p.m. ET 1/16/25.
Docket Numbers: ER25–806–000.
Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation—SA Nos. 2776, 2777, 2778 and 2779 to be effective 11/25/2024.

Filed Date: 12/26/24.

Accession Number: 20241226–5003.

Comment Date: 5 p.m. ET 1/16/25.

Docket Numbers: ER25–807–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to PJM Rate Schedule 46—Market Monitor Services Agreement to be effective 1/1/2025.

Filed Date: 12/26/24.

Accession Number: 20241226–5007.

Comment Date: 5 p.m. ET 1/16/25.

Docket Numbers: ER25–808–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original GIA Service Agreement No. 7441; Project Identifier No. AE2–045 to be effective 11/25/2024.

Filed Date: 12/26/24.

Accession Number: 20241226–5100.

Comment Date: 5 p.m. ET 1/16/25.

Docket Numbers: ER25–809–000.

Applicants: Walton County Power, LLC.

Description: Tariff Amendment: Walton County Power, LLC MBR Cancellation to be effective 12/27/2024.

Filed Date: 12/26/24.

Accession Number: 20241226–5154.

Comment Date: 5 p.m. ET 1/16/25.

Docket Numbers: ER25–810–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original GIA, SA No. 7451; Project Identifier No. AG1–517 to be effective 12/2/2024.

Filed Date: 12/26/24.

Accession Number: 20241226–5235.

Comment Date: 5 p.m. ET 1/16/25.

Docket Numbers: ER25–811–000.

Applicants: Uniper Global Commodities North America LLC.

Description: Tariff Amendment: Cancellation entire tariff to be effective 12/27/2024.

Filed Date: 12/26/24.

Accession Number: 20241226–5325.

Comment Date: 5 p.m. ET 1/16/25.

Docket Numbers: ER25–812–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA#767 Eleventh Revised—Basin NITSA to be effective 2/27/2025.

Filed Date: 12/26/24.

Accession Number: 20241226–5329.

Comment Date: 5 p.m. ET 1/16/25.

Docket Numbers: ER25–813–000.

Applicants: Basin Electric Power Cooperative.

Description: Initial rate filing: Submission of Service Agreement No. 121 to be effective 3/1/2025.

Filed Date: 12/26/24.

Accession Number: 20241226–5341.

Comment Date: 5 p.m. ET 1/16/25.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: December 26, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–31476 Filed 12–31–24; 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: AC25–41–000.

Applicants: Phillips 66 Pipeline LLC.

Description: Phillips 66 Pipeline, LLC submits request for Commission approval to use Account 705, Prior Period Adjustments to Beginning Retained Income, in its 2024 FERC Form 6.

Filed Date: 12/26/24.

Accession Number: 20241226–5097.

Comment Date: 5 p.m. ET 1/16/25.

Docket Numbers: RP25–304–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: § 4(d) Rate Filing: TPC 2024–12–23 Negotiated Rate Agreement Amendments to be effective 12/24/2024.

Filed Date: 12/23/24.

Accession Number: 20241223–5244.

Comment Date: 5 p.m. ET 1/6/25.

Docket Numbers: RP25–305–000.

Applicants: Honeoye Storage Corporation, RWE Clean Energy Wholesale Services, Inc., Citadel Energy Marketing LLC.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of Honeoye Storage Corporation, et al.

Filed Date: 12/23/24.

Accession Number: 20241223–5261.

Comment Date: 5 p.m. ET 1/6/25.

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: *https://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: December 26, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–31472 Filed 12–31–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25–33–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on December 16, 2024, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 300, Houston, TX 77002–2700, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and Columbia's blanket certificate issued in Docket No. CP83–76–000, for authorization to plug and abandon one injection/withdrawal well and to abandon connecting pipeline and appurtenant facilities (Guernsey Well 7908 Abandonment Project), all located in Guernsey County, Ohio. The Guernsey Well 7908 Abandonment Project is necessary to comply with the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Storage Final Rule, which requires operators to assess and minimize well integrity risks. Well 7908, and the associated facilities are no longer necessary due to their low performance and inability to contribute significantly to the total deliverability of the Guernsey Storage Field. Abandoning these facilities will eliminate routine maintenance requirements and the associated costs. The estimated cost for the project is $1.1 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Any questions concerning this request should be directed to David A. Alonzo, Manager of Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, (832) 320–5477, or *david_alonzo@tcenergy.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on February 24, 2025. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is February 24, 2025. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is February 24, 2025. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before February 24, 2025. *The filing of a comment alone will not serve to make the filer a party to the proceeding.* To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP25–33–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP25–33–000.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail at: David A. Alonzo, Manager of Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas, or by email (with a link to the document) at *david_alonzo@tcenergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: December 26, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–31473 Filed 12–31–24; 8:45 am]

BILLING CODE 6717–01–P

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2024–0139; FRL–12537–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Notice of Arrival of Pesticides and Devices Under Section 17(c) of FIFRA (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted the following information collection request (ICR), Notice of Arrival of Pesticides and Devices Under Section 17(c) of FIFRA (EPA ICR Number 0152.15 and OMB Control Number 2070–0020), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This is a proposed extension of ICR, which is currently approved through January 31, 2025. Public comments were previously requested via the **Federal Register** on June 24, 2024 during a 60 day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments must be received on or before February 3, 2025.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OPP–2024–0139, to EPA online using *https://www.regulations.gov* or by mail to EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Connie Ocampo, Office of Program Support (7602M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1216; email address: *ocampo.connie@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a request to renew the approval of an ICR currently approved through January 31, 2025. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on April 25, 2024, establishing a 60-day comment period (89 FR 31747). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information collection activities and related estimated burden and costs that are summarized in this document, are available in the docket.

Abstract: The U.S. Customs and Border Protection (CBP or ''Customs'') regulations at 19 CFR 12.112 require that an importer or their authorized agent desiring to import a pesticide or pesticide device into the United States shall, prior to the shipment's arrival in the United States, submit a Notice of

Arrival (NOA) of Pesticides and Devices (EPA Form 3540–1 or its electronic alternative via a CBP-authorized electronic interchange system) to EPA. This is necessary to ensure that the EPA fulfills its obligations and is notified of the arrival of pesticides and pesticide devices as required under section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and allow time for the EPA to review and plan for the final disposition of the shipment. Paper NOAs (EPA Form 3540–1) must be reviewed by the EPA, provide the EPA's determination of any action to be taken by CBP, and be signed by the EPA Administrator (or designee per delegations). Alternatively, an importer or their authorized agent can electronically submit the pesticide data required on the Paper NOA through the Participating Government Agency (PGA) Message Set in Automated Commercial Environment (ACE) along with an image of the product's label. The data in the PGA Message Set is automatically checked for presence, format, and validity, similar to the physical reviews done by regional import specialist for paper NOAs submitted by using EPA Form 3540–1. Upon entry of a shipment of pesticides or devices, and concurrent with the filing of the entry documentation, CBP must be in receipt of the completed Paper NOA or its electronic alternative. CBP will compare the entry information for the shipment with the information in the NOA and notify the EPA of any discrepancies.

Form number(s): EPA Form 3540–1 or its Customs-authorized electronic equivalent.

Respondents/affected entities: Entities potentially affected by this ICR are importers of pesticides and pesticide devices, which may include entities identified with the following North American Industrial Classification System (NAICS) codes: Commercial and Institutional Building Construction (NAICS 236220); Pesticide and Other Agricultural Chemical Manufacturing (NAICS 325300); and Public Administration: Executive Offices (NAICS 921110). Other business and institutions that import pesticides include Agriculture, Forestry, Fishing and Hunting (Sector 11), Wholesale Trade, (Sector 42).

Respondent's obligation to respond: Mandatory, per 40 CFR 152.25(f), FIFRA sections 3 and 25, and 19 CFR 12.112.

Estimated number of potential respondents: 168,025.

Frequency of response: On occasion.

Total estimated burden: 67,723 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated costs: $5,478,039 (per year), includes $0 annualized capital investment or maintenance and operational costs.

Changes in the estimates: There is an increase of 26,843 hours in the total estimated respondent burden compared with that currently approved by OMB. This change reflects an increase in the annual number of NOAs submitted electronically through the ACE system by 75,892. There is an increase in respondent costs by $2,724,517. Cost increases are a result of changes to reflect the current wage rates. This is an adjustment.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2024–31463 Filed 12–31–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2024–0438; FRL–12231–01–OCSPP]

Draft Pesticide Registration Notice; Establishment of a Plan To Track the Adoption of Bilingual Labeling on End Use Pesticide Product Labels; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is announcing the availability of and seeking public comment on a draft Pesticide Registration Notice (PR Notice) entitled ''Establishment of a Plan to Track the Adoption of Bilingual Labeling on End Use Pesticide Product Labels.'' PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. The Pesticide Registration Improvement Act of 2022 (PRIA 5) requires EPA to ''develop and implement, and make publicly available, a plan for tracking the adoption of the bilingual labeling.'' This draft PR Notice provides guidance on how the Agency plans to track the adoption of bilingual labeling.

DATES: Comments must be received on or before February 3, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2024–0438, through the *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. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Bartow, Office of Chemical Safety and Pollution Prevention (7508M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2280; email address: *OPPbilinguallabels@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action is directed to the general public and may be of specific interest to persons or entities that register pesticide products. Since a potentially broad range of entities may be interested in this action, the Agency has not attempted to describe all the specific entities that may be interested. If you have any questions regarding the applicability of this guidance to a particular entity or registration action, contact the person listed under **FURTHER INFORMATION CONTACT**.

II. What is the Agency's authority for taking this action?

EPA is issuing this guidance pursuant to its authority under PRIA 5 which requires the Agency to develop, implement, and make publicly available, a plan for tracking the adoption of bilingual labeling by December 29, 2024.

III. What action is the Agency taking?

EPA is announcing the availability of and seeking public comment on a draft PR Notice entitled ''Establishment of a Plan to Track the Adoption of Bilingual Labeling on End Use Pesticide Product Labels.'' PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. The Pesticide Registration Improvement Act of 2022 (PRIA 5) requires EPA to ''develop and implement, and make publicly available, a plan for tracking the adoption of the bilingual labeling.'' Currently, bilingual labeling is implemented through a non-notification process (see PR Notice 98–10, entitled ''Notifications, Non-Notifications and Minor Formulation Amendments'' dated

October 22, 1998). The non-notification process means that a product label may be updated with Spanish translations without notifying EPA (or EPA reviewing the label), if that is the only change being made to the label. Non-notification label changes are not systematically tracked by EPA. However, given the new bilingual labeling requirements in PRIA 5, EPA has developed a plan for tracking the adoption of the bilingual labeling. The draft PR Notice provides guidance on how the Agency plans to track the adoption of bilingual labeling. Since Spanish is the primary language for most American farmworkers, this effort advances environmental justice by making health and safety information on pesticide labels more accessible, fostering a better understanding and compliance with label instructions.

IV. Do PR Notices contain binding requirements?

The draft PR Notice discussed in this document is intended to provide guidance to EPA personnel and decision makers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, the PR Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

V. Are these forms approved under the Paperwork Reduction Act (PRA)?

According to the PRA, 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 that requires approval under the PRA, unless it has been approved by the Office of Management and Budget (OMB) and displays a currently valid OMB control number. The information collection activities described in this draft PR Notice are being addressed in the new Information Collection Requests (ICR) entitled ''Pesticide Product, Spanish Labeling Tracking,'' identified as EPA ICR No. 7795.01, that will be made available for public review and comment in a forthcoming edition of the **Federal Register**. EPA intends to consider public comments on that ICR, along with comments on the draft PR Notice, before submitting a revised ICR to OMB for review and approval under the PRA, and issuing a final PR Notice.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 26, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2024–31469 Filed 12–31–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2024–0054; FRL–12539–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Pesticide Registration Fees Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted the following information collection request (ICR), Pesticide Registration Fees Program (EPA ICR Number 2330.05 and OMB Control Number 2070–0179), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This is a proposed extension of the ICR, which is currently approved through January 31, 2025. Public comments were previously requested via the **Federal Register** on April 29, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments must be received on or before February 3, 2025.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP–2024–0054, to EPA online using *https://www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Carolyn Siu, Office of Program Support (7602M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 719–1649; email address: *siu.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a request for approval of an ICR currently approved through January 31, 2025. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on April 29, 2024, establishing a 60-day comment period (89 FR 33344). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information collection activities and related estimated burden and costs that are summarized in this document, are available in the docket. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This ICR covers the paperwork burden hours and costs associated with the information collection activities under the pesticide registration fee program. Pesticide registrants are required by statute to pay an annual registration maintenance fee for all products registered under sections 3 and 24(c) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). In addition, the Pesticide Registration Improvement Act (PRIA) amended FIFRA in 2004 to create a registration service fee system for applications for specific pesticide registration, amended registration, and associated tolerance actions as per FIFRA section 33. This ICR specifically covers the activities related to the collection of the annual registration maintenance fees, the registration service fees, and the burden associated with the submission of requests for fees to be waived.

Form number(s): 8570–30.

Respondents/affected entities: Entities potentially affected are those that are pesticide importers which includes entities identified in the North

American Industrial Classification System (NAICS) codes identified in question 12 of the ICR.

Respondent's obligation to respond: Mandatory, per FIFRA sections 4(i)(5) and 33.

Estimated number of potential respondents: 2,252.

Frequency of response: Annually and on occasion.

Total estimated burden: 9,058 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated costs: $822,010 (per year), includes $0 annualized capital investment or maintenance and operational costs.

Changes in the estimates: There is an increase in the number of respondents by 369 and a corresponding increase of 518 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. There is also an increase in costs for the regulated community by $138,709. The increase in costs ae based on updated BLS wage rates. These changes are adjustments.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2024–31467 Filed 12–31–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2023–0492; FRL 12479–01–OAR]

Transportation and Climate Division (TCD) Grant Program Reporting Templates: Supplemental Project Application Template and Project Reporting Templates for Diesel Emission Reduction Act (DERA), Clean School Bus (CSB), Clean Heavy Duty (CHD), and Clean Ports Grant Programs; EPA ICR No. 2793.02 OMB Control No. 2060–0754

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit a revised information collection request (ICR), ''Transportation and Climate Division (TCD) Grant Programs ICR'' (EPA ICR No. 2793.02, OMB Control No. 2060–0754) 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 revision of ICR No. 2793.01, which is currently approved through April 30, 2027. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before March 3, 2025.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2023–0492, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Timothy Thomas, Office of Transportation and Air Quality, (6406A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 734–214–4465; fax number: 202–343–2803; email address: *thomas.tim.l@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a request for approval of a revised collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This notice allows 60 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The ICR package will be submitted to OMB for review and approval.

Abstract: This supporting statement is for a revision to an existing Information Collection Request (ICR) for four mobile source related grant programs administered by the Transportation and Climate Division (TCD), within Environmental Protection Agency's (EPA) Office of Transportation and Air Quality (OTAQ). These four programs include: Diesel Emission Reduction Act (DERA) Grant Program, Clean School Bus (CSB) Grant Program, Clean Heavy-Duty Vehicles (CHDV) Grant Program, and Clean Ports Grant Program.

The EPA currently uses ICR No. 2060–0754 to collect information for most major elements of grants administration for these programs, but to reflect the final program design and to further ease the burden for applicants, awardees, and Agency staff, the Agency needs to update this ICR to be able to use improved versions of previously approved instruments and collect information via 3 new reporting instruments to reflect final program design. This ICR revision aims to enhance project reporting instruments to ensure that the project reporting templates align with the final program design and requirements and incorporate user feedback received during the application period for the CHDV and Clean Ports Grant Programs.

TCD uses approved procedures and forms to collect necessary information to operate its grant programs and has been providing grants under DERA since 2008. EPA launched the 2024 Clean Port Program in late winter 2024, the 2024 Clean Heavy-Duty Vehicles Program in early spring 2024, and the 2024 DERA grant program in summer 2024, and is overseeing the 2023 Clean School Bus Grantees, who began reporting in mid-2024.

While these programs each have unique statutory requirements, there are key aspects that unite them as mobile source emissions reduction efforts, and by combining them as a cohort of programs under one ICR, EPA aims to enrich data quality across our programs and to ease burden on applicants and

awardees considering applying for multiple programs and agency staff overseeing multiple programs. Additionally, collecting data via these program-specific, fillable data templates will enhance the Agency's oversight of these projects as directed by Congress. Further, doing so will also provide critical real-world performance data that the Agency would not otherwise be able to procure, which can inform future research and policy decisions related to OTAQ's mission to protect human health and the environment by reducing air pollution and greenhouse gas emissions from mobile sources and advancing clean fuels and technology.

Respondents/affected entities: Entities potentially affected by this action are those interested in applying for grants under EPA's CSB, DERA, Clean Heavy Duty, and Clean Ports programs and include but are not limited to the following NAICS (North American Industry Classification System) codes: 23 Construction; 482 Rail Transportation; 483 Water Transportation; 484 Truck Transportation; 485 Transit and Ground Passenger Transportation; 4854 School and Employee Bus Transportation; 48831 Port and Harbor Operations; 61111 Elementary and Secondary Schools; 61131 Colleges, Universities, and Professional Schools; 9211 Executive, Legislative, and Other Government Support; and 9221 Justice, Public Order, and Safety Activities.

Respondent's obligation to respond: Mandatory for grant recipients.

Estimated number of respondents: 623 DERA, 267 CSB, 70 CHDV, and 55 Clean Ports Program respondents annually.

Frequency of response: Up to 4 annual responses per year the grant is active.

Total estimated burden: 9,108 hours per year; 27,323 hours over ICR Period. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $552,072 per year; $1,656,217 over ICR Period which includes $0 annualized capital or operation & maintenance costs.

Changes in the estimates: This is revision results in a decrease of 38% of the original estimated temporal burden and 33% reduction in the original estimated cost burden.

Michael Moltzen,

Acting Director, Transportation and Climate Division, Office of Air and Radiation.

[FR Doc. 2024–31491 Filed 12–31–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2024–0023; FRL–12538–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Standards for Pesticide Containers and Containment (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Standards for Pesticide Containers and Containment (EPA ICR Number 1632.07 and OMB Control Number 2070–0133) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This is a proposed extension of the ICR, which is currently approved through January 31, 2025. Public comments were previously requested via the **Federal Register** on April 22, 2024. This notice allows for an additional 30 days for public comments.

DATES: Comments must be received on or before February 3, 2025.

ADDRESSES: Submit your comments to EPA, referencing Docket ID Number EPA–HQ–OPP–2024–0023, to EPA online using *https://www.regulations.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Carolyn Siu, Office of Program Support (7602M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 719–1649; email address: *siu.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a request to renew the approval of an ICR currently approved through January 31, 2025. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on April 22, 2024, establishing a 60-day comment period (89 FR 29323). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information collection activities and related estimated burden and costs that are summarized in this document, are available in the docket. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This ICR covers the information collection activities associated with the pesticide container design and residue removal requirements and containment structure requirements. With respect to the container design and residue removal requirements, the information collection activities are associated with the requirement that businesses subject to the container regulations (pesticide registrants) and repackaging regulations (pesticide registrants and refillers) maintain records of test data, cleaning procedures, certain data when a container is refilled, and other supporting information. These records are subject to both call-in by EPA and on-site inspection by EPA and its representatives. EPA has not established a regular schedule for the collection of these records, and there is no reporting. With respect to the containment structure requirements, the information collection activities are associated with the requirement that businesses subject to the containment structure regulations maintain records of the: (1) Monthly inspection and maintenance of each containment structure and all stationary bulk containers; (2) Duration over which non-stationary bulk containers holding pesticide and not protected by a secondary containment unit remain at the same location; and (3) Construction date of the containment structure. The businesses subject to the containment structure regulations include

agrichemical retailers and refilling establishments, custom blenders and commercial applicators of agricultural pesticides. The records have to be maintained by the owners and operators of such businesses and made available to inspectors to ensure that businesses are in compliance with containment requirements. These inspections are generally conducted by the states, which enforce Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) regulations through cooperative agreements with EPA.

Form number(s): None.

Respondents/affected entities: Entities potentially affected are those that are part of the regulated community affected by the container design and residue removal regulations which includes businesses that formulate pesticide products or repackage pesticide products into refillable containers. The ICR includes a list of potentially affected entities with North American Industrial Classification System (NAICS) codes provided to assist in determining potential applicability. NAICS codes identified in question 12 of the ICR.

Respondent's obligation to respond: Mandatory under FIFRA sections 3, 8, 19 and 25 (7 U.S.C. 136f, 136q, *and* 136w).

Estimated number of potential respondents: 23,586.

Frequency of response: On Occasion.

Total estimated burden: 180,763 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated costs: $10,864,047 (per year), includes $419,875 annualized capital investment or maintenance and operational costs.

Changes in the estimates: There is no change in the number of burden hours as there are no programmatic updates or changes for this ICR. The change in costs for the regulated community is $1,830,391. The change in costs for the Agency is $1,747. The increase in costs for both are based on BLS wage rate adjustments. There is also an increase in capital costs of $83,975 as a result of an increase in costs for agricultural pesticide refiller. These are adjustments.

Courtney Kerwin,

Director, Information Engagement Division.

[FR Doc. 2024–31490 Filed 12–31–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0463, OMB 3060–0692, 3060–1299; FR ID 270454]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before February 3, 2025.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

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: 3060–0463.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Misuse of internet Protocol (IP) Captioned Telephone Service, CG Docket Nos. 03–123, 10–51, and 13–24.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Individuals or household; State, Local and Tribal Government.

Number of Respondents and Responses: 5,075 respondents; 8,468 responses.

Estimated Time per Response: 0.1 hours (6 minutes) to 80 hours.

Frequency of Response: Annually, semi-annually, eight times a year,

monthly, on occasion, one-time, and quarterly reporting requirements; Recordkeeping and Third-Party Disclosure requirements.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority for the information collection requirements is found at section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, in Title IV of the Americans with Disabilities Act of 1990, Public Law 101–336, 104 Stat. 327, 366–69.

Total Annual Burden: 15,850 hours.

Total Annual Cost: $348,000.

Needs and Uses: On December 21, 2001, the Commission released the 2001 TRS Cost Recovery Order, document FCC 01–371, published at 67 FR 4203, January 29, 2002, in which the Commission, among other things:

(1) required internet-based TRS providers to submit certain projected TRS-related cost and demand data to the TRS Fund administrator to be used to calculate the rate; and

(2) directed the TRS Fund administrator to expand its data collection forms accordingly.

In 2003, the Commission released the 2003 Second Improved TRS Order, published at 68 FR 50973, August 25, 2003, which among other things required that TRS providers offer certain local exchange carrier (LEC)-based improved services and features where technologically feasible, including a speed dialing requirement which may entail voluntary recordkeeping for TRS providers to maintain a list of telephone numbers. See also 47 CFR 64.604(a)(3)(vi)(B).

In 2007, the Commission released the Section 225/255 VoIP Report and Order, published at 72 FR 43546, August 6, 2007, extending the disability access requirements that apply to telecommunications service providers and equipment manufacturers under 47 U.S.C. 225, 255 to interconnected voice over internet protocol (VoIP) service providers and equipment manufacturers. As a result, under rules implementing section 225 of the Act, interconnected VoIP service providers are required to publicize information about telecommunications relay services (TRS) and 711 abbreviated dialing access to TRS. See also 47 CFR 64.604(c)(3).

In 2007, the Commission also released the 2007 Cost Recovery Report and Order and Declaratory Ruling, published at 73 FR 3197, January 17, 2008, in which the Commission:

(1) adopted a new cost recovery methodology for interstate traditional TRS, interstate speech-to-speech service (STS), captioned telephone service (CTS), and internet Protocol captioned telephone service (IP CTS) based on the Multi-state Average Rate Structure (MARS) plan, under which interstate TRS compensation rates are determined by weighted average of the states' intrastate compensation rates, and which includes for STS additional compensation approved by the Commission for STS outreach;

(2) adopted a cost recovery methodology for internet Protocol (IP) Relay based on a price cap like methodology;

(3) adopted a cost recovery methodology for video relay service (VRS) that adopted tiered rates based on call volume;

(4) clarified the nature and extent that certain categories of costs are compensable from the Fund; and

(5) addressed certain issues concerning the management and oversight of the Fund, including prohibiting financial incentives offered to consumers to make relay calls.

The 2007 TRS Cost Recovery Order requires that state relay administrators and TRS providers submit to the TRS Fund administrator the following information annually, for intrastate traditional TRS, STS, and CTS:

(1) the per-minute compensation rate(s) and other compensation received for the provision of TRS;

(2) whether the rate applies to session minutes or conversation minutes, which are a subset of session minutes;

(3) the number of intrastate session minutes; and

(4) the number of intrastate conversation minutes.

Also, STS providers must file a report annually with the TRS Fund administrator and the Commission on their specific outreach efforts directly attributable to the additional compensation approved by the Commission for STS outreach.

In 2011, to help prevent waste, fraud, and abuse, the Commission adopted three VRS orders to curtail these harmful practices. Each of these orders (collectively, the 2011 VRS Orders) included information collection requirements.

On April 6, 2011, in document FCC 11–54, the Commission released the 2011 Fraud Prevention Order, published at 76 FR 30841, May 27, 2011, which included several measures designed to eliminate the waste, fraud and abuse, while ensuring that VRS remains a viable and a valuable communication tool for Americans who use it on a daily basis.

On July 28, 2011, in document FCC 11–118 the Commission released the VRS Certification Order, published at 76 FR 47469, August 5, 2011, amending its rules for certifying internet-based TRS providers as eligible for payment from the Interstate TRS Fund (Fund) for their provision of internet-based TRS.

On October 17, 2011, in document FCC 11–155, the Commission released the Second VRS Certification Order, published at 76 FR 67070, October 31, 2011, addressing three petitions related to the VRS Certification Order by revising the burdens contained in the requirements for the submission of documentation of a provider's VRS equipment and technologies and the submission of documentation regarding sponsorship arrangements.

The following are the final information collection requirements contained in the 2011 VRS Orders:

(1) The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of a TRS provider shall certify, under penalty of perjury, that: (1) minutes submitted to the Interstate TRS Fund (Fund) administrator for compensation were handled in compliance with the Commission's rules and are not the result of impermissible financial incentives to generate calls, and (2) cost and demand data submitted to the Fund administrator related to the determination of compensation rates are true and correct.

(2) VRS providers shall: (a) submit to the Commission and the TRS Fund administrator a call center report twice a year and (b) notify the Commission and the TRS Fund administrator at least 30 days prior to any change to their call centers' locations.

(3) VRS providers shall submit detailed call data records (CDRs) and speed of answer compliance data to the Fund administrator.

(4) TRS providers shall use an automated record keeping system to capture the CDRs and shall submit such data electronically in standardized form to the TRS Fund administrator.

(5) Internet-based TRS providers shall retain the CDRs that are used to support payment claims submitted to the Fund administrator for a minimum of five years, in an electronic format.

(6) VRS providers shall: (a) maintain copies of all third-party contracts or agreements and make them available to the Commission and the TRS Fund administrator upon request; and (b) describe all agreements in connection with marketing and outreach activities in their annual submissions to the TRS Fund administrator.

(7) TRS providers shall provide information about their TRS whistleblower protections to all employees and contractors, in writing.

In 2018, the Commission released the IP CTS Modernization Order, published at 83 FR 30082, June 27, 2018, in which the Commission:

(1) determined that it would transition the methodology for IP CTS cost recovery from the MARS plan to cost-based rates and adopted interim rates; and

(2) added two cost reporting requirements for IP CTS providers: (i) In annual cost data filings and supplementary information provided to the TRS Fund administrator, IP CTS providers that contract for the supply of services used in the provision of TRS, shall include information about payments under such contracts, classified according to the substantive cost categories specified by the TRS Fund administrator; and (ii) in the course of an audit or otherwise upon demand, IP CTS providers must make available any relevant documentation. 47 CFR 64.604(c)(5)(iii)(D)(1), (6).

In December 2023, the FCC released the 2023 VRS Improvements Order, document FCC 23–116, published at 89 FR 20125, March 21, 2024, amending its rules (1) increase from 50% to 80% the portion of monthly VRS minutes that may be handled by communications assistants (CAs) working at home; (2) modify the amount of prior interpreting experience required of VRS CAs who work at home; and (3) allow VRS providers to use contract CAs, subject to conditions, for up to 30% of their monthly call minutes. 47 CFR 64.604(c)(5)(iii)(D)(8), (d)(1)(iii)(C), (d)(2)(iv). The Commission also modified when VRS providers may seek compensation for VRS calls that originate from international IP addresses from users traveling abroad. 47 CFR 64.604(d)(6).

OMB Control Number: 3060–0692.

Type of Review: Extension of a currently approved collection.

Title: Sections 76.802 and 76.804, Home Wiring Provisions; Section 76.613, Interference from a Multi-channel Video Programming Distributor (MVPD).

Form Number: N/A.

Respondents: Individuals or households; Business or other for-profit entities.

Number of Respondents and Responses: 22,000 respondents and 253,010.

Estimated Time per Response: 0.083–2 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Annual reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 1, 4, 224, 251, 303, 601, 623, 624 and 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 36,114 hours.

Total Annual Cost: No cost.

Needs and Uses: In the Cable Television Consumer Protection and Competition Act of 1992, Congress directed the FCC to adopt rules governing the disposition of home wiring owned by a cable operator when a subscriber terminates service. The rules at 76.800 *et seq.,* implement that directive. The intention of the rules is to clarify the status and provide for the disposition of existing cable operator-owned wiring in single family homes and multiple dwelling units upon the termination of a contract for cable service by the home owner or MDU owner. Section 76.613(d) requires that when Multichannel Video Programming Distributors (MVPDs) cause harmful signal interference MVPDs may be required by the District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

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.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2024–31456 Filed 12–31–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0773; FR ID 271228]

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 February 3, 2025.

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: 3060–0773.

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.

Aleta Bowers,

Information Management Specialist, Office of the Secretary.

[FR Doc. 2024–31488 Filed 12–31–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreement to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreement are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201443.

Agreement Name: Maersk/Network Shipping Ltd. Ad Hoc Space Charter Agreement.

Parties: Maersk A/S; Network Shipping, Ltd.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The agreement authorizes the parties to charter space to/from one another on an ad hoc basis in the trades between ports in Costa Rica, Ecuador and Guatemala on the one hand and ports in California on the other hand.

Proposed Effective Date: 02/03/2025.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/88588.

Dated: December 26, 2024.

Alanna Beck,

Federal Register Alternate Liaison Officer.

[FR Doc. 2024–31454 Filed 12–31–24; 8:45 am]

BILLING CODE 6730–02–P

GENERAL SERVICES ADMINISTRATION

[Notice–P–2024–03; Docket No. 2024–0002; Sequence No. 59]

Notice of Availability (NOA) for the Record of Decision (ROD) on the Final Environmental Impact Statement (EIS) and Floodplain Assessment and Statement of Findings for the Kenneth G. Ward (Lynden) and Sumas Land Ports of Entry (LPOE) Modernization and Expansion Projects in Lynden and Sumas, Washington

AGENCY: Public Buildings Service (PBS), United States (U.S.) General Services Administration (GSA).

ACTION: NOA; public notice of ROD for the Final EIS and Floodplain Assessment and Statement of Findings.

SUMMARY: GSA issued a ROD for the Modernization and Expansion of the Lynden and Sumas LPOEs in Lynden and Sumas, Washington on December 27, 2024 (Identification Number: EISX–023–00–010–1728643103). The ROD was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969 and the GSA PBS NEPA Desk Guide.

DATES: *Applicable:* Friday, December 27, 2024.

ADDRESSES: The ROD may be found online at the GSA project websites: *www.gsa.gov/lynden* and *www.gsa.gov/sumas.*

FOR FURTHER INFORMATION CONTACT: Patrick Manning, Capital Project Manager, GSA at *lyndenlpoe@gsa.gov or sumaslpoe@gsa.gov,* or call 202–501–4755.

SUPPLEMENTARY INFORMATION:

Background

GSA is planning to modernize and expand the Lynden and Sumas LPOEs. The existing 4.8-acre Lynden LPOE serves as the port of entry for people and vehicles connecting Lynden, Washington to Aldergrove, British Columbia, Canada. The Lynden LPOE currently operates 16 hours per day, 7 days per week and processes privately owned vehicles (POVs), buses, pedestrians, and permitted commercial traffic. The existing 4.0-acre Sumas LPOE serves as the port of entry for people and vehicles connecting Sumas, Washington, to Abbotsford, British Columbia, Canada. The Sumas LPOE operates 24 hours per day, 7 days per week and processes POVs, buses, pedestrians, and commercial traffic.

The purpose of these projects is for GSA to support the U.S. Department of Homeland Security's Customs and Border Protection (CBP) mission through modernizing and expanding the Lynden and Sumas LPOEs. Accomplishing this purpose would increase the functionality, capacity, operational efficiency, effectiveness, security, sustainability, and safety of the Lynden and Sumas LPOEs. The projects are generally needed to update the current facilities at the Lynden and Sumas LPOEs, which no longer function adequately and cannot meet CBP current operational needs or Program of Requirements.

The existing Lynden and Sumas LPOEs have not undergone major improvements since their initial construction in the late 1980s and do not have sufficient space for modernization and expansion. Both facilities also have configuration and space issues that cause congestion, delays in processing times, and safety and security issues for inspection personnel. Additionally, these facilities do not have the ability to incorporate new technologies as they become available. The projects at the Lynden and Sumas LPOEs are analyzed jointly in this Final EIS due to their proximity (approximately 10 miles) to one another. Operational changes at the Lynden and Sumas LPOEs could impact each other, especially during construction.

GSA prepared a Final EIS to assess the potential impacts of these expansion and modernization projects. On August 8, 2023, GSA published a Notice of Intent for the EIS and underwent a 30-day scoping period (88 FR 53486). The Draft EIS, which considered two action alternatives and a No Action Alternative for the Lynden LPOE and three action alternatives and a No Action Alternative for the Sumas LPOE, was made available for a 45-day public comment period from August 12, 2024 to September 26, 2024. The Final EIS was issued on November 15, 2024 (89 FR 90292); starting a 30-day waiting period that ended on December 16, 2024.

One comment from U.S. Environmental Protection Agency (USEPA), Region 10 was received during the Final EIS 30-day waiting period from November 15, 2024 to December 16, 2024. The USEPA indicated that GSA addressed all the USEPA comments on the Draft EIS related to information on measures to protect water resources, improve air quality, and sustainable building design to adapt to a changing climate. No other comments were received during the Final EIS 30-day waiting period.

GSA's Preferred Alternatives and Environmentally Preferable Alternatives

GSA considered the findings in the Final EIS, stakeholder input, public comments, and tenant needs at the LPOEs to determine the preferred alternatives, including the environmentally preferable alternatives, which are discussed below.

Lynden LPOE

GSA's preferred alternative for the Lynden LPOE is to implement Lynden LPOE Alternative 3 (North-South Oriented LPOE Expansion) as described in the Final EIS. GSA has selected this alternative because it would match the orientation of the existing LPOE and facilitate more efficient traffic flow. GSA has also identified Lynden LPOE Alternative 3 as the environmentally preferable alternative.

Lynden LPOE Alternative 3 (North-South Oriented LPOE Expansion) would involve potential acquisition of primarily agricultural land to the west of the LPOE, site preparation, and construction to modernize and expand the LPOE. The maximum proposed limits of disturbance for Lynden LPOE Alternative 3 would be approximately 10.3 acres.

Sumas LPOE

GSA's preferred alternative for the Sumas LPOE is to implement Sumas LPOE Alternative 4 (Multi-Story Construction LPOE Expansion) as described in the Final EIS. GSA has selected this alternative because the operational space within the Main Building would be consolidated, and the building would use a smaller footprint within the LPOE allowing more space for other LPOE functions and increasing LPOE operational efficiency. This alternative would also add a pedestrian bridge, further increasing employee safety. GSA has also identified Sumas LPOE Alternative 4 as the environmentally preferable alternative.

Sumas LPOE Alternative 4 (Multi-Story Construction LPOE Expansion) would involve potential acquisition of land south and east of the LPOE, site preparation, and construction to modernize and expand the LPOE. The maximum proposed limits of disturbance for Sumas LPOE Alternative 4 would be approximately 12.9 acres.

Lynden LPOE and Sumas LPOE Construction Sequencing Options

The Final EIS evaluated two construction sequencing options, which could be implemented under the preferred action alternatives selected. Construction sequencing options are still being evaluated and will be determined during the design-build phase.

Under the Concurrent Construction Option, both ports would remain open during construction. Pedestrian and POV access would be maintained through the ports but limits on the number of open processing lanes and shifting of POVs to commercial owned vehicle (COV) lanes for limited times may be necessary. COVs may be detoured at times to other ports to permit adequate space for continued POV processing. Under the Sequential Construction Option, all traffic, pedestrians, POVs, and COVs would be detoured from the Lynden LPOE during the majority of its construction. Once the Lynden LPOE was reopened, construction that impacts traffic would begin on the Sumas LPOE. The Sumas LPOE would remain open to pedestrians and POVs during construction to the greatest extent possible. COVs would be detoured from the Sumas LPOE to other LPOEs during portions of the construction period.

Anamarie Crawley,

Director, R10 Facilities Management Division, Northwest/Arctic Region 10, U.S. General Services Administration.

[FR Doc. 2024–30597 Filed 12–31–24; 8:45 am]

BILLING CODE 6820–DL–P

GOVERNMENT ACCOUNTABILITY OFFICE

Request for Medicaid and CHIP Payment and Access Commission (MACPAC) Nominations

AGENCY: Government Accountability Office.

ACTION: Request for letters of nomination and resumes.

SUMMARY: The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) established MACPAC to review Medicaid and CHIP access and payment policies and to advise Congress on issues affecting Medicaid and CHIP. CHIPRA gave the Comptroller General of the United States responsibility for appointing MACPAC's members. The Government Accountability Office (GAO) is now accepting nominations for MACPAC appointments that will be effective May 2025. Nominations should be sent to the email address listed below. Acknowledgement of receipt will be provided within a week of submission.

DATES: Letters of nomination and resumes should be submitted no later than January 28, 2025, to ensure adequate opportunity for review and consideration of nominees prior to appointment.

ADDRESSES: Submit letters of nomination and resumes to *MACPACappointments@gao.gov*.

FOR FURTHER INFORMATION CONTACT: Corissa Kiyan-Fukumoto at *KiyanFukumotoC@gao.gov* or (202) 512–7114 if you do not receive an acknowledgment or need additional information. For general information, contact GAO's Office of Public Affairs, at *PublicAffairs@gao.gov*.

Authority: 42 U.S.C. 1396.

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2024–29982 Filed 12–31–24; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Meeting; National Advisory Committee on the Trafficking of Children and Youth in the United States

AGENCY: Office on Trafficking in Persons, Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the Federal Advisory Committee Act (FACA), that a meeting of the National Advisory Committee on the Trafficking of Children and Youth in the United States (Committee) will be held on January 13, 2025. The purpose of the meeting is for the Committee to discuss its plans and responsibilities over its 24-month extension to advise on the development and implementation of successful interventions with children and youth who have been impacted by labor and sex trafficking, make recommendations for administrative and legislative changes regarding the trafficking of children and youth, and publish information on best practices regarding the labor and sex trafficking of children and youth.

DATES: Please submit any comments regarding best practices and recommendations to address the trafficking of children and youth comments as soon as possible and before January 10, 2025. The meeting will be held on January 13, 2025. Future meetings will be held on a quarterly basis, on or around the approximate dates: April 14, 2025; July 14, 2025; and October 13, 2025.

ADDRESSES: The meeting will be held virtually. Please register for this event online: *https://www.acf.hhs.gov/otip/partnerships/nac-trafficking-children-youth.* Please submit comments to *endtrafficking@acf.hhs.gov* with the subject ''NAC Comments''.

FOR FURTHER INFORMATION CONTACT: Katherine Chon (Designated Federal Officer) at *EndTrafficking@acf.hhs.gov* or (202) 205–5778, or 330 C Street SW, Washington, DC 20201. Additional information is available at *https://www.acf.hhs.gov/otip/partnerships/nac-trafficking-children-youth.*

SUPPLEMENTARY INFORMATION: The formation and operation on behalf of the Committee are governed by the provisions of Public Law 92–463, as amended (5 U.S.C. App. 2), which sets forth standards for the formation and use of Federal advisory committees.

Purpose of the Committee: The purpose of the Committee is to advise the Secretary and the Attorney General on practical and general policies concerning improvements to the Nation's response to the labor and sex trafficking of children and youth in the United States. The discretionary advisory Committee will build on the work of the previous National Advisory Committee on the Sex Trafficking of Children and Youth in the United States, which operated from January 18, 2017, to January 18, 2022, authorized pursuant to section 121 of the Preventing Sex Trafficking and Strengthening Families Act (Pub. L. 113–183) and governed by the provisions of Public Law 92–463, as amended 5 U.S.C. chapter 10.

Tentative Agenda: The agenda can be found at *https://www.acf.hhs.gov/otip/partnerships/nac-trafficking-children-youth.* To submit written statements, email *endtrafficking@acf.hhs.gov* by January 10, 2025. Please include your name, organization, and phone number. More details on these options are below.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public virtually.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public may submit written statements in response to the stated agenda of the meeting or to the Committee's mission in general. Organizations with recommendations on strategies to engage states and stakeholders are encouraged to submit their comments or resources (hyperlinks preferred). Written comments or statements received after January 10, 2025, may not be provided to the Committee until its next meeting.

Verbal Statements: Pursuant to 41 CFR 102–3.140, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public are invited to provide verbal statements during the Committee meeting only at the time and manner described in the agenda. The request to speak should include a brief statement of the subject matter to be addressed and should be relevant to the stated agenda of the meeting or the Committee's mission in general.

Minutes: The minutes of this meeting will be available for public review and copying within 90 days at *https://www.acf.hhs.gov/otip/partnerships/nac-trafficking-children-youth.*

Rudette Pinkney,

Acting Deputy Director, Office of the Executive Secretariat.

[FR Doc. 2024–31416 Filed 12–31–24; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1991–P–0355]

Liquid Eggs Deviating From the Standard of Identity; Revocation of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the revocation of the temporary permit issued to M.G. Waldbaum Co., a subsidiary of Michael Foods Egg Co., to market test ''ultrapasteurized liquid whole eggs'' and ''ultrapasteurized liquid whole eggs with citric acid'' because the need for the temporary permit no longer exists.

DATES: This permit is revoked as of January 2, 2025.

FOR FURTHER INFORMATION CONTACT: Marjan Morravej, Nutrition Center of Excellence, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371; or Jessica Ritsick, Office of Policy, Regulations, and Information, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 21, 1989 (54 FR 30612), we issued a notice announcing that we had issued a temporary permit to Crystal Foods, Inc., 6465 Wayzata Blvd., Minneapolis, MN 55426, a subsidiary of Michael Foods, Inc., to market test experimental packs of ''ultrapasteurized liquid whole eggs'' and ''ultrapasteurized liquid whole eggs with citric acid,'' which we stated deviate from the standard of identity for liquid eggs at § 160.115 (21 CFR 160.115) because they were processed with increased heat treatment and aseptic processing and packaging. We refer to the temporary permit holder as ''the company'' throughout this notice. The temporary permit allowed the company to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility (Id.). In February 1991, FDA combined the original docket for the temporary permit (FDA–1989–P–0168) with other related dockets for the company into what is now docket number FDA–1991–P–0355.

After issuance of the temporary permit, the company requested, and FDA granted, several revisions:

- July 11, 1990 (55 FR 28456)—FDA amended the temporary permit to provide for package sizes larger than the designated 2.27 kilograms (5 pounds) to provide a broader base for data collection on consumer acceptance of the test products.
- September 20, 1990 (55 FR 38753)—FDA extended the temporary permit so the company could continue experimental market testing of the products and continue gathering data in support of its petition to amend the standard of identity for liquid eggs at § 160.115. As part of the extension, FDA invited interested persons to participate in the market test under the conditions in the temporary permit, except for the designated area of distribution. We have no records that show that any interested persons notified us of their intent to participate in the market test, as required under § 130.17(i) (21 CFR 130.17(i)).
- March 22, 1991 (56 FR 12206)—FDA amended the temporary permit to allow the test products to be packaged in aseptic packages ranging in size from 42.5 grams (1.5 ounces) to 1 kilogram (2.2 pounds). Additionally, as requested by the company, we changed the name and address of the permit holder from Crystal Foods, Inc., Minneapolis, MN 55426, to M.G. Waldbaum Co., Wakefield, NE 68784.

In the time since the temporary permit was originally issued, FDA has concluded that the temporary permit is not necessary, because the standard of identity in § 160.115 provides for the treatment process used by the company under the temporary permit. Our regulation, at § 160.115(a), states that liquid eggs must be pasteurized or otherwise treated to destroy all viable *Salmonella* microorganisms. The specific process used by the company under the temporary permit—increased heat treatment and aseptic processing and packaging—is consistent with § 160.115(a). Specifically, the standard of identity for liquid eggs permits other treatments that destroy all viable *Salmonella* microorganisms. As such, we have concluded that the temporary permit is not necessary to market liquid eggs using the company's process, consistent with the standard of identity.

In addition, in April 2024, FDA contacted the company via email regarding the current use of its temporary permit. The company did not object to FDA revoking the temporary permit under § 130.17(g)(3).

Therefore, under § 130.17(g)(3), we are revoking the company's temporary permit because the need for it no longer exists.

Dated: December 20, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31470 Filed 12–31–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–4974]

Advanced Manufacturing Technologies Designation Program; 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 ''Advanced Manufacturing Technologies Designation Program.'' FDA encourages the early adoption of advanced manufacturing technologies (AMTs) by the pharmaceutical industry, which can improve the reliability and robustness of the manufacturing process and can benefit patients by enhancing product quality and reducing drug development time or increasing or maintaining the supply of drugs that are life-supporting, life-sustaining, of critical importance to providing health care, or in shortage. This guidance provides recommendations to persons and organizations interested in participating in FDA's Advanced Manufacturing Technologies Designation Program, which facilitates the development of drugs manufactured using an AMT that has been designated as such under the program. The guidance finalizes the draft guidance of the same title issued on December 13, 2023.

DATES: The announcement of the guidance is published in the **Federal Register** on January 2, 2025.

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–4974 for ''Advanced Manufacturing Technologies Designation Program.'' 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 this guidance to the Division of Drug Information, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Ranjani Prabhakara, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 6648, Silver Spring, MD 20993, 240–402–4652; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Advanced Manufacturing Technologies Designation Program.'' FDA's Advanced Manufacturing Technologies Designation Program, which is required under section 506L of the Federal Food, Drug, and Cosmetic Act (FD&C Act, 21 U.S.C. 356l), offers a framework for persons or organizations (*e.g.,* applicants, contract manufacturers, technology developers) to request designation of a method or combination of methods of manufacturing a drug as an AMT. The program facilitates the development of drugs as described in section 506L(b) of the FD&C Act that are manufactured using a designated AMT, submitted in an application under section 505 of the FD&C Act (21 U.S.C. 355) or section 351 of the Public Health Service Act (42 U.S.C. 262), and regulated by CDER or CBER. An application or supplemental application referencing a designated AMT can receive certain benefits under the program, such as FDA's early interaction with applicants regarding the development and manufacture of drugs using a designated AMT, as described in section 506L(c)(1) of the FD&C Act.

The guidance outlines the eligibility criteria for AMT designation, the submission and assessment process for requests, including data and information to be submitted, and the benefits of receiving an AMT designation, among other information, and includes a questions and answers section to cover additional details about key concepts important for program utilization. The guidance finalizes the draft guidance of the same title issued on December 13, 2023 (88 FR 86333). FDA considered comments received on the draft guidance in finalizing the guidance. FDA made changes from the draft guidance to improve clarity about the AMT designation process, the content of AMT designation requests, the roles and responsibilities of different entities involved in the development and use of designated AMTs, and the relationship between the Advanced Manufacturing Technologies Designation Program and other FDA programs addressing emerging or advanced technologies.

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 ''Advanced Manufacturing Technologies Designation Program.'' 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

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. FDA is issuing this guidance, as final, in accordance with section 506L of the FD&C Act, which directs FDA to initiate a program and establish a process for

AMT designation, including information collection provisions subject to review and approval by OMB under the PRA. Section 506L(e)(2) of the FD&C Act further directs FDA to issue program guidance. Before implementing the information collection provisions of the guidance, FDA will publish a notice in the **Federal Register** continuing to invite public comment on the proposed collections of information (see 88 FR 86333) and announce OMB's decision to approve, modify, or disapprove the collections of information, including the OMB control number(s).

III. Electronic Access

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

Dated: December 27, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31493 Filed 12–31–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Career Development for Established Investigators and Conference Grants Study Section.

Date: February 13–14, 2025.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institute on Aging, 5601 Fishers Lane, Suite 8B, Rockville, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Rajasri Roy, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 5601 Fishers Lane, Suite 8B, Rockville, MD 20892, 301–496–6477, *rajasri.roy@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 26, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–31444 Filed 12–31–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Career Development for Clinicians/Health Professionals Study Section.

Date: February 10–11, 2025.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institute on Aging, 5601 Fishers Lane, Suite 8B, Rockville, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Mariel Jais, Ph.D., M.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 5601 Fishers Lane, Suite 8B, Rockville, MD 20892, (301) 594–2614, *mariel.jais@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 26, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–31441 Filed 12–31–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Nutrition Obesity Research Centers (P30–P2C).

Date: March 12–13, 2025.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Address: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney, National Institutes of Health, 6707 Democracy Boulevard, Rm. 7021, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 26, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–31445 Filed 12–31–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed 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 General Medical Sciences Special Emphasis Panel; Review of NIH Pathway to Independence Award (K99/R00) Applications.

Date: March 3–4, 2025.

Time: 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Tracy Koretsky, Ph.D., Scientific Review Officer, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Bethesda, MD 20892, 301–594–2886, *tracy.koretsky@nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Support for Research Excellence (SuRE) Program and Support for Research Excellence—First Independent Research (SuRE-First) Award (R16).

Date: March 13–14, 2025.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Marcienne Michele Wright, Ph.D., Scientific Review Officer, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Bethesda, MD 20892, (301) 827–7635, *marci.wright@nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of IDeA Clinical and Translational Research Development (CTR–D) Award and IDeA Clinical and Translational Research Network (CTR–N) Award programs.

Date: March 13, 2025.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Nina Sidorova, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Bethesda, MD 20892, 301–594–3663, *sidorova@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 26, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–31448 Filed 12–31–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 on Drug Abuse Special Emphasis Panel; Advancing Technologies to Improve Delivery of Pharmacological, Gene Editing, and other Cargoes for HIV and SUD Mechanistic or Therapeutic Research.

Date: February 20, 2025.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Sindhu Kizhakke Madathil, Ph.D., Scientific Review Officer, Division of Extramural Research, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5702, *sindhu.kizhakkemadathil@nih.gov.*

Name of Committee: National Institute on Drug Abuse Initial Review Group; Career Development Education and Training Study Section.

Date: February 28, 2025.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Sindhu Kizhakke Madathil, Ph.D., Scientific Review Officer, Division of Extramural Research, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5702, *sindhu.kizhakkemadathil@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: December 26, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–31446 Filed 12–31–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Institutional Research Training Grants (IT).

Date: January 21, 2025.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Center for Complementary and Integrative, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Michael E Authement, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, 6707 Democracy Boulevard, Bethesda, MD 20817, *michael.authement@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: December 27, 2024.

David W Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–31477 Filed 12–31–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Exploratory Clinical Trials of Mind and Body Interventions (MB).

Date: February 27–28, 2025.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Center for Complementary and Integrative, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: BAILA S Hall, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 443–9285, *baila.hall@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: December 27, 2024.

David W Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–31478 Filed 12–31–24; 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 Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Hepatobiliary Pathobiology.

Date: January 22, 2025.

Time: 2:00 p.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: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 26, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–31447 Filed 12–31–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R7–ES–2024–0128; FXES111607MRG01–245–FF07CAMM00]

Marine Mammal Protection Act; Draft Revised Stock Assessment Reports for Two Stocks of Polar Bears in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended, and its implementing regulations, we, the U.S. Fish and Wildlife Service (FWS), have developed draft revised marine mammal stock assessment reports (SARs) for the Chukchi/Bering Seas and Southern Beaufort Sea polar bear (*Ursus maritimus*) stocks in Alaska. We invite comments on the two draft revised SARs from the public and from Federal, Tribal, State, and local governments.

DATES: We must receive comments by April 2, 2025. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES:

Obtaining Documents: You may view the draft revised stock assessment reports at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2024–0128, or you may request copies from the contact under **FOR FURTHER INFORMATION CONTACT**.

Submitting Comments: You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on FWS–R7–ES–2024–0128.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R7–ES–2024–0128, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by one of the methods described above. We will post all comments at *https://www.regulations.gov.* You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Charles Hamilton, Marine Mammals Management, by telephone at 907–786–3800; by email at *FW7_ak_marine_mammals@fws.gov;* or by mail at U.S. Fish and Wildlife Service, MS–341, 1011 East Tudor Road, Anchorage, AK 99503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 18, we, the FWS, have developed draft revised marine mammal stock assessment reports (SARs) for two stocks of polar bears. The draft revised SARs are for the Chukchi/Bering Seas and Southern Beaufort Sea polar bear (*Ursus maritimus*) stocks in Alaska. We invite comments on the two draft SARs from the public and from Federal, Tribal, State, and local governments.

Background

Under the MMPA and its implementing regulations, we regulate the taking, possession, transportation, purchasing, selling, offering for sale, exporting, and importing of marine mammals. One of the goals of the MMPA is to ensure that each stock of marine mammals occurring in waters under U.S. jurisdiction does not experience a level of human-caused mortality and serious injury that is likely to cause the stock to be reduced below its optimum sustainable population level (OSP). The MMPA defines the OSP as ''the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element'' (16 U.S.C. 1362(9)).

To help accomplish the goal of maintaining marine mammal stocks at their OSPs, section 117 of the MMPA requires the FWS and the National Marine Fisheries Service (NMFS) to prepare a SAR for each marine mammal stock that occurs in waters under U.S. jurisdiction. When preparing SARs, section 117 of the MMPA also requires the FWS to consider the best scientific information available and consult with regional scientific review groups, established under section 117(d) of the MMPA. Pursuant to section 117(a) of the MMPA, each SAR must include: (1) A description of the stock and its geographic range; (2) a minimum population estimate, current and maximum net productivity rate, and current population trend; (3) an estimate of the annual human-caused mortality and serious injury of the stock by source and, for a strategic stock, other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey; (4) commercial fishery interactions; (5) categorization of the status of the stock; and (6) an estimate on the potential biological removal (PBR) level.

The MMPA defines the PBR level as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population'' (16 U.S.C. 1362(20)). The PBR is the product of the minimum population estimate of the stock (N_{min}); one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size (R_{max}); and a recovery factor (F_r) of between 0.1 and 1.0, which is intended to compensate for uncertainty and unknown estimation errors. This can be written as:

$$PBR = N_{min} \times 0.5R_{max} \times F_R$$

Section 117 of the MMPA also requires the FWS and NMFS to review the SARs (1) at least annually for stocks that are specified as strategic stocks; (2) at least annually for stocks for which significant new information is available; and (3) at least once every 3 years for all other stocks. If our review of the status of a stock indicates that it has changed or may be more accurately determined, then the SAR must be revised accordingly.

A strategic stock is defined in the MMPA as a marine mammal stock ''(A) for which the level of direct human-caused mortality exceeds the PBR; (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 [as amended (16 U.S.C. 1531 *et seq.*] within the foreseeable future; or (C) which is listed as a threatened or endangered species under the ESA, or is designated as depleted under [the MMPA]'' (16 U.S.C. 1362(19)).

Summary of Draft Revised Stock Assessment Reports

The SARs for the Chukchi/Bering Seas and Southern Beaufort Sea polar bear stocks in Alaska were last revised in 2021 (June 24, 2021; 86 FR 33337). In 2022, the FWS preliminarily concluded that stock assessment revisions are warranted for each of these stocks because the status of the stocks can be more accurately determined at this time. We based this determination on new information that has become available, such as new population estimates for these stocks, which allows us to better describe their statuses. The FWS consulted with the Alaska Regional Scientific Review Group, established under section 117 of the MMPA, on these draft revised SARs. Therefore, we are providing these draft revised SARs for public comment in accordance with section 117(b) of the MMPA.

Table 1 summarizes the draft revised SARs for the Chukchi/Bering Seas and Southern Beaufort Sea polar bear stocks, listing each stock's N_{min}, R_{max}, F_r, PBR, annual estimated human-caused mortality and serious injury, and status.

TABLE 1—SUMMARY OF DRAFT REVISED STOCK ASSESSMENT REPORTS FOR THE CHUKCHI/BERING SEAS AND SOUTHERN BEAUFORT SEA POLAR BEAR STOCKS

Stock	N_{min}	R_{max} (%)	F_r	PBR	Annual estimated human-caused mortality		Stock status
					Fishery/other	Subsistence	
Chukchi/Bering Sea	2,172	10	0.48	52	0.1 [a] (US)	13.6 (US), 32 [b] (RU) ..	Strategic.
Southern Beaufort Sea	589	10	0.48	14	0.7 [a] (US)	18.5 (US), 2.8 (CA) ...	Strategic.

US = United States, RU = Russian Federation, CA = Canada.
[a] 10-year average from July 1, 2013, through June 30, 2023.
[b] Kochnev and Zdor (2015).

Public Comment Procedures

If you wish to comment on either or both of the revised draft SARs, you may submit your comments by one of the methods in **ADDRESSES**. Please identify which draft revised SAR you are commenting on, make your comments as specific as possible, confine comments to issues pertinent to the draft revised SARs, and explain the reasons for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the SAR that you are addressing. We will consider all

comments that are received by the close of the comment period (see **DATES**).

Comments, including names and addresses of respondents, will become part of the administrative record. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

References

The complete list of references used during the drafting of each of the draft revised SARs is available at *https://www.regulations.gov* under Docket FWS–R7–ES–2024–0128 and upon request from the Alaska Marine Mammals Management Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Gary Frazer,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–31483 Filed 12–31–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF JUSTICE

[OMB 1140–0052]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Office of Strategic Management Environmental Assessment Outreach

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until March 3, 2025.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Jeffrey Hosmer, Office of Strategic Management, either by mail at Bureau of Alcohol, Tobacco, Firearms and Explosives, 99 New York Avenue NE, Rm. 5E–409, Washington, DC 20226, by email at *Jeffrey.hosmer@atf.gov* or telephone at 202–648–7132.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: Under the Government Performance and Results Modernization Act of 2010, ATF must update its strategic plan every four years and identify key external factors that could significantly affect their ability to achieve strategic goals and objectives. For this purpose, ATF conducts outreach for feedback from ATF stakeholders as part of the Bureau's quadrennial assessment process. Information Collection (IC) OMB 1140–0052 is being revised to include the monetized value of respondent time in this renewal (from $0 to $535), which was not previously included. There has also been a decrease in the number of respondents over time, from 1,500 to 47 and a reduction in the collective hour burden from 450 hours to 2 hours.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Office of Strategic Management Environmental Assessment Outreach.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number:* None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond: Affected Public:* State, local and tribal governments, Private Sector-for or not for profit institutions, Federal Government.

The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 7 respondents will respond to this collection once annually, and it will take each respondent approximately 0.3 hours to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 2 hours total, which is equal to 7 (total respondents) * 1 (# of response per respondent) * 0.3 (hours).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $535.00.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
Respond to Questionnaire	7	1/annually	7	0.3	2
Unduplicated Totals	7	1/annually	7	0.3	2

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: December 26, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–31455 Filed 12–31–24; 8:45 am]

BILLING CODE 4410–FY–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 24–13]

Notice of First Amendment to Compact With the Federal Democratic Republic of Nepal

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with the Millennium Challenge Act of 2003, as amended, the Millennium Challenge Corporation is publishing a summary, justification, and full text of the proposed First Amendment to Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Federal Democratic Republic of Nepal. Representatives of the United States Government and the Government of the Federal Democratic Republic of Nepal plan to conclude the Amendment in January 2025.

(Authority: 22 U.S.C. 7708(i)(2))

Dated: December 20, 2024.

Peter E. Jaffe,

Vice President, General Counsel, and Corporate Secretary.

Summary of First Amendment to Millennium Challenge Compact With the Federal Democratic Republic of Nepal

The Board of Directors of the Millennium Challenge Corporation (''*MCC*'') has approved an amendment (the ''*Amendment*'') to the existing $500 million, five-year Millennium Challenge Compact between the United States of America, acting through MCC, and the Federal Democratic Republic of Nepal (the ''*Compact*'').

Background

The Compact was signed September 14, 2017, and entered into force on August 30, 2023. The Compact aims to increase domestic electricity consumption through the Electricity Transmission Project by improving the availability and reliability of electricity in Nepal's electricity grid, expanding and strengthening Nepal's high voltage electricity transmission network to support new investments in generation that unlock Nepal's hydropower potential, and facilitating increased power trade between India and Nepal. The Compact also aims to maintain road quality across Nepal's strategic road network through the Road Maintenance Project.

Scope of the Amendment

MCC proposes to provide additional funding up to $50 million under the Compact. The proposed additional funding will be used to cover additional costs associated with the Compact's Electricity Transmission Project, thus enabling successful implementation of the project.

Justification for the Amendment

The Compact was signed in September 2017 but did not enter into force until August 2023. The protracted delay between signing and entry into force, as well as the global inflationary pressures of the COVID–19 pandemic, resulted in an increase in costs for the Electricity Transmission Project. Further, procurement for construction of the project's electricity transmission line was not initiated until September 2023 and the bids received reflected costs that were substantially higher than the original cost estimate, resulting in a failed procurement. Despite identifying significant potential reductions of cost drivers for a re-procurement of the transmission line work, MCC anticipates that the cost of the transmission line work will continue to exceed the projected compact budget.

Providing additional assistance under the Compact to support the Electricity Transmission Project will enable successful implementation of the Compact's objectives with respect to electricity reform. Specifically, the additional MCC funding is necessary for and will enable the accountable entity to sign contracts for the transmission line work once re-procurement is complete in a timely manner and maximize the remaining implementation period without further delays. The additional funding will also preserve adequate contingency across the Compact to facilitate operational adjustments that may become necessary during construction. The economic rate of return for the Electricity Transmission Project remains above 10 percent, which indicates that, even with cost escalations, this remains a highly viable and impactful project. Therefore, additional MCC funding for this Compact would constitute a high return investment.

First Amendment to Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Federal Democratic Republic of Nepal Acting Through the Ministry of Finance

First Amendment to Millennium Challenge Compact

This First Amendment to Millennium Challenge Compact (this ''*Amendment*''), is made by and between the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation (''*MCC*''), and the Federal Democratic Republic of Nepal (''*Nepal*''), acting through the Ministry of Finance (the ''*Government*'') (individually, a ''*Party*'' and collectively, the ''*Parties*''). All capitalized terms used in this Amendment that are not otherwise defined herein have the meanings given to such terms in the Compact (as defined below).

Recitals

Whereas, the United States of America and Nepal signed the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Federal Democratic Republic of Nepal, acting through the Ministry of Finance, on September 14, 2017 (as modified, the ''*Compact*'');

Whereas, Section 2.1 of the Compact provides for MCC to grant to the Government, under the terms of the Compact, an amount not to exceed Four Hundred Fifty-Nine Million Five Hundred Thousand United States Dollars (US$459,500,000) (''*Program Funding*'') for use by the Government to implement the Program;

Whereas, Section 2.2 of the Compact further provides for MCC to grant to the Government, under the terms of the Compact and in addition to the Program Funding described in Section 2.1 of the Compact, an amount not to exceed Forty Million Five Hundred Thousand United States Dollars (US$40,500,000) (''*Compact CDF*'') under Section 609(g) of the Millennium Challenge Act of 2003, as amended (the ''*MCA Act*''), for use by the Government to facilitate implementation of the Compact;

Whereas, in accordance with Section 2.2(e) of the Compact, MCC notified the Government on June 28, 2024, that the Excess Compact CDF Amount of US$16,477,559.41 has been reallocated to Program Funding, thereby increasing the total amount of Program Funding to 475,977,559.41;

Whereas, the Program involves a project to increase electricity consumption by facilitating power trade and by improving the availability and reliability of electricity supply in Nepal's electricity grid (''the *Electricity Transmission Project*'' or ''*ETP*'');

Whereas, the cost to complete the Electricity Transmission Project is now estimated to exceed the associated budget for the project; and

Whereas, pursuant to Section 6.2(a) of the Compact, the Parties desire to amend the Compact to increase Program Funding by 50,000,000,

Now, therefore, the Parties hereby agree as follows:

Article 1

Amendments

Amendment to Section 2.1 of the Compact

Section 2.1 (Program Funding) of the Compact is amended and restated to read as follows:

''Section 2.1 *Program Funding.* Following entry into force of this Compact in accordance with Section 7.3, MCC will grant to the Government, under the terms of this Compact, an amount not to exceed 525,977,559.41 (''*Program Funding*'') for use by the Government to implement the Program. The allocation of Program Funding is generally described in *Annex II.*''

Amendments to Exhibit A to Annex II to the Compact

Exhibit A to Annex II to the Compact (Multi-Year Financial Plan Summary) is deleted in its entirety and replaced by the revised Exhibit A as set forth in Annex I to this Amendment.

Article 2

General Provisions

2.1 Entry Into Force of This Amendment

This Amendment shall enter into force on the date of the last signature of the Parties. Nepal represents that the Council of Ministers of the Government of Nepal has approved Nepal's signature of this Amendment.

2.2 Scope of This Amendment

Except as expressly amended by this Amendment, all of the provisions of the Compact remain unchanged and in full force and effect.

Done in [duplicate] in the English language.

For the United States of America	For the Federal Democratic Republic of Nepal
[name]	[name]
[title]	[title]
Date:	Date:
Place:	Place:

Annex I

Exhibit A to Annex II

Multi-Year Financial Plan Summary

(SUS)							
Component	**CDF**	**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Total**
1. Electricity Transmission Project							
(a) Transmission Lines Activity	99,708	64,340,935	41,235,000	51,235,000	75,320,000	60,604,643	284,521,643
(b) Substations Activity	40,370	19,712,000	22,122,000	22,122,000	15,113,435	17,895,000	99,014,435
(c) Power Sector Technical Assistance Activity	10,218	6,398,000	2,890,000	2,886,000	2,200,000	2,263,149	17,072,149
(d) Program Management and Technical Oversight Activity	10,408.712	12,121,584	6,207,000	6,207,000	7,207,000	6,529,258	48,680,258
Subtotal	**10,558,712**	**102,572,519**	**73,618,000**	**72,450,000**	**96,371,931**	**93,717,323**	**449,288,485**
2. Road Maintenance Project							
(a) Technical Assistance Activity	786,900	3,688,100	1,227,000	1,142,000	165,000	36,000	7,045,000
(b) Strategic Road Maintenance Works Activity	1,045,616	3,507,384	11,645,000	16,011,000	13,031,000	0.00	45,240,000
Subtotal	**1,832,515**	**7,195,484**	**12,872,000**	**17,153,000**	**13,196,000**	**36,000**	**52,285,000**

[FR Doc. 2024–31066 Filed 12–31–24; 8:45 am]
BILLING CODE 9211–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 24–081]

NASA Property in the Custody of Award Recipients and Property Management System Analysis (PMSA)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal information collection.

SUMMARY: NASA, as part of its continuing effort to reduce paperwork and respondent burden, under the Paperwork Reduction Act, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by February 3, 2025.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to NASA PRA Clearance Officer, Stayce Hoult, NASA Headquarters, 300 E Street SW, JC0000, Washington, DC 20546, phone 256–714–8575, or email *hq-ocio-pra-program@mail.nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

To ensure accurate reporting of Government-owned, contractor-held property on the financial statements and to provide information necessary for effective property management in accordance with FAR Part 45, NASA obtains summary data annually from the official Government property records maintained by its award recipients with contracts, grants and cooperative agreements. The information is submitted via the NASA Form 1018, at the end of each fiscal year. Additional information submitted to approve the accuracy of the award recipient property management system compliance is submitted via NASA Form 1019, at the beginning of awards with NASA property in the hands of award recipients; and same information gathered by Federal agencies assisting NASA according to risk matrix. Information for property management system in accordance with FAR Part 45, NASA is the agency responsible for contract award administration shall conduct an analysis of the award recipient's property management policies, procedures, practices, and systems.

II. Methods of Collection

Electronic.

III. Data

Title: NASA Property in the Custody of Award Recipients and Property Management System Analysis (PMSA).

OMB Number: 2700–0017.

Type of Review: Renewal of a previously approved information collection.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Annual Number of Activities: 1,200 (might not apply to small dollar amount awards).

Estimated Number of Respondents per Activity: 1.

Annual Responses: 1,200.

Estimated Time per Response: 1.5 hours.

Estimated Total Annual Burden Hours: 1,800.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Stayce Hoult,

PRA Clearance Officer, National Aeronautics and Space Administration.

[FR Doc. 2024–31465 Filed 12–31–24; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

78th Committee Meeting of the President's Committee on the Arts and the Humanities

AGENCY: Institute of Museum and Library Services (IMLS), National Foundation of the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the President's Committee on the Arts and the Humanities will meet to consider a subcommittee proposal.

DATES: The meeting will be held virtually on January 8, 2025, at 4:30 p.m. Eastern Time (ET).

ADDRESSES: The meeting will convene in a virtual format. Individuals wishing to attend should contact Alexandra Piper at *apiper@imls.gov* for registration details.

FOR FURTHER INFORMATION CONTACT: Jasmine Jennings, Assistant General Counsel and Alternate Designated Federal Officer, Institute of Museum and Library Services, Suite 4000, 955 L'Enfant Plaza North SW, Washington, DC 20024; (202) 653–4653; *jjennings@imls.gov.*

SUPPLEMENTARY INFORMATION: The President's Committee on the Arts and the Humanities is meeting pursuant to Executive Order 14084 and the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. The 78th Meeting of the President's Committee on the Arts and Humanities will convene on January 8, 2025, at 4:30 p.m. ET. This meeting will be open to the public.

Purpose: To review and consider a subcommittee proposal regarding an Archive of Joy campaign.

Further Information: On January 8, 2025, at 4:30 p.m. ET, the Committee will meet to deliberate on a recommendation for Committee action. Any interested persons may attend as observers. Individuals wishing to attend should contact Alexandra Piper at *apiper@imls.gov* for registration details.

Dated: December 26, 2024.

Brianna Ingram,

Paralegal Specialist.

[FR Doc. 2024–31418 Filed 12–31–24; 8:45 am]

BILLING CODE 7036–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review 3206–0253: Leadership Assessment Surveys

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a currently approved collection, Leadership Assessment Surveys. OPM is requesting approval of the OPM Leadership 360™, Leadership Potential Assessment, the OPM Personality Assessment for Leaders, the Leadership for Engagement Survey, the Leadership for Inclusion Survey, and the DEIA Pulse Survey as a part of this collection. Approval of these surveys is necessary to collect information on Federal agency performance and leadership effectiveness.

DATES: Comments are encouraged and will be accepted until February 3, 2025. This process is conducted in accordance with 5 CFR 1320.8(d)(1).

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Human Resources Strategy and Evaluation Solutions, Office of Personnel Management, 1900 E Street, Rm. 2469, NW, Washington, DC 20415, Attention: Coty Hoover, C/O Henry Thibodeaux, via phone at 202–606–8001, or via email to *Organizational_Assessment@opm.gov.*

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Background

OPM's Human Resources Strategy and Evaluation Solutions performs assessment and related consultation activities for Federal agencies on a reimbursable basis. The assessments are authorized by various statutes and regulations: section 4702 of title 5, U.S.C.; E.O. 12862; E.O. 13715; section 1128 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136; 5 U.S.C. 1101 note, 1103(a)(5), 1104, 1302, 3301, 3302, 4702, 7701 note; E.O. 13197, 66 FR 7853, 3 CFR, 2001 Comp., p. 748; E.O. 10577, 12 FR 1259, 3 CFR, 1954–1958 Comp., p. 218; and section 4703 of title 5, United States Code.

This collection request includes surveys we currently use and plan to use during the next three years to measure Federal leaders' effectiveness. These surveys all measure leadership characteristics. Non-Federal respondents will almost never receive more than one of these surveys. All these surveys consist of Likert-type, mark-one, and mark-all-that-apply items, and may include a small number of open-ended comment items. OPM's Leadership 360™ assessment measures the 28 competencies that comprise the five Executive Core Qualifications and Fundamental Competencies in the OPM leadership model. The OPM Leadership 360™ consists of 116 items and is almost never customized, although customization to meet an agency's needs is possible. OPM's Leadership Potential Assessment consists of 103 items focused on identifying individuals ready to move into supervisory positions. OPM's Personality Assessment for Leaders consists of 236 items that measure leadership personality characteristics within a ''Big 5'' framework. OPM's Leadership for Engagement and Leadership for Inclusion surveys consist of 140 items that measure 30 leadership behaviors and employees' perceptions of their work unit related to engagement and Diversity, Equity, Inclusion, and Accessibility (DEIA), respectively. The DEIA Pulse Survey consists of 50 items that provide leaders with information related to the demographics of their workforce, perceptions of the leader's policies, procedures, and practices related to DEIA, and attitudes toward working in the leader's organization. These assessments are almost always administered electronically.

Three new surveys are being added to this collection: The Leadership for Inclusion Survey (L4I), the Leadership for Engagement Survey (L4E), and the DEIA Pulse Survey. For the remaining three surveys the following minor updates, which did not impact the burden estimate, have been made:

The OPM Leadership 360™ survey content was reviewed and some changes were made, including refreshing some items to update the language and/or better reflect current terminology, revamping the response scale in an effort to increase response variance, and changing some item language to make it more gender neutral (*e.g.,* updated language such as ''he or she'' to ''they'').

For the Leadership Potential Assessment, some item language was changed to make it more gender neutral (*e.g.,* updated language such as ''he or she'' to ''they'').

Minor changes were also made to the instructions of the Leadership Profiler to match our new survey platform.

Analysis

Agency: Office of Personnel Management.

Title: Leadership Assessment Surveys.

OMB Number: 3206–0253.

Frequency: On occasion.

Affected Public: Individuals

Number of Respondents: Approximately 8300 annually, 24,900 over 3 years.

Estimated Time per Respondent: 15 minutes for the OPM Leadership 360™ and Leadership Potential Assessment; 45 minutes for the OPM Personality Assessment for Leaders; 20 minutes for the Leadership for Engagement Survey and the Leadership for Inclusion Survey; and 10 minutes for the DEIA Pulse Survey. The OPM Personality Assessment for Leaders will almost never be administered to non-Federal employees; excluding it, the average time to complete these surveys is approximately 16 minutes.

Total Burden Hours: 2,088 hours annually, 6,264 over 3 years.

Alexys Stanley,

Federal Register Liaison.

[FR Doc. 2024–31520 Filed 12–31–24; 8:45 am]

BILLING CODE 6325–43–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025–991 and K2025–990; MC2025–992 and K2025–991; MC2025–993 and K2025–992; MC2025–994 and K2025–993; MC2025–995 and K2025–994; MC2025–996 and K2025–995; MC2025–997 and K2025–996; MC2025–998 and K2025–997]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 3, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Public Proceeding(s)
III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).:* MC2025–991 and K2025–990; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1194 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 23, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* January 3, 2025.

2. *Docket No(s).:* MC2025–992 and K2025–991; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1195 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 23, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* January 3, 2025.

3. *Docket No(s).:* MC2025–993 and K2025–992; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1196 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 23, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* January 3, 2025.

4. *Docket No(s).:* MC2025–994 and K2025–993; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 570 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 23, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* January 3, 2025.

5. *Docket No(s).:* MC2025–995 and K2025–994; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1197 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 23, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* January 3, 2025.

6. *Docket No(s).:* MC2025–996 and K2025–995; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1198 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 23, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* January 3, 2025.

7. *Docket No(s).:* MC2025–997 and K2025–996; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1199 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 23, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Manon Boudreault; *Comments Due:* January 3, 2025.

8. *Docket No(s).:* MC2025–998 and K2025–997; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1200 to the Competitive

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 23, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Manon Boudreault; *Comments Due:* January 3, 2025.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–31461 Filed 12–31–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–289, OMB Control No. 3235–0327]

Proposed Collection; Comment Request; Extension: Form SE

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form SE (17 CFR 239.64, 17 CFR 249.444, 17 CFR 269.8, 17 CFR 274.403) is used by filers on the Commission's Electronic Data Gathering Analysis and Retrieval system (''EDGAR''), to submit any paper document relating to an otherwise electronic filing and must accompany exhibits filed in paper pursuant to a hardship exemption, as provided in Rule 311 of Regulation S–T (17 CFR 232.311). The information contained in Form SE is used by the Commission to identify paper copies of exhibits. Form SE is filed by individuals, companies or other entities that are required to file documents electronically. Approximately 2.7 filers file Form SE each year and it takes an estimated 0.10 hours per response for a total annual burden of 0.27 hours (0.10 hours per response × 2.7 responses). For administrative convenience, we are estimating an annual burden of 1 hour (as the nearest whole number above zero).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by March 3, 2025.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 26, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–31459 Filed 12–31–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–377, OMB Control No. 3235–0425]

Proposed Collection; Comment Request; Extension: Form TH

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form TH (17 CFR 239.65, 17 CFR 249.447, 269.10 and 17 CFR 274.404) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) is used by registrants to notify the Commission that an electronic filer is relying on the temporary hardship exemption for the filing of a document in paper form that would otherwise be required to be filed electronically as required by Rule 201(a) of Regulation S–T (17 CFR. 232.201(a)) (hereinafter ''Rule 201(a)'') . Except for certain identified exclusions listed in Rule 201(a), Form TH must be filed every time an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing. Approximately 0 filers file Form TH each year and it takes an estimated 0.33 hours per response to complete Form TH. For administrative convenience, we are estimating an annual burden of 1 hour (as the nearest whole number above zero) to reflect the possibility that one or more filers may submit a Form TH.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by March 3, 2025.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street NE, Washington, DC 20549 or send an email to *PRA_Mailbox@sec.gov.*

Dated: December 26, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–31458 Filed 12–31–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102037; File No. SR–Phlx–2024–54]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Withdrawal of Proposed Rule Change To Amend Options 3, Section 13 Related to XND

December 26, 2024.

On October 18, 2024, Nasdaq PHLX LLC (''Phlx'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit orders for the accounts of appointed market makers to be solicited for PIXL auctions in Nasdaq-100 Micro Index (''XND'') Options. The proposed rule change was published for comment in the **Federal Register** on November 6, 2024.[3] On December 16, 2024, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comments on the proposed rule change.

On December 20, 2024, Phlx withdrew the proposed rule change (SR–Phlx–2024–54).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–31457 Filed 12–31–24; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20932 and #20933; WASHINGTON Disaster Number WA–20014]

Administrative Declaration of a Disaster for the State of Washington

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Washington dated December 23, 2024.

Incident: Bomb Cyclone.

DATES: Issued on December 23, 2024.

Incident Period: November 17, 2024 through November 25, 2024.

Physical Loan Application Deadline Date: February 21, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: September 23, 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: King.

Contiguous Counties:

Washington: Chelan, Kitsap, Kittitas, Pierce, Snohomish, Yakima.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.125
Homeowners without Credit Available Elsewhere	2.563
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.625
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 20932B and for economic injury is 209330.

The State which received an EIDL Declaration is Washington.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–31453 Filed 12–31–24; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36821]

Dover and Delaware River Railroad, LLC—Lease and Operation Exemption Including Interchange Commitment—Norfolk Southern Railway Company

Dover and Delaware River Railroad, LLC (DDRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to exempt from regulation DDRR's amendment (the Amendment) modifying the existing lease (the Current Lease) that DDRR and Norfolk Southern Railway Company entered into in 2018 and amended in 2023.[1] The lines subject to the Current Lease and Amendment (Leased Lines), which DDRR will continue to operate after the transaction, include: (1) the Washington Secondary, between milepost WD 57.25 (previously WD 58.0) at Hackettstown, N.J., and milepost WD 80.3 at Phillipsburg, N.J.; (2) the Old Road Industrial Track, between milepost 66.5 TG at Washington, N.J., and milepost 67.6 TG at Washington; (3) the Pompton Industrial Track, between milepost PQ 21.4 at Mountain View, N.J., and milepost PQ 22.2 at Wayne, N.J.; and (4) the Totowa Spur, between milepost TO 18.0 at Totowa, N.J., and milepost 21.0 at Wayne, a total of 27.95 miles of rail line. The Amendment will extend the term and will also revise other commercial terms of the Current Lease.[2]

DDRR certifies that its projected annual revenues from this transaction will not result in the creation of a Class I or Class II rail carrier and will not exceed $5 million. DDRR also certifies that an interchange commitment will continue to apply during the term of the Amendment. DDRR has provided additional information regarding the interchange commitment as required under 49 CFR 1150.43(h).

According to the verified notice, the Amendment will become effective once

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 101488 (Oct. 31, 2024), 89 FR 88092.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 101919, 89 FR 104253 (December 20, 2024).

[6] 17 CFR 200.30–3(a)(12).

[1] *See Dover & Del. River R.R.—Lease with Interchange Commitment & Trackage Rts. Exemption—Norfolk S. Ry.,* FD 36258 et al. (STB served Feb. 15, 2019); *Dover & Del. River R.R.—Lease Containing Interchange Commitment & Trackage Rts. Exemption—Norfolk S. Ry.,* FD 36703 (STB served June 16, 2023).

[2] According to the verified notice, the trackage rights that were originally authorized together with the Current Lease will continue unchanged.

the notice of exemption becomes effective, and DDRR will continue to operate the Leased Lines under the Current Lease until that point. The earliest this transaction may be consummated is January 16, 2025, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 9, 2025.

All pleadings, referring to Docket No. FD 36821, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on DDRR's representative, Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. NW, Suite 1300 South, Washington, DC 20004.

According to DDRR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.y,*

Decided: December 26, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2024–31460 Filed 12–31–24; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 730 (Sub-No. 1)]

Roster of Arbitrators—Annual Update

Pursuant to 49 U.S.C. 11708, the Board's regulations establish a voluntary and binding arbitration process to resolve rail rate and practice complaints that are subject to the Board's jurisdiction. Section 11708(f) provides that, unless parties otherwise agree, an arbitrator or panel of arbitrators shall be selected from a roster maintained by the Board. Accordingly, the Board's rules establish a process for creating and maintaining a roster of arbitrators. 49 CFR 1108.6(b).

The Board most recently updated its roster of arbitrators by decision served February 23, 2024. The roster is published on the Board's website at *www.stb.gov* (click the ''Resources'' tab, select ''Litigation Alternatives'' from the dropdown menu, click on the ''Arbitration'' link, and click on the ''Roster of Arbitrators'' link).

As provided under 49 CFR 1108.6(b), the Board updates the roster of arbitrators annually. Accordingly, the Board is now requesting the names and qualifications of new arbitrators who wish to be placed on the roster. Current arbitrators who wish to remain on the roster must notify the Board of their continued availability and confirm that the biographical information on file with the Board remains accurate and, if not, provide any necessary updates. Arbitrators who do not confirm their continued availability will be removed from the roster. This decision will be served on all current arbitrators.

Any person who wishes to be added to the roster should file an application that describes the applicant's experience with rail transportation and economic regulation, as well as professional or business experience, including agriculture, in the private sector. The submission should also describe the applicant's training in dispute resolution and/or experience in arbitration or other forms of dispute resolution, including the number of years of experience. Lastly, the submission should provide the applicant's contact information and information on fees.

All comments—including filings from new applicants, updates to existing arbitrator information, and confirmations of continued availability—should be submitted either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001 by January 27, 2025. The Board will assess each new applicant's qualifications to determine which individuals can ably serve as arbitrators based on the criteria established under 49 CFR 1108.6(b). The Board will then establish an updated roster of arbitrators. The roster will include a brief biographical sketch of each arbitrator, including information such as background, area(s) of expertise, arbitration experience, and geographical location, as well as contact information and fees. The roster will be published on the Board's website.

It is ordered:

1. Applications from persons interested in being added to the Board's roster of arbitrators, and confirmations of continued availability (with updates, if any, to existing arbitrator information) from persons currently on the arbitration roster, are due by January 27, 2025.

2. This decision will be served on all current arbitrators and published in the **Federal Register**.

3. This decision is effective on the date of service.

Decided: December 27, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2024–31496 Filed 12–31–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 1099–G, Certain Government Payments.

DATES: Written comments should be received on or before March 3, 2025 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Number 1545–0120—Form 1099–G, Certain Government Payments'' in the subject of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Andres Garcia, at (202) 317–4542, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Andres.Garcia@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certain Government Payments.

OMB Number: 1545–0120.

Form Number: 1099–G.

Abstract: Form 1099–G is used to report government payments such as unemployment compensation, state and local income tax refunds, credits, or offsets, reemployment trade adjustment assistance (RTAA) payments, taxable grants, agricultural payments, or for

payments received on a Commodity Credit Corporation (CCC) loan.

Current Actions: There are no changes to the existing collection. However, the estimated number of responses has been updated based on current filing data.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal, State, local or Tribal governments.

Estimated Number of Responses: 83,436,800.

Estimated Time per Response: 0.3 hours (18 minutes).

Estimated Total Annual Burden Hours: 25,031,040.

The following paragraph applies to the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 27, 2024.

Andres Garcia Leon,

Supervisory Tax Analyst.

[FR Doc. 2024–31482 Filed 12–31–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0903]

Agency Information Collection Activity Under OMB Review: VA Form 26–0967, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, and VA Form 26–0967a, Specially Adaptive Housing Assistive Technology Grants Criteria and Responses

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by February 3, 2025.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: *www.reginfo.gov/public/do/PRAMain,* select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0903.''

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, 202–461–8900, *vacopaperworkreduact@va.gov.*

SUPPLEMENTARY INFORMATION:

Title: Agency Information Collection Activity under OMB Review: VA Form 26–0967, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, and VA Form 26–0967a, Specially Adaptive Housing Assistive Technology Grants Criteria and Responses.

OMB Control Number: 2900–0903 *https://www.reginfo.gov/public/do/PRASearch.*

Type of Review: Extension without change of a currently approved collection.

Abstract: The proposed regulations would require applicants to submit VA Form 26–0967, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. These regulations would also require applicants to provide statements addressing six scoring criteria for grant awards as part of their application. The information will be used by Loan Guaranty personnel in deciding whether an applicant meets the requirements and satisfies the scoring criteria for award of an SAH Assistive Technology grant under 38 U.S.C. 2108. 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.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 85587, October 28, 2024.

Affected Public: Individuals or Households.

Estimated Annual Burden: 40.

Estimated Average Burden per Respondent: 120 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 20.

Authority: 44 U.S.C. 3501 *et seq.*

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.), Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–31475 Filed 12–31–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice and request for public comment and hearing.

SUMMARY: The United States Sentencing Commission is considering promulgating amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that proposed amendment. This notice also sets forth several issues for comment, some of which are set forth together with the proposed amendments, and one of which (regarding retroactive application of proposed amendments) is set forth in the Supplementary Information section of this notice.

DATES:

Written Public Comment. Written public comment regarding the proposed amendments and issues for comment set forth in this notice, including public comment regarding retroactive application of any of the proposed amendments, should be received by the Commission not later than February 3, 2025. Written reply comments, which may only respond to issues raised during the original comment period, should be received by the Commission not later than February 18, 2025. Public comment regarding a proposed amendment received after the close of the comment period, and reply comment received on issues not raised during the original comment period, may not be considered.

Public Hearing. The Commission may hold a public hearing regarding the proposed amendments and issues for comment set forth in this notice. Further information regarding any public hearing that may be scheduled, including requirements for testifying and providing written testimony, as well as the date, time, location, and scope of the hearing, will be provided by the Commission on its website at *www.ussc.gov.*

ADDRESSES: There are two methods for submitting public comment.

Electronic Submission of Comments. Comments may be submitted electronically via the Commission's Public Comment Submission Portal at *https://comment.ussc.gov.* Follow the online instructions for submitting comments.

Submission of Comments by Mail. Comments may be submitted by mail to the following address: United States Sentencing Commission, One Columbus Circle NE, Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs—Proposed Amendments.

FOR FURTHER INFORMATION CONTACT: Jennifer Dukes, Senior Public Affairs Specialist, (202) 502–4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

Publication of a proposed amendment requires the affirmative vote of at least three voting members of the Commission and is deemed to be a request for public comment on the proposed amendment. *See* USSC Rules of Practice and Procedure 2.2, 4.4. In contrast, the affirmative vote of at least four voting members is required to promulgate an amendment and submit it to Congress. *See id.* 2.2; 28 U.S.C. 994(p).

The proposed amendments in this notice are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline, policy statement, or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part in comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2][4][6] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

In summary, the proposed amendments and issues for comment set forth in this notice are as follows:

(1) A proposed amendment relating to § 4B1.2 (Definitions of Terms Used in Section 4B1.1), including amendments to (A) § 4B1.2 to eliminate the use of the categorical and modified categorical approaches by providing a definition for ''crime of violence'' that is based on a defendant's conduct and a definition of ''controlled substance offense'' that lists specific federal drug statutes; (B) the commentary to the guidelines that use the terms ''crime of violence'' and ''controlled substance offense'' and define these terms by making specific reference to § 4B1.2; and (C) related issues for comment.

(2) A two-part proposed amendment to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), including (A) amendments to § 2K2.1 to address its application to offenses involving machinegun conversion devices (MCDs), and related issues for comment; and (B) an amendment to § 2K2.1(b)(4) to establish a *mens rea* requirement for the enhancements for stolen firearms and firearms with modified serial numbers, and a related issue for comment.

(3) A two-part proposed amendment addressing certain circuit conflicts involving § 2B3.1 (Robbery) and § 4A1.2 (Definitions and Instructions for Computing Criminal History), including (A) three options for amending § 2B3.1(b)(4)(B) to address a circuit conflict concerning whether the ''physically restrained'' enhancement can be applied to situations in which a victim is restricted from moving at gunpoint but is not otherwise immobilized through physical measures such as those listed in the ''physically restrained'' definition set forth in the Commentary to § 1B1.1 (Application Instructions), and related issues for comment; and (B) an amendment to § 4A1.2(a)(2) to address a circuit conflict concerning whether a traffic stop is an ''intervening arrest'' for purposes of determining whether multiple prior sentences should be ''counted separately or treated as a single sentence'' when assigning criminal history points (''single-sentence rule'').

(4) A two-part proposed amendment to the *Guidelines Manual,* including (A) request for public comment on whether any changes should be made to the *Guidelines Manual* relating to the three-step process set forth in § 1B1.1 (Application Instructions) and the use of departures and policy statements relating to specific personal characteristics; and (B) amendments that would restructure the *Guidelines Manual* to simplify both (1) the current three-step process utilized in determining a sentence that is

''sufficient, but not greater than necessary,'' and (2) existing guidance in the *Guidelines Manual* regarding a court's consideration of the individual circumstances of the defendant as well as certain offense characteristics.

In addition, the Commission requests public comment regarding whether, pursuant to 18 U.S.C. 3582(c)(2) and 28 U.S.C. 994(u), any proposed amendment published in this notice should be included in subsection (d) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants. The Commission lists in § 1B1.10(d) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The Background Commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(d). To the extent practicable, public comment should address each of these factors.

The text of the proposed amendments and related issues for comment are set forth below. Additional information pertaining to the proposed amendments and issues for comment described in this notice may be accessed through the Commission's website at *www.ussc.gov.* In addition, as required by 5 U.S.C. 553(b)(4), plain-language summaries of the proposed amendments are available at *https://www.ussc.gov/guidelines/amendments/proposed-2025-amendments-federal-sentencing-guidelines-published-december-2024.*

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure 2.2, 4.3, 4.4.

Carlton W. Reeves,
Chair.

Proposed Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary

1. Career Offender

Synopsis of Proposed Amendment: In August 2024, the Commission identified as one of its policy priorities for the amendment cycle ending May 1, 2025, ''[s]implifying the guidelines and clarifying their role in sentencing,'' including ''revising the 'categorical approach' for purposes of the career offender guideline.'' U.S. Sent'g Comm'n, ''Notice of Final Priorities,'' 89 FR 66176 (Aug. 14, 2024).

The proposed amendment addresses recurrent criticism of the categorical approach and modified categorical approach, which courts have applied in the context of § 4B1.1 (Career Offender). It would eliminate the categorical approach when determining whether an offense qualifies as a crime of violence by providing a definition for ''crime of violence'' that is based on a defendant's conduct and a definition of ''controlled substance offense'' that is limited to specific federal drug statutes. These changes are intended to correct some of the ''odd'' and ''arbitrary'' results that the categorical approach has produced relating to the ''crime of violence'' definition (*see, e.g., United States* v. *Davis,* 875 F.3d 592, 595 (11th Cir. 2017); *United States* v. *McCollum,* 885 F.3d 300, 309–14 (4th Cir. 2018) (Traxler, J., concurring); *id.* (Wilkinson, J., dissenting)), and to provide a definition of ''controlled substance offense'' that is based on enumerated federal drug trafficking offenses.

The Categorical Approach as Developed by Supreme Court Jurisprudence

Several statutes and guidelines provide enhanced penalties for defendants convicted of offenses that meet the definition of a particular category of crimes. Courts typically determine whether a conviction fits within the definition of a particular category of crimes through the application of the ''categorical approach'' and ''modified categorical approach,'' as set forth by Supreme Court jurisprudence. The categorical and modified categorical approaches require courts to look only to the elements of the offense, rather than the particular facts underlying the conviction, to determine whether the offense meets the definition of a particular category of crimes. In applying the modified categorical approach, courts may look to certain additional sources of information, now commonly referred to as the ''*Shepard* documents,'' to determine the elements of the offense of conviction. *See Taylor* v. *United States,* 495 U.S. 575 (1990) (holding that, under the ''categorical approach,'' courts must compare the elements of the offense as described in the statute of conviction to the elements of the applicable definition of a particular category of crimes to determine if such offense criminalizes the same or a narrower range of conduct than the definition captures in order to serve as a predicate offense); *Shepard* v. *United States,* 544 U.S. 13 (2005) (holding that courts may use a ''modified categorical approach'' in cases where the statute of conviction is ''overbroad,'' that is, the statute contains multiple offenses with different offense elements).

Application of the Categorical Approach in the Guidelines

Supreme Court jurisprudence on this subject pertains to statutory provisions (*e.g.,* 18 U.S.C. 924(e)), but courts have applied the categorical and modified categorical approaches to guideline provisions. For example, courts have used these approaches to determine if a conviction is a ''crime of violence'' or a ''controlled substance offense'' for purposes of applying the career offender guideline at § 4B1.1.

Commission data indicates that of the 64,124 individuals sentenced in fiscal year 2023, 1,351 individuals (2.1%) were sentenced under the career offender guideline. While representing a relatively small portion of the federal caseload each year, the categorical approach continues to result in substantial litigation.

General Criticism of the Categorical Approach as Developed by Supreme Court Jurisprudence

The Commission has received significant comment over the years regarding the complexity and limitations of the categorical approach, as developed by Supreme Court jurisprudence. Courts have criticized the categorical approach as a ''legal fiction,'' in which an offense that a defendant commits violently is deemed to be a non-violent offense because other defendants at other times could have been convicted of violating the same statute without violence, often leading to ''odd'' and ''arbitrary'' results (*e.g., United States* v. *Davis,* 875 F.3d 592, 595 (11th Cir. 2017); *United States* v. *McCollum,* 885 F.3d 300, 309–14 (4th Cir. 2018) (Traxler, J., concurring); *id.* (Wilkinson, J., dissenting)).

Feedback From Stakeholders

The Commission has also received input at roundtable discussions with several stakeholders with diverse perspective and expertise within the criminal justice system. Many stakeholders suggested that the Commission should eliminate the categorical approach to capture violent offenses that are currently excluded while also narrowing the scope of the ''controlled substance offense'' definition, particularly its reach over predicate offenses. Many stakeholders also recommend that the definition of ''controlled substance offense'' should only cover federal drug offenses and

exclude prior state drug offenses for purposes of the career offender guideline.

Many stakeholders have remarked that the Commission should limit the number of qualifying prior offenses overall for purposes the career offender guideline. Some stakeholders suggested that the Commission should condition which convictions qualify as predicate offenses by establishing a minimum sentence length threshold.

Proposed Changes to § 4B1.2

The proposed amendment would amend § 4B1.2 (Definitions of Terms Used in Section 4B1.1) in several ways.

First, the proposed amendment would move the definition of ''controlled substance offense'' from subsection (b) to subsection (a). It would also revise the definition of ''controlled substance offense'' to exclude state drug offenses from the scope of its application by listing specific federal statutes relating to drug offenses. The proposed amendment lists the federal statutes that are controlled substance offenses under the current definition to maintain the status quo with respect to federal drug trafficking statutes. The federal drug trafficking statutes that do not appear in brackets are specifically referenced in the career offender directive at 28 U.S.C. 994(h). The proposed amendment would also move to subsection (a) the provision currently located in Commentary to § 4B1.2 stating that a violation of 18 U.S.C. 924(c) or 929(a) is a ''controlled substance offense'' if the offense of conviction established that the underlying offense was a ''controlled substance offense.''

Second, the proposed amendment would place all provisions related to ''crime of violence'' in subsection (b). It would define the term ''crime of violence'' based on the defendant's own offense conduct which, consistent with subsection (a)(1)(A) of § 1B1.3 (Relevant Conduct), is the conduct that the defendant committed, aided or abetted, counseled, commanded, induced, procured, or willfully caused during the commission of the offense, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense. It provides a list of types of qualifying conduct that includes a ''force clause'' at § 4B1.2(b)(1)(A) (which closely tracks the language of current § 4B1.2(a)(1) but would incorporate a parenthetical insert defining the term ''physical force'' as ''force capable of causing physical pain or injury to another person'') and provisions relating to conduct that would constitute certain specific offenses that currently qualify as a ''crime of violence,'' such as forcible sex offenses, robbery, arson, and extortion. The proposed amendment would also include a provision at subsection (b)(2) that would allow certain inchoate offenses to still qualify as ''crimes of violence.'' In addition, the proposed amendment would require the government to make a prima facie showing that an offense is a ''crime of violence'' by using only a specific list of sources of information from the record.

Third, the proposed amendment sets forth three options for setting a minimum sentence length requirement for a prior conviction to qualify as a ''crime of violence'' or ''controlled substance offense.'' Option 1 would limit qualifying prior convictions to only convictions that are counted separately under § 4A1.1(a) [or (b)]. Option 2 would limit qualifying prior convictions to only convictions that resulted in a sentence imposed of [five years][three years][one year] or more that are counted separately under § 4A1.1(a) [or (b)]. Option 2 brackets the possibility of including a provision that provides that a conviction shall not qualify as a prior felony conviction under § 4B1.2 if the defendant can establish that the conviction resulted in a sentence for which the defendant served less than [three years] [two years][six months] in prison. Option 3 would limit qualifying prior convictions to only convictions that resulted in a sentence for which the defendant served [five years][three years][one year] or more in prison and that are counted separately under § 4A1.1(a) [or (b)]. All three options include two suboptions. Suboption A in each option would set the minimum sentence length requirement for purposes of both ''crime of violence'' and ''controlled substance offense.'' Suboption B in each option would set the minimum sentence length requirement for purposes of ''crime of violence'' only.

Changes to Other Guidelines

The current definitions of ''crime of violence'' and ''controlled substance'' at § 4B1.2 are incorporated by reference in several other guidelines in the *Guidelines Manual.* The proposed amendment would maintain the status quo by amending the Commentary to these guidelines to incorporate the relevant part or parts of § 4B1.2. The proposed amendment would make such changes to § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity), § 4A1.2 (Definitions and Instructions for Computing Criminal History), § 4B1.4 (Armed Career Criminal), § 5K2.17 (Semiautomatic Firearms Capable of Accepting Large Capacity Magazine (Policy Statement)), and § 7B1.1 (Classification of Violations (Policy Statement)).

Issues for comment are also provided.

Proposed Amendment

Section 4B1.2 is amended by striking the following:

''(a) *Crime of Violence.*—The term 'crime of violence' means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c).

(b) *Controlled Substance Offense.*—The term 'controlled substance offense' means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense; or

(2) is an offense described in 46 U.S.C. 70503(a) or § 70506(b).

(c) *Two Prior Felony Convictions.*—The term 'two prior felony convictions' means (1) the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (*i.e.,* two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense), and (2) the sentences for at least two of the aforementioned felony convictions are counted separately under the provisions of § 4A1.1(a), (b), or (c). The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether

by guilty plea, trial, or plea of *nolo contendere.*

(d) *Inchoate Offenses Included.*—The terms 'crime of violence' and 'controlled substance offense' include the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(e) *Additional Definitions.*—

(1) *Forcible Sex Offense.*—'Forcible sex offense' includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (A) an offense described in 18 U.S.C. 2241(c) or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(2) *Extortion.*—'Extortion' is obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.

(3) *Robbery.*—'Robbery' is the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. The phrase 'actual or threatened force' refers to force that is sufficient to overcome a victim's resistance.

(4) *Prior Felony Conviction.*—'Prior felony conviction' means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen or older is an adult conviction. A conviction for an offense committed prior to age eighteen is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.,* a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).

Commentary

Application Notes:

1. *Further Considerations Regarding 'Crime of Violence' and 'Controlled Substance Offense'.*—For purposes of this guideline—

Unlawfully possessing a listed chemical with intent to manufacture a controlled substance (21 U.S.C. 841(c)(1)) is a 'controlled substance offense.'

Unlawfully possessing a prohibited flask or equipment with intent to manufacture a controlled substance (21 U.S.C. 843(a)(6)) is a 'controlled substance offense.'

Maintaining any place for the purpose of facilitating a drug offense (21 U.S.C. 856) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense facilitated) was a 'controlled substance offense.'

Using a communications facility in committing, causing, or facilitating a drug offense (21 U.S.C. 843(b)) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense committed, caused, or facilitated) was a 'controlled substance offense.'

A violation of 18 U.S.C. 924(c) or § 929(a) is a 'crime of violence' or a 'controlled substance offense' if the offense of conviction established that the underlying offense was a 'crime of violence' or a 'controlled substance offense'. (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

2. *Offense of Conviction as Focus of Inquiry.*—Section 4B1.1 (Career Offender) expressly provides that the instant and prior offenses must be crimes of violence or controlled substance offenses of which the defendant was convicted. Therefore, in determining whether an offense is a crime of violence or controlled substance for the purposes of § 4B1.1 (Career Offender), the offense of conviction (*i.e.,* the conduct of which the defendant was convicted) is the focus of inquiry.

3. *Applicability of § 4A1.2.*—The provisions of § 4A1.2 (Definitions and Instructions for Computing Criminal History) are applicable to the counting of convictions under § 4B1.1.

4. *Upward Departure for Burglary Involving Violence.*—There may be cases in which a burglary involves violence, but does not qualify as a 'crime of violence' as defined in § 4B1.2(a) and, as a result, the defendant does not receive a higher offense level or higher Criminal History Category that would have applied if the burglary qualified as a 'crime of violence.' In such a case, an upward departure may be appropriate.'';

and inserting the following:

''(a) *Controlled Substance Offense.*—

(1) *Definition.*—The term 'controlled substance offense' means an offense under 21 U.S.C. 841, § 952(a), § 955, or § 959, or 46 U.S.C. 70503(a) or § 70506(b), [or 21 U.S.C. 843(a)(6), § 843(b), § 846 (if the object of the conspiracy or attempt was to commit an offense covered by this provision), § 856, § 860, § 960, or § 963 (if the object of the conspiracy or attempt was to commit an offense covered by this provision)].

(2) *Additional Consideration.*—A violation of 18 U.S.C. 924(c) or § 929(a) is a 'controlled substance offense' if the offense of conviction established that the underlying offense was a 'controlled substance offense.' (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(b) *Crime of Violence.*—

(1) *Definition.*—The term 'crime of violence' means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, in which the defendant engaged in any of the following conduct:

(A) The use, attempted use, or threatened use of physical force (*i.e.,* force capable of causing physical pain or injury to another person) against the person of another.

(B) A sexual act with a person where the person does not consent or gives consent that is not legally valid (such as involuntary, incompetent, or coerced consent). However, conduct constituting sexual abuse of a minor and statutory rape is included only if the defendant engaged in conduct that constitutes (i) an offense described in 18 U.S.C. 2241(c), or (ii) an offense under state law that would have been an offense under 18 U.S.C. 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(C) The unlawful taking or obtaining of personal property from a person, or in the presence of a person, against the person's will by means of actual or threatened force (*i.e.,* force that is sufficient to overcome a victim's resistance), or violence, or fear of injury against: (i) the person, the property of such person, or property in the custody

or possession of such person; (ii) a relative or family member of the person, or the property of such relative or family member; or (iii) anyone in the company of the person at the time of the taking or obtaining, or their property.

(D) The obtaining something of value from another by the wrongful use of (i) force, (ii) fear of physical injury, or (iii) threat of physical injury.

(E) The willful or malicious setting of fire to or burning of property.

(F) The use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive materials as defined in 18 U.S.C. 841(c).

(2) *Covered Inchoate Offenses.*—An offense is a 'crime of violence' if the defendant engaged in any of the conduct described in subsection (b)(1) regardless of whether the offense of conviction was for a substantive offense, aiding and abetting the commission of an offense, attempting to commit an offense, or conspiring to commit an offense.

(3) *Determination of Whether an Offense Is a 'Crime of Violence'.*—In determining whether an offense is a 'crime of violence,' the focus of inquiry is on the conduct that the defendant committed, aided or abetted, counseled, commanded, induced, procured, or willfully caused during the commission of the offense, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense. *See* subsection (a)(1)(A) of § 1B1.3 (Relevant Conduct).

(4) *Sources of Information.*—In making a prima facie showing that the offense is a 'crime of violence,' the government may only use the following sources of information from the record:

(A) The charging document.

(B) The jury instructions and accompanying verdict form.

(C) The plea agreement or transcript of colloquy between judge and defendant in which the factual basis of the guilty plea was confirmed by the defendant.

[(D) The judge's formal rulings of law or findings of fact.

(E) The judgment of conviction.

(F) Any explicit factual finding by the trial judge to which the defendant assented.]

(G) Any comparable judicial record of the sources described in paragraphs (A) through (F).

[*Option 1 for Subsection (c) (Limiting Prior Convictions to Sentences Receiving Points under § 4A1.1(a)*[*or (b)*]]:

[*Suboption 1A (Limitation applicable to both* ''*crime of violence*'' *and* ''*controlled substance offense*''):

(c) *Two Prior Felony Convictions.*—The term 'two prior felony convictions' means: (1) the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (*i.e.,* two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense); and (2) the sentences for at least two of the aforementioned felony convictions are counted separately under § 4A1.1(a) [or (b)]. The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere.*]

[*Suboption 1B (Limitation applicable only to* ''*crime of violence*''):

(c) *Two Prior Felony Convictions.*—The term 'two prior felony convictions' means the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (*i.e.,* two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense). The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere.* For purposes of determining whether the defendant sustained at least two felony convictions of either a crime of violence or a controlled substance offense, use only: (1) any such felony conviction of a 'controlled substance offense' that is counted separately under § 4A1.1(a), (b), or (c); or (2) any such felony conviction of a 'crime of violence' that is counted separately under § 4A1.1(a) [or (b)].]]

[*Option 2 for Subsection (c) (Limiting Prior Convictions Through a Sentence-Imposed Approach*):

[*Suboption 2A (Limitation applicable to both* ''*crime of violence*'' *and* ''*controlled substance offense*''):

(c) *Two Prior Felony Convictions.*—The term 'two prior felony convictions' means: (1) the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (*i.e.,* two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense); and (2) each of at least two of the aforementioned felony convictions (A) is counted separately under § 4A1.1(a) [or (b)], and (B) resulted in a sentence imposed of [five years][three years][one year] or more. The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere.* For purposes of this provision, 'sentence imposed' has the meaning given the term 'sentence of imprisonment' in § 4A1.2(b) and Application Note 2 of the Commentary to § 4A1.2. The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release, regardless of when the revocation occurred.

[A conviction shall not qualify as a prior felony conviction under this provision if the defendant can establish that the conviction resulted in a sentence for which the defendant served less than [three years] [two years][six months] in prison.]]

[*Suboption 2B (Limitation applicable only to* ''*crime of violence*''):

(c) *Two Prior Felony Convictions.*—The term 'two prior felony convictions' means the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (*i.e.,* two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense). The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere.* For purposes of determining whether the defendant sustained at least two felony convictions of either a crime of violence or a controlled substance offense, use only: (1) any such felony conviction of a 'controlled substance offense' that is counted separately under § 4A1.1(a), (b), or (c); or (2) any such felony conviction of a 'crime of violence' that (A) is counted separately under § 4A1.1(a) [or (b)], and (B) resulted in a sentence imposed of [five years][three years][one year] or more. For purposes of this provision, 'sentence imposed' has the meaning given the term 'sentence of imprisonment' in § 4A1.2(b) and Application Note 2 of the Commentary to § 4A1.2. The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release, regardless of when the revocation occurred.

[A conviction of a crime of violence shall not qualify as a prior felony conviction under this provision if the defendant can establish that the conviction resulted in a sentence for which the defendant served less than [three years] [two years][six months] in prison.]]]

[*Option 3 for Subsection (c) (Limiting Prior Convictions Through a Time-Served Approach*):

[*Suboption 3A (Limitation applicable to both* ''*crime of violence*'' *and* ''*controlled substance offense*''):

(c) *Two Prior Felony Convictions.*—The term 'two prior felony convictions' means: (1) the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (*i.e.,* two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense); and (2) each of at least two of the aforementioned felony convictions (A) is counted separately under § 4A1.1(a) [or (b)], and (B) resulted in a sentence for which the defendant served [five years][three years][one year] or more in prison. The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere.*]

[*Suboption 3B (Limitation applicable only to* ''*crime of violence*''):

(c) *Two Prior Felony Convictions.*—The term 'two prior felony convictions' means the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (*i.e.,* two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense). The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere.* For purposes of determining whether the defendant sustained at least two felony convictions of either a crime of violence or a controlled substance offense, use only: (1) any such felony conviction of a 'controlled substance offense' that is counted separately under § 4A1.1(a), (b), or (c); or (2) any such felony conviction of a 'crime of violence' that (A) is counted separately under § 4A1.1(a) [or (b)], and (B) resulted in a sentence for which the defendant served [five years][three years][one year] or more in prison.]]

(d) *Prior Felony Conviction.*—'Prior felony conviction' means a prior adult conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen or older is an adult conviction. A conviction for an offense committed prior to age eighteen is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.,* a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).

Commentary

Application Note:

1. *Conduct Constituting Robbery and Extortion Offenses.*—The Commission anticipates that subsection (b)(1)(A) will be sufficient to include as crimes of violence conduct that would constitute most robbery and extortion offenses that involve violence. Subsections (b)(1)(C) and (b)(1)(D) are included to provide clarity and ease of application.

Background: Section 4B1.2 defines the terms 'crime of violence,' 'controlled substance offense,' and 'two prior felony convictions.' Prior to [amendment year], to determine if an offense met the definition of 'crime of violence' or 'controlled substance offense' in § 4B1.2, courts used the categorical approach and the modified categorical approach, as set forth in Supreme Court jurisprudence. *See, e.g., Taylor* v. *United States,* 495 U.S. 575 (1990); *Shepard* v. *United States,* 544 U.S. 13 (2005); *Descamps* v. *United States,* 570 U.S. 254 (2013); *Mathis* v. *United States,* 579 U.S. 500 (2016). These Supreme Court cases, however, involved statutory provisions (*e.g.,* 18 U.S.C. 924(e)) rather than guideline provisions.

In [amendment year], the Commission amended § 4B1.2 to eliminate the use of the categorical approach and modified categorical approach established by Supreme Court jurisprudence for purposes of determining whether an offense is a 'crime of violence' or a 'controlled substance offense' in § 4B1.2. *See* USSG App. C, Amendment [____] (effective [Date]). Section 4B1.2 provides a list of the federal drug statutes that qualify as a 'controlled substance offense.' The approach set out in the guideline for determining whether an offense of conviction is a 'crime of violence' allows a court to consider the conduct of the defendant underlying the offense of conviction. The approach set forth by this guideline requires the court to consider the defendant's own conduct and conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused. The government must make a prima facie showing that an offense of conviction is a 'crime of violence' only by using the limited list of sources of information, commonly referred to as the '*Shepard* documents,' that Supreme Court jurisprudence has determined is permissible to determine whether a conviction fits within the definition of a particular category of crimes.''.

The Commentary to § 2K1.3 captioned ''Application Notes'' is amended in Note 2 by striking the following:

''For purposes of this guideline:

'Controlled substance offense' has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

'Crime of violence' has the meaning given that term in § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2.

'Felony conviction' means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen years or older is an adult conviction. A conviction for an offense committed prior to age eighteen years is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.,* a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).'';

and inserting the following:

''*Definitions for Purposes of Subsections (a)(1) and (a)(2).*—

(A) *Crime of Violence.*—

(i) *Definition.*—'Crime of violence'' means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (I) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (II) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm

described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c).

(ii) *Additional Considerations.*—

(I) The term 'crime of violence' includes the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(II) 'Forcible sex offense' includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (aa) an offense described in 18 U.S.C. 2241(c) or (bb) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(III) 'Extortion' is obtaining something of value from another by the wrongful use of (aa) force, (bb) fear of physical injury, or (cc) threat of physical injury.

(IV) 'Robbery' is the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. The phrase 'actual or threatened force' refers to force that is sufficient to overcome a victim's resistance.

(V) A violation of 18 U.S.C. 924(c) or § 929(a) is a 'crime of violence' if the offense of conviction established that the underlying offense was a 'crime of violence'. (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(VI) In determining whether an offense is a crime of violence, the offense of conviction (*i.e.,* the conduct of which the defendant was convicted) is the focus of inquiry.

(B) *Controlled Substance Offense.*—

(i) *Definition.*—'Controlled substance offense' means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (I) prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense; or (II) is an offense described in 46 U.S.C. 70503(a) or § 70506(b).

(ii) *Additional Considerations.*—

(I) The term 'controlled substance offense' include the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(II) Unlawfully possessing a listed chemical with intent to manufacture a controlled substance (21 U.S.C. 841(c)(1)) is a 'controlled substance offense.'

(III) Unlawfully possessing a prohibited flask or equipment with intent to manufacture a controlled substance (21 U.S.C. 843(a)(6)) is a 'controlled substance offense.'

(IV) Maintaining any place for the purpose of facilitating a drug offense (21 U.S.C. 856) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense facilitated) was a 'controlled substance offense.'

(V) Using a communications facility in committing, causing, or facilitating a drug offense (21 U.S.C. 843(b)) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense committed, caused, or facilitated) was a 'controlled substance offense.'

(VI) A violation of 18 U.S.C. 924(c) or § 929(a) is a 'controlled substance offense' if the offense of conviction established that the underlying offense was a 'controlled substance offense.' (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(VII) In determining whether an offense is a controlled substance offense, the offense of conviction (*i.e.,* the conduct of which the defendant was convicted) is the focus of inquiry.

(C) *Felony Conviction.*—'Felony conviction' means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen years or older is an adult conviction. A conviction for an offense committed prior to age eighteen years is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.,* a federal conviction for an offense committed prior to the defendant's eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended—

in Note 1 by striking the following:

'' 'Controlled substance offense' has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

'Crime of violence' has the meaning given that term in § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2.'';

by redesignating Notes 3 through 14 as Notes 4 through 15, respectively;

by inserting after Note 2 the following new Note 3:

''3. *'Crime of Violence' and 'Controlled Substance Offense'.*—

(A) *Crime of Violence.*—

(i) *Definition.*—'Crime of violence' means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (I) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (II) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c).

(ii) *Additional Considerations.*—

(I) The term 'crime of violence' includes the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(II) 'Forcible sex offense' includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (aa) an offense described in 18 U.S.C. 2241(c) or (bb) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(III) 'Extortion' is obtaining something of value from another by the wrongful use of (aa) force, (bb) fear of physical injury, or (cc) threat of physical injury.

(IV) 'Robbery' is the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his

custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. The phrase 'actual or threatened force' refers to force that is sufficient to overcome a victim's resistance.

(V) A violation of 18 U.S.C. 924(c) or § 929(a) is a 'crime of violence' if the offense of conviction established that the underlying offense was a 'crime of violence.' (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(VI) In determining whether an offense is a crime of violence, the offense of conviction (*i.e.,* the conduct of which the defendant was convicted) is the focus of inquiry.

(B) *Controlled Substance Offense.*—

(i) *Definition.*—'Controlled substance offense' means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (I) prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense; or (II) is an offense described in 46 U.S.C. 70503(a) or § 70506(b).

(ii) *Additional Considerations.*—

(I) The term 'controlled substance offense' include the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(II) Unlawfully possessing a listed chemical with intent to manufacture a controlled substance (21 U.S.C. 841(c)(1)) is a 'controlled substance offense.'

(III) Unlawfully possessing a prohibited flask or equipment with intent to manufacture a controlled substance (21 U.S.C. 843(a)(6)) is a 'controlled substance offense.'

(IV) Maintaining any place for the purpose of facilitating a drug offense (21 U.S.C. 856) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense facilitated) was a 'controlled substance offense.'

(V) Using a communications facility in committing, causing, or facilitating a drug offense (21 U.S.C. 843(b)) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense committed, caused, or facilitated) was a 'controlled substance offense.'

(VI) A violation of 18 U.S.C. 924(c) or § 929(a) is a 'controlled substance offense' if the offense of conviction established that the underlying offense was a 'controlled substance offense.' (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(VII) In determining whether an offense is a controlled substance offense, the offense of conviction (*i.e.,* the conduct of which the defendant was convicted) is the focus of inquiry.'';

in Note 12 (as so redesignated) by striking ''*see* Application Note 7'' and inserting ''*see* Application Note 8'';

and in Note 14 (as so redesignated) by striking the following:

'' 'Crime of violence' and 'controlled substance offense' have the meaning given those terms in § 4B1.2 (Definitions of Terms Used in Section 4B1.1).''.

The Commentary to § 2S1.1 captioned ''Application Notes'' is amended—

in Note 1 by striking the following:

'' 'Crime of violence' has the meaning given that term in subsection (a)(1) of § 4B1.2 (Definitions of Terms Used in Section 4B1.1).'';

by redesignating Notes 4, 5, and 6 as Notes 5, 6, and 7;

and by inserting after Note 3 the following new Note 4:

''4. *'Crime of Violence' under Subsection (b)(1).*—

(A) *Definition.*—For purposes of subsection (b)(1), 'crime of violence' means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that has as an element the use, attempted use, or threatened use of physical force against the person of another.

(B) *Additional Considerations.*—

(i) The term 'crime of violence' includes the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(ii) A violation of 18 U.S.C. 924(c) or § 929(a) is a 'crime of violence' if the offense of conviction established that the underlying offense was a 'crime of violence.' (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(iii) In determining whether an offense is a crime of violence, the offense of conviction (*i.e.,* the conduct of which the defendant was convicted) is the focus of inquiry.''.

The Commentary to § 4A1.1 captioned ''Application Notes'' is amended in Note 4 by striking '' 'crime of violence' has the meaning given that term in § 4B1.2(a). *See* § 4A1.2(p)'' and inserting '' 'crime of violence' has the meaning given that term in § 4A1.2(p)''.

Section 4A1.2(p) is amended by striking the following:

''For the purposes of § 4A1.1(d), the definition of 'crime of violence' is that set forth in § 4B1.2(a).'';

and inserting the following:

''(1) *Definition.*—For purposes § 4A1.1(d), 'crime of violence' means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (A) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (B) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c).

(2) *Additional Considerations.*—

(A) The term 'crime of violence' includes the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(B) 'Forcible sex offense' includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (i) an offense described in 18 U.S.C. 2241(c) or (ii) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(C) 'Extortion' is obtaining something of value from another by the wrongful use of (i) force, (ii) fear of physical injury, or (iii) threat of physical injury.

(D) 'Robbery' is the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. The phrase 'actual or threatened force' refers to force that is sufficient to overcome a victim's resistance.

(E) A violation of 18 U.S.C. 924(c) or § 929(a) is a 'crime of violence' if the offense of conviction established that the underlying offense was a 'crime of violence.' (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(F) In determining whether an offense is a crime of violence, the offense of conviction (*i.e.,* the conduct of which the defendant was convicted) is the focus of inquiry.''.

Section 4B1.4(b)(3) is amended by striking ''either a crime of violence, as defined in § 4B1.2(a), or a controlled substance offense, as defined in § 4B1.2(b)'' and inserting ''either a crime of violence or a controlled substance offense''.

Section 4B1.4(c)(2) is amended by striking ''either a crime of violence, as defined in § 4B1.2(a), or a controlled substance offense, as defined in § 4B1.2(b)'' and inserting ''either a crime of violence or a controlled substance offense''.

The Commentary to § 4B1.4 captioned ''Application Notes'' is amended by inserting at the end the following new Note 3:

''3. *'Crime of Violence' and 'Controlled Substance Offense'.*—

(A) *Crime of Violence.*—

(i) *Definition.*—'Crime of violence' means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (I) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (II) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c).

(ii) *Additional Considerations.*—

(I) The term 'crime of violence' includes the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(II) 'Forcible sex offense' includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (aa) an offense described in 18 U.S.C. 2241(c) or (bb) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(III) 'Extortion' is obtaining something of value from another by the wrongful use of (aa) force, (bb) fear of physical injury, or (cc) threat of physical injury.

(IV) 'Robbery' is the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. The phrase 'actual or threatened force' refers to force that is sufficient to overcome a victim's resistance.

(V) A violation of 18 U.S.C. 924(c) or § 929(a) is a 'crime of violence' if the offense of conviction established that the underlying offense was a 'crime of violence.' (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(VI) In determining whether an offense is a crime of violence, the offense of conviction (*i.e.,* the conduct of which the defendant was convicted) is the focus of inquiry.

(B) *Controlled Substance Offense.*—

(i) Definition.—'Controlled substance offense' means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (I) prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense; or (II) is an offense described in 46 U.S.C. 70503(a) or § 70506(b).

(ii) *Additional Considerations.*—

(I) The term 'controlled substance offense' include the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(II) Unlawfully possessing a listed chemical with intent to manufacture a controlled substance (21 U.S.C. 841(c)(1)) is a 'controlled substance offense.'

(III) Unlawfully possessing a prohibited flask or equipment with intent to manufacture a controlled substance (21 U.S.C. 843(a)(6)) is a 'controlled substance offense.'

(IV) Maintaining any place for the purpose of facilitating a drug offense (21 U.S.C. 856) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense facilitated) was a 'controlled substance offense.'

(V) Using a communications facility in committing, causing, or facilitating a drug offense (21 U.S.C. 843(b)) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense committed, caused, or facilitated) was a 'controlled substance offense.'

(VI) A violation of 18 U.S.C. 924(c) or § 929(a) is a 'controlled substance offense' if the offense of conviction established that the underlying offense was a 'controlled substance offense.' (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(VII) In determining whether an offense is a controlled substance offense, the offense of conviction (*i.e.,* the conduct of which the defendant was convicted) is the focus of inquiry.''.

The Commentary to § 5K2.17 captioned ''Application Notes'' is amended—

in the caption by striking ''Note'' and inserting ''Notes'';

by striking Note 1 as follows:

''1. 'Crime of violence' and 'controlled substance offense' are defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1).'';

and by inserting the following new Notes 1 and 2:

''1. *Crime of Violence.*—

(A) *Definition.*—'Crime of violence' means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (ii) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c).

(B) *Additional Considerations.*—

(i) The term 'crime of violence' includes the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(ii) 'Forcible sex offense' includes where consent to the conduct is not

given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (I) an offense described in 18 U.S.C. 2241(c) or (II) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(iii) 'Extortion' is obtaining something of value from another by the wrongful use of (I) force, (II) fear of physical injury, or (III) threat of physical injury.

(iv) 'Robbery' is the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. The phrase 'actual or threatened force' refers to force that is sufficient to overcome a victim's resistance.

(v) A violation of 18 U.S.C. 924(c) or § 929(a) is a 'crime of violence' if the offense of conviction established that the underlying offense was a 'crime of violence.' (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(vi) In determining whether an offense is a crime of violence, the offense of conviction (*i.e.,* the conduct of which the defendant was convicted) is the focus of inquiry.

2. *Controlled Substance Offense.*—

(A) *Definition.*—'Controlled substance offense' means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (i) prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense; or (ii) is an offense described in 46 U.S.C. 70503(a) or § 70506(b).

(B) *Additional Considerations.*—

(i) The term 'controlled substance offense' include the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(ii) Unlawfully possessing a listed chemical with intent to manufacture a controlled substance (21 U.S.C. 841(c)(1)) is a 'controlled substance offense.'

(iii) Unlawfully possessing a prohibited flask or equipment with intent to manufacture a controlled substance (21 U.S.C. 843(a)(6)) is a 'controlled substance offense.'

(iv) Maintaining any place for the purpose of facilitating a drug offense (21 U.S.C. 856) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense facilitated) was a 'controlled substance offense.'

(v) Using a communications facility in committing, causing, or facilitating a drug offense (21 U.S.C. 843(b)) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense committed, caused, or facilitated) was a 'controlled substance offense.'

(vi) A violation of 18 U.S.C. 924(c) or § 929(a) is a 'controlled substance offense' if the offense of conviction established that the underlying offense was a 'controlled substance offense.' (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(vii) In determining whether an offense is a controlled substance offense, the offense of conviction (*i.e.,* the conduct of which the defendant was convicted) is the focus of inquiry.''.

The Commentary to § 7B1.1 captioned ''Application Notes'' is amended—

in Note 2 by striking the following:

'' 'Crime of violence' is defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). See § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2.'';

and inserting the following:

''*Crime of Violence.*—

(A) *Definition.*—'Crime of violence' means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (ii) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c).

(B) *Additional Considerations.*—

(i) The term 'crime of violence' includes the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(ii) 'Forcible sex offense' includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (I) an offense described in 18 U.S.C. 2241(c) or (II) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(iii) 'Extortion' is obtaining something of value from another by the wrongful use of (I) force, (II) fear of physical injury, or (III) threat of physical injury.

(iv) 'Robbery' is the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. The phrase 'actual or threatened force' refers to force that is sufficient to overcome a victim's resistance.

(v) A violation of 18 U.S.C. 924(c) or § 929(a) is a 'crime of violence' if the offense of conviction established that the underlying offense was a 'crime of violence.' (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(vi) In determining whether an offense is a crime of violence, the offense of conviction (*i.e.,* the conduct of which the defendant was convicted) is the focus of inquiry.'';

and in Note 3 by striking the following:

'' 'Controlled substance offense' is defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). *See* § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2.'';

and inserting the following:

''*Controlled Substance Offense.*—

(A) *Definition.*—'Controlled substance offense' means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (i) prohibits the manufacture,

import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense; or (ii) is an offense described in 46 U.S.C. 70503(a) or § 70506(b).

(B) Additional Considerations.—

(i) The term 'controlled substance offense' include the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(ii) Unlawfully possessing a listed chemical with intent to manufacture a controlled substance (21 U.S.C. 841(c)(1)) is a 'controlled substance offense.'

(iii) Unlawfully possessing a prohibited flask or equipment with intent to manufacture a controlled substance (21 U.S.C. 843(a)(6)) is a 'controlled substance offense.'

(iv) Maintaining any place for the purpose of facilitating a drug offense (21 U.S.C. 856) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense facilitated) was a 'controlled substance offense.'

(v) Using a communications facility in committing, causing, or facilitating a drug offense (21 U.S.C. 843(b)) is a 'controlled substance offense' if the offense of conviction established that the underlying offense (the offense committed, caused, or facilitated) was a 'controlled substance offense.'

(vi) A violation of 18 U.S.C. 924(c) or § 929(a) is a 'controlled substance offense' if the offense of conviction established that the underlying offense was a 'controlled substance offense.' (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(vii) In determining whether an offense is a controlled substance offense, the offense of conviction (*i.e.,* the conduct of which the defendant was convicted) is the focus of inquiry.''.

Issues for Comment

1. As explained above, courts use the ''categorical approach'' and the ''modified categorical approach,'' as set forth in Supreme Court jurisprudence, to determine whether a conviction is a ''crime of violence'' or a ''controlled substance offense'' for purposes of § 4B1.2 (Definitions of Terms Used in Section 4B1.1). These Supreme Court cases, however, involved statutory provisions (*e.g.,* 18 U.S.C. 924(e)) rather than guideline provisions.

The Commission seeks comment on whether determinations under the career offender guideline should use a different approach, such as the approach provided above, that permits the court to consider the defendant's conduct underlying the offense of conviction for purposes of the ''crime of violence'' definition. What are the advantages and disadvantages of the ''categorical approach'' as opposed to the approach set forth in the proposed amendment above?

2. The proposed amendment provides that courts may consider the full scope of the defendant's conduct under subsection (a)(1)(A) of § 1B1.3 (Relevant Conduct) (*i.e.,* ''all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant . . . that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense'') for purposes of the ''crime of violence'' definition. Should the focus of the inquiry be limited to the conduct that formed the basis of the conviction? If not, should the Commission limit the consideration of the defendant's conduct in some other way? If so, how should the Commission set forth such limitation? Should the Commission limit the consideration of the defendant's conduct only to such acts and omissions that occurred ''during the commission of the offense of conviction'' and exclude conduct ''in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense'' or make any other changes?

3. The proposed amendment would revise the definition of ''controlled substance offense'' in § 4B1.2 to exclude state drug offenses by listing specific federal statutes relating to drug offenses. The proposed amendment lists the federal statutes that are controlled substance offenses under the current definition to maintain the status quo. The federal drug trafficking statutes that do not appear in brackets are specifically referenced in the career offender directive at 28 U.S.C. 994(h). Are there federal drug offenses that are covered by the proposed amendment but should not be? Are there federal drug offenses that are not covered by the proposed amendment but should be?

The Commission also seeks comment on whether, instead of excluding state drug offenses, it should limit the definition of ''controlled substance offense'' in some other way. For example, should the Commission keep the current definition of ''controlled substance offense'' and limit qualifying prior convictions to only convictions that received a certain number of criminal history points or a certain length of sentence imposed or served? If so, how should the Commission set that limit and why?

4. The definition of ''crime of violence'' set forth in the proposed amendment above includes a ''force clause'' proposed at § 4B1.2(b)(1)(A). The provision closely tracks the language of current § 4B1.2(a)(1) but would incorporate a parenthetical insert defining the term ''physical force'' as ''force capable of causing physical pain or injury to another person.'' The Commission seeks comment on whether this definition is appropriate.

The definition of ''crime of violence'' also includes provisions relating to conduct that would constitute certain specific offenses that currently qualify as a ''crime of violence,'' such forcible sex offenses, robbery, arson, and extortion. The Commission seeks comment on whether the force clause set forth in proposed § 4B1.2(b)(1)(A) would be sufficient to cover the other types of conduct specifically listed in the ''crime of violence'' definition. Specifically, the Commission seeks comment on whether the force clause would cover conduct constituting robbery and extortion offenses.

5. The definition of ''crime of violence'' includes a provision relating to forcible sexual acts at proposed § 4B1.2(b)(1)(B). The Commission seeks comment generally on whether the scope of this provision for purposes of the ''crime of violence'' definition is appropriate.

6. The ''crime of violence'' definition includes a provision that would cover conduct constituting an arson offense at proposed § 4B1.2(b)(1)(E). The Commission seeks comment generally on whether the proposed provision is appropriate.

7. The Commission seeks comment on whether the definition of ''crime of violence'' should still address the offenses of attempting to commit a substantive offense and conspiracy to commit a substantive offense. Should the Commission provide additional requirements or guidance to address these types of offenses?

8. The proposed amendment would require the government to make a prima facie showing that an offense is a ''crime of violence'' only by using a specific list of sources of information from the record. The sources of information that do not appear within brackets in the proposed amendment are specifically

identified in *Shepard* v. *United States,* 544 U.S. 13 (2005), for use in the modified categorical approach. The sources of information listed within brackets are comparable judicial documents identified in subsequent case law for the same purpose.

The Commission seeks comment on whether it should limit the sources of information that the government needs to make a prima facie showing that an offense of conviction is a ''crime of violence.'' Should the Commission list specific sources or types of sources that courts may consider in addition to the sources listed in the proposed amendment? If so, what documents or types of information should be included in this list? Are there any documents or types of information that should be excluded?

9. The proposed amendment sets forth three options for setting a minimum sentence length requirement for a prior conviction to qualify as a ''crime of violence'' or ''controlled substance offense.'' The Commission seeks comment on whether including a minimum sentence length requirement for prior offenses to qualify as a ''crime of violence'' or ''controlled substance offense'' is consistent with the Commission's authority under 28 U.S.C. 994(h). The Commission also seeks comment on each of these options and suboptions. Should the Commission differentiate between ''crimes of violence'' and ''controlled substance offenses'' in setting a minimum sentence length requirement?

10. As indicated above, several guidelines use the terms ''crime of violence'' and ''controlled substance offense'' and define these terms by making specific reference to § 4B1.2. *See* Commentary to § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity), § 4A1.2 (Definitions and Instructions for Computing Criminal History), § 4B1.4 (Armed Career Criminal), § 5K2.17 (Semiautomatic Firearms Capable of Accepting Large Capacity Magazine (Policy Statement)), and § 7B1.1 (Classification of Violations (Policy Statement)).

The proposed amendment would maintain the status quo by amending the Commentary to these guidelines to incorporate the relevant part or parts of § 4B1.2. The Commission seeks comment on whether this is the appropriate approach or, in the alternative, whether any or all of these guidelines should continue to define the terms ''crime of violence'' and ''controlled substance offense'' by making specific references to § 4B1.2 if the Commission were to promulgate the proposed amendment making changes to the definitions contained in § 4B1.2. Should the Commission consider moving these definitions from the commentary of these guidelines to the guidelines themselves?

2. Firearms Offenses

Synopsis of Proposed Amendment: The proposed amendment contains two parts (Part A and Part B) addressing offenses involving firearms. The Commission is considering whether to promulgate either or both parts, as they are not mutually exclusive.

Part A of the proposed amendment addresses the application of § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) to machinegun conversion devices (MCDs), which are designed to convert weapons to fully automatic firearms. Issues for comment are also provided.

Part B of the proposed amendment establishes a *mens rea* requirement for the enhancements under § 2K2.1(b)(4) for stolen firearms and firearms with modified serial numbers. An issue for comment is also provided.

(A) Machinegun Conversion Devices (MCDs)

Synopsis of Proposed Amendment: Section 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) employs, for different purposes, two distinct definitions of the term ''firearm'' drawn from separate statutory sources: 21 U.S.C. 921(a)(3) (''Gun Control Act (GCA) definition of firearm'') and 26 U.S.C. 5845(a) (''National Firearms Act (NFA) definition of firearm''). One difference between the definitions is the inclusion of machinegun conversion devices (MCDs). Commonly referred to as ''Glock switches'' or ''auto sears,'' MCDs are devices designed to convert weapons into fully automatic firearms. The NFA definition of firearm includes ''machineguns,'' 26 U.S.C. 5845(a), and the definition of ''machinegun'' includes ''any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun,'' 26 U.S.C. 5845(b). Therefore, MCDs fall within the NFA definition of firearm. However, the GCA definition of firearm does not encompass MCDs. *See* 21 U.S.C. 921(a)(3).

Section 2K2.1 uses the NFA definition of firearm for certain enhanced base offense levels. *See, e.g.,* USSG § 2K2.1(a)(1), (3), (4), and (5). Therefore, those enhanced base offense levels apply to offenses involving MCDs. However, the remainder of § 2K2.1, including the specific offense characteristics and the cross reference, uses the GCA definition of firearm. USSG § 2K2.1, comment. (n.1). Therefore, MCDs do not trigger § 2K2.1's specific offense characteristics or the cross reference. For example, an individual convicted under 18 U.S.C. 922(o) for possessing five MCDs would receive an enhanced base offense level because the offense involved a firearm described in 26 U.S.C. 5845(a). *See* USSG § 2K2.1(a)(5). However, this individual would not receive an enhancement under § 2K2.1(b)(1) for the number of firearms involved in the offense because the MCDs are not firearms under the GCA definition. *See* USSG § 2K2.1(b)(1).

Commenters have expressed concern that § 2K2.1 insufficiently addresses offenses involving MCDs. Commenters have described a significant recent proliferation of MCDs and pointed out the increased danger to bystanders and law enforcement officials when a weapon is equipped with an MCD because those weapons can fire more quickly and are more difficult to control.

Part A of the proposed amendment would amend § 2K2.1 to address these concerns.

The proposed amendment provides two options to amend § 2K2.1.

Option 1 would amend the definition of ''firearm'' applicable to § 2K2.1 to include any firearm described in 18 U.S.C. 921(a)(3) (*i.e.,* the GCA definition of firearm) or 26 U.S.C. 5845(a) (*i.e.,* the NFA definition of firearm). It would move the definition from the Commentary to the guideline itself in newly created subsection (d).

Option 2 would expand the application of the following subsections, which now apply only to GCA firearms, so that those subsections would also apply to NFA firearms:

- Subsection (b)(1), which provides an enhancement based on the number of firearms involved in the offense;
- Subsection (b)(4), which provides an enhancement for offenses involving firearms that were stolen, had a

modified serial number, or were not marked with a serial number;

• Subsection (b)(5), which provides an enhancement for certain offenses involving the transport, transfer, sale, or other disposition of a firearm to another person;

• Subsection (b)(6), which provides an enhancement for offenses involving transportation of a firearm outside the United States or the possession of a firearm in connection with another felony;

• Subsection (b)(7), which provides an enhancement for recordkeeping offenses that reflect an effort to conceal a substantive offense involving firearms or ammunition; and

• Subsection (c), which cross references other guidelines for cases in which the defendant used or possessed any firearm cited in the offense of conviction in connection with the commission or attempted commission of another offense, or possessed or transferred a firearm cited in the offense of conviction with knowledge or intent that it would be used or possessed in connection with another offense.

Option 2, if applied to all of the listed subsections, would produce an equivalent result to Option 1, but Option 2 highlights the policy question as to whether expansion of the definition of ''firearm'' should apply to all relevant provisions.

Issues for comment are also provided.

Proposed Amendment

Option 1 (''*Firearm*'' *definition includes GCA firearms and NFA firearms*):

Section 2K1.1 is amended by inserting at the end the following new subsection (d):

''(d) Definition

(1) For purposes of this guideline, 'firearm' includes any firearm described in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a).''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended in Note 1 by striking the following:

'' '*Firearm'* has the meaning given that term in 18 U.S.C. 921(a)(3).''.

Option 2 (''*Firearm*'' *definition depends on statutory references in specific subsections*):

Section 2K2.1 is amended—

in subsection (b)(1) by inserting after ''three or more firearms'' the following: ''(as described in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a))'';

in subsection (b)(3)(B), by striking ''subdivision'' and inserting ''paragraph'';

by striking subsection (b)(4) as follows:

''(4) If (A) any firearm was stolen, increase by 2 levels; or (B)(i) any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye; or (ii) the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, increase by 4 levels.'',

and inserting the following new subsection (b)(4) as follows:

''(4) If any firearm (as described in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a)) (A) was stolen, increase by 2 levels; (B) had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye, increase by 4 levels; or (C) was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) and the defendant knew, was willfully blind to, or consciously avoided knowledge of such fact, increase by 4 levels.'';

by striking subsections (b)(5), (b)(6), and (b)(7) as follows:

''(5) (Apply the Greatest) If the defendant—

(A) was convicted under 18 U.S.C. 933(a)(2) or (a)(3), increase by 2 levels;

(B) (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, a firearm or any ammunition knowing or having reason to believe that such conduct would result in the receipt of the firearm or ammunition by an individual who (I) was a prohibited person; or (II) intended to use or dispose of the firearm or ammunition unlawfully; (ii) attempted or conspired to commit the conduct described in clause (i); or (iii) received a firearm or any ammunition as a result of inducing the conduct described in clause (i), increase by 2 levels; or

(C) (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, two or more firearms knowing or having reason to believe that such conduct would result in the receipt of the firearms by an individual who (I) had a prior conviction for a crime of violence, controlled substance offense, or misdemeanor crime of domestic violence; (II) was under a criminal justice sentence at the time of the offense; or (III) intended to use or dispose of the firearms unlawfully; (ii) attempted or conspired to commit the conduct described in clause (i); or (iii) received two or more firearms as a result of inducing the conduct described in clause (i), increase by 5 levels.

Provided, however, that subsection (b)(5)(C)(i)(I) shall not apply based upon the receipt or intended receipt of the firearms by an individual with a prior conviction for a misdemeanor crime of domestic violence against a person in a dating relationship if, at the time of the instant offense, such individual met the criteria set forth in the proviso of 18 U.S.C. 921(a)(33)(C).

(6) If the defendant—

(A) possessed any firearm or ammunition while leaving or attempting to leave the United States, or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be transported out of the United States; or

(B) used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense,

increase by 4 levels. If the resulting offense level is less than level 18, increase to level 18.

(7) If a recordkeeping offense reflected an effort to conceal a substantive offense involving firearms or ammunition, increase to the offense level for the substantive offense.'',

and inserting the following new subsections (b)(5), (b)(6), and (b)(7):

''(5) (Apply the Greatest) If the defendant—

(A) was convicted under 18 U.S.C. 933(a)(2) or (a)(3), increase by 2 levels;

(B) (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, a firearm (as described in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a)) or any ammunition knowing or having reason to believe that such conduct would result in the receipt of the firearm or ammunition by an individual who (I) was a prohibited person; or (II) intended to use or dispose of the firearm or ammunition unlawfully; (ii) attempted or conspired to commit the conduct described in clause (i); or (iii) received a firearm (as described in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a)) or any ammunition as a result of inducing the conduct described in clause (i), increase by 2 levels; or

(C) (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, two or more firearms (as described in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a)) knowing or having reason to believe that

such conduct would result in the receipt of the firearms by an individual who (I) had a prior conviction for a crime of violence, controlled substance offense, or misdemeanor crime of domestic violence; (II) was under a criminal justice sentence at the time of the offense; or (III) intended to use or dispose of the firearms unlawfully; (ii) attempted or conspired to commit the conduct described in clause (i); or (iii) received two or more firearms (as described in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a)) as a result of inducing the conduct described in clause (i), increase by 5 levels.

Provided, however, that subsection (b)(5)(C)(i)(I) shall not apply based upon the receipt or intended receipt of the firearms by an individual with a prior conviction for a misdemeanor crime of domestic violence against a person in a dating relationship if, at the time of the instant offense, such individual met the criteria set forth in the proviso of 18 U.S.C. 921(a)(33)(C).

(6) If the defendant—

(A) possessed any firearm (as described in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a)) or ammunition while leaving or attempting to leave the United States, or possessed or transferred any firearm (as described in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a)) or ammunition with knowledge, intent, or reason to believe that it would be transported out of the United States; or

(B) used or possessed any firearm (as described in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a)) or ammunition in connection with another felony offense; or possessed or transferred any firearm (as described in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a)) or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense,

increase by 4 levels. If the resulting offense level is less than level 18, increase to level 18.

(7) If a recordkeeping offense reflected an effort to conceal a substantive offense involving firearms (as described in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a)) or ammunition, increase to the offense level for the substantive offense.'';

and in subsection (c)(1) by inserting after ''any firearm'' the following: ''(as described in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a))''; and inserting after ''transferred a firearm'' the following: ''(as described in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5845(a))''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended—

in Note 1, in the paragraph that begins '' 'Firearm' has the meaning'' by inserting after ''18 U.S.C. 921(a)(3)'' the following: ''unless otherwise specified'';

by striking Note 8 as follows:

''8. *Application of Subsection (b)(4).*—

(A) *Interaction with Subsection (a)(7).*—If the only offense to which § 2K2.1 applies is 18 U.S.C. 922(i), (j), or (u), or 18 U.S.C. 924(l) or (m) (offenses involving a stolen firearm or stolen ammunition) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(A). This is because the base offense level takes into account that the firearm or ammunition was stolen. However, if the offense involved a firearm with a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye, or if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, apply subsection (b)(4)(B)(i) or (ii).

Similarly, if the offense to which § 2K2.1 applies is 18 U.S.C. 922(k) or 26 U.S.C. 5861(g) or (h) (offenses involving an altered or obliterated serial number) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(B)(i). However, if the offense involved a stolen firearm or stolen ammunition, or if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, apply subsection (b)(4)(A) or (B)(ii).

(B) *Defendant's State of Mind.*—Subsection (b)(4)(A) or (B)(i) applies regardless of whether the defendant knew or had reason to believe that the firearm was stolen or had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye. However, subsection (b)(4)(B)(ii) only applies if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact.'',

and inserting the following new Note 8:

''8. *Application of Subsection (b)(4).*—

(A) *Interaction with Subsection (a)(7).*—If the only offense to which § 2K2.1 applies is 18 U.S.C. 922(i), (j), or (u), or 18 U.S.C. 924(l) or (m) (offenses involving a stolen firearm or stolen ammunition) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(A). This is because the base offense level takes into account that the firearm or ammunition was stolen. However, if the offense involved a firearm with a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye, or if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, apply subsection (b)(4)(B) or (C).

Similarly, if the offense to which § 2K2.1 applies is 18 U.S.C. 922(k) or 26 U.S.C. 5861(g) or (h) (offenses involving an altered or obliterated serial number) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(B). However, if the offense involved a stolen firearm or stolen ammunition, or if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, apply subsection (b)(4)(A) or (C).

(B) *Defendant's State of Mind.*—Subsection (b)(4)(A) or (B) applies regardless of whether the defendant knew or had reason to believe that the firearm was stolen or had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye. However, subsection (b)(4)(C) only applies if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact.'';

and in Note 9 by striking ''record-keeping'' and inserting ''recordkeeping''.

Issues for Comment

1. Part A of the proposed amendment seeks to respond to concerns that § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) insufficiently addresses the dangers presented by machinegun conversion devices (MCDs). The Commission seeks comment on whether the proposed amendment appropriately addresses those concerns. Should the Commission

address those concerns in another way? If so, how?

2. Under Options 1 and 2 of Part A of the proposed amendment, an MCD would be treated as a firearm for purposes of § 2K2.1. The Commission seeks comment on whether it is appropriate for MCDs to be given the same weight as other firearms. Should MCDs be treated differently from other firearms? If so, how?

3. Section 2K2.1(b)(1) and (b)(5)(C) provide enhancements based, in whole or in part, on the number of ''firearms'' involved in the offense. Under Options 1 and 2, an MCD would be considered a firearm. MCDs are designed to be affixed to another firearm. The Commission seeks comment on how MCDs should be factored when calculating the number of firearms for purposes of § 2K2.1(b)(1) and (b)(5)(C). Should the calculation depend on whether the MCD was affixed to another firearm? If an MCD is affixed to a semi-automatic firearm, should the resulting weapon be counted as one firearm or two firearms?

4. Section 2K2.1(b)(1), (b)(4), (b)(5), (b)(6), (b)(7), and (c) currently apply to firearms defined in 18 U.S.C. 921(a)(3) (the GCA definition of firearm). Under Options 1 and 2, the term ''firearm,'' as used in those provisions, would also include any firearm described in 26 U.S.C. 5845(a) (the NFA definition of firearm), such as an MCD. The Commission seeks comment on whether this change should apply to all of the listed provisions. Should one or more of these provisions be excluded from the change? For example, should the Commission make an exception to § 2K2.1(b)(4)(C), as redesignated, which provides an enhancement for certain cases involving firearms that were not marked with a serial number, for MCDs, which are often privately made and not marked with a serial number?

5. With few exceptions (*e.g.,* MCDs), a weapon that meets the NFA definition of firearm also meets the GCA definition of firearm. Apart from MCDs, the Commission seeks comment on whether there are any exceptions (*i.e.,* weapons that meet the NFA definition of firearm but not the GCA definition) that should not be treated as firearms for purposes of § 2K2.1. If so, what types of weapons should be excluded? In Option 2 of Part A of the proposed amendment, should the Commission expand the application of subsection (b)(1), (b)(4), (b)(5), (b)(6), (b)(7), or (c) to include machineguns (as defined in 26 U.S.C. 5845(b)), rather than all NFA firearms?

6. In addition to amending the definition of ''firearm'' for purposes of § 2K2.1, Option 1 of Part A of the amendment would move the definition from the Commentary to the guideline itself. However, the option would not move any other § 2K2.1 definitions from the Commentary to the guideline. The Commission seeks comment on whether leaving some definitions in the Commentary will lead to inconsistent application of those definitions. Should the Commission move other definitions from the Commentary to § 2K2.1 to the guideline itself? If so, which ones?

(B) Mens Rea Requirement

Synopsis of Proposed Amendment: Section 2K2.1 provides for offense level increases in cases involving stolen firearms, firearms with modified serial numbers, and firearms not marked with a serial number (commonly referred to as ghost guns). *See* USSG § 2K2.1(b)(4). Subsection (b)(4)(A) provides a 2-level enhancement if a firearm is stolen. USSG § 2K2.1(b)(4)(A). Subsections (B)(i) and (ii) provide a 4-level enhancement based upon the existence and state of any serial number on firearms considered for purposes of § 2K2.1. USSG § 2K2.1(b)(4)(B)(i) and (ii). The 4-level enhancement may apply, under subsection (b)(4)(B)(i), if a ''firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye,'' and, under subsection (b)(4)(B)(ii), if a ''firearm involved in the offense was not otherwise marked with a serial number.'' *Id.* The court may not apply both § 2K2.1(b)(4)(A) and (b)(4)(B) cumulatively, as the provisions are alternative. *See* USSG § 1B1.1, comment. (n.4(A)) (''Within each specific offense characteristic subsection, . . . the offense level adjustments are alternative; only the one that best describes the conduct is to be used.'').

The enhancements for stolen firearms and modified serial numbers impose no requirement of the defendant's knowledge or other mental state. USSG § 2K2.1(b)(4)(A) and (B)(i). The Commentary to § 2K2.1 states that these enhancements apply ''regardless of whether the defendant knew or had reason to believe that the firearm was stolen or had serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye.'' USSG § 2K2.1, comment. (n.8(B)). However, subsection (b)(4)(B)(ii) for firearms not marked with a serial number applies only ''if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number . . . or was willfully blind to or consciously avoided knowledge of such fact.'' *Id.*

The enhancement regarding firearms not marked with a serial number is the result of a 2023 amendment. USSG App. C, amend. 819 (effective Nov. 1, 2023). The amendment extended the 4-level enhancement at § 2K2.1(b)(4)(B) to firearms not marked with a serial number. *Id.* The Commission determined, however, ''that the enhancement should apply only to those defendants who knew or consciously avoided knowing that the firearm was not marked with a serial number.'' *Id.*

Accordingly, in its current form, § 2K2.1(b)(4) imposes a mental state requirement when the enhancement applies based on a firearm not marked with a serial number but includes no such requirement when it applies based on a stolen firearm or firearm with a modified serial number.

Part B of the proposed amendment would apply the current mental state requirement from § 2K2.1(b)(4)(B)(ii) to all of subsection (b)(4).

Under the proposed amendment, a defendant would be subject to the 2-level enhancement under § 2K2.1(b)(4)(A) only if the defendant ''knew, was willfully blind to the fact, or consciously avoided knowing that . . . any firearm was stolen.'' Similarly, a defendant would be subject to the 4-level enhancement under § 2K2.1(b)(4)(B)(i) only if the defendant ''knew, was willfully blind to the fact, or consciously avoided knowing that . . . any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye.'' The proposed amendment would also make conforming changes to Application Note 8 of the Commentary to § 2K2.1.

An issue for comment is also provided.

Proposed Amendment

Section 2K2.1(b)(4) is amended by inserting after ''If'' the following: ''the defendant knew, was willfully blind to the fact, or consciously avoided knowing that''; by striking ''or (B)(i) any firearm'' and inserting ''(B) any firearm''; by striking ''(ii) the defendant knew that any firearm'' and inserting ''(C) any firearm''; and by striking ''or was willfully blind to or consciously avoided knowledge of such fact''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended by striking Note 8 as follows:

''8. *Application of Subsection (b)(4).*—

(A) *Interaction with Subsection (a)(7).*—If the only offense to which § 2K2.1 applies is 18 U.S.C. 922(i), (j), or

(u), or 18 U.S.C. 924(l) or (m) (offenses involving a stolen firearm or stolen ammunition) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(A). This is because the base offense level takes into account that the firearm or ammunition was stolen. However, if the offense involved a firearm with a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye, or if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, apply subsection (b)(4)(B)(i) or (ii).

Similarly, if the offense to which § 2K2.1 applies is 18 U.S.C. 922(k) or 26 U.S.C. 5861(g) or (h) (offenses involving an altered or obliterated serial number) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(B)(i). However, if the offense involved a stolen firearm or stolen ammunition, or if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, apply subsection (b)(4)(A) or (B)(ii).

(B) *Defendant's State of Mind.*—Subsection (b)(4)(A) or (B)(i) applies regardless of whether the defendant knew or had reason to believe that the firearm was stolen or had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye. However, subsection (b)(4)(B)(ii) only applies if the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact.'',

and inserting the following new Note 8:

''8. *Application of Subsection (b)(4).*—If the only offense to which § 2K2.1 applies is 18 U.S.C. 922(i), (j), or (u), or 18 U.S.C. 924(l) or (m) (offenses involving a stolen firearm or stolen ammunition) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(A). This is because the base offense level takes into account that the firearm or ammunition was stolen. However, if the defendant knew, was willfully blind to the fact, or consciously avoided knowing that a firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye, or that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968), apply subsection (b)(4)(B) or (C).

Similarly, if the offense to which § 2K2.1 applies is 18 U.S.C. 922(k) or 26 U.S.C. 5861(g) or (h) (offenses involving an altered or obliterated serial number) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(B). However, if the defendant knew, was willfully blind to the fact, or consciously avoided knowing that a firearm or ammunition was stolen, or that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968), apply subsection (b)(4)(A) or (C).''.

Issue for Comment

1. Under Part B of the proposed amendment, a defendant would be subject to the 2-level enhancement under § 2K2.1(b)(4)(A) only if the defendant ''knew, was willfully blind to the fact, or consciously avoided knowing that'' a firearm was stolen. Similarly, a defendant would be subject to the 4-level enhancement under § 2K2.1(b)(4)(B) only if the defendant ''knew, was willfully blind to the fact, or consciously avoided knowing that . . . any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye.'' The Commission seeks comment on whether there are evidentiary challenges in firearms cases to proving a defendant's mental state. Are there changes the Commission should make to the proposed amendment to address potential evidentiary issues? If so, what changes should the Commission make?

3. Circuit Conflicts

Synopsis of Proposed Amendment: This proposed amendment addresses two circuit conflicts involving § 2B3.1 (Robbery) and § 4A1.2 (Definitions and Instructions for Computing Criminal History). *See* U.S. Sent'g Comm'n, ''Notice of Final Priorities,'' 89 FR 66176, 66177 (Aug. 14, 2024) (identifying resolution of circuit conflicts as a priority). The proposed amendment contains two parts (Parts A and B). The Commission is considering whether to promulgate any or all of these parts, as they are not mutually exclusive.

Part A addresses a circuit conflict concerning whether the ''physically restrained'' enhancement at § 2B3.1(b)(4)(B) can be applied to situations in which a victim is restricted from moving at gunpoint but is not otherwise immobilized through physical measures such as those listed in the ''physically restrained'' definition set forth in the Commentary to § 1B1.1 (Application Instructions). Three options are presented. Issues for comment are also included.

Part B addresses a circuit conflict concerning whether a traffic stop is an ''intervening arrest'' for purposes of determining whether multiple prior sentences should be ''counted separately or treated as a single sentence'' when assigning criminal history points (''single-sentence rule''). *See* USSG § 4A1.2(a)(2).

(A) Circuit Conflict Concerning the ''Physically Restrained'' Enhancement at § 2B3.1(b)(4)(B)

Synopsis of Proposed Amendment: Subsection (b)(4)(B) of § 2B3.1 (Robbery) provides for a 2-level enhancement ''if any person was physically restrained to facilitate commission of the offense or to facilitate escape.'' For purposes of § 2B3.1(b)(4)(B), the term ''physically restrained'' is defined in Application Note 1(L) to § 1B1.1 (Application Instructions) as ''the forcible restraint of the victim such as by being tied, bound, or locked up.''

A circuit conflict has arisen concerning whether the enhancement at § 2B3.1(b)(4)(B) can be applied to situations in which a victim is restricted from moving at gunpoint but is not otherwise immobilized through physical measures such as those outlined in the Commentary to § 1B1.1 (*i.e.,* ''being tied, bound, or locked up'').

The First, Fourth, Sixth, Tenth, and Eleventh Circuits have held that restricting a victim from moving at gunpoint suffices for the enhancement. *See, e.g., United States* v. *Wallace*, 461 F.3d 15, 34–35 (1st Cir. 2006) (affirming application of enhancement where one victim had her path blocked and was ordered at gunpoint to stop, and the other had a gun pointed directly at his face and chest, ''at close range,'' and was commanded to ''look straight ahead into the gun and not to move''); *United States* v. *Dimache*, 665 F.3d 603, 608 (4th Cir. 2011) (upholding enhancement where ''two bank tellers ordered to the floor at gunpoint were prevented from both leaving the bank and thwarting the bank robbery''); *United States* v. *Howell*,

17 F.4th 673, 692 (6th Cir. 2021) (noting that the Sixth Circuit has ''rejected the notion of a 'physical component' limitation as inapt'' and upholding enhancement where victim was ordered at gunpoint to lie down on the floor (citation omitted)); *United States* v. *Miera*, 539 F.3d 1232, 1235–36 (10th Cir. 2008) (pointing gun around, commanding bank occupants not to move, and blocking door sufficed for enhancement); *United States* v. *Deleon*, 116 F.4th 1260, 1261–62 (11th Cir. 2024) (affirming application of enhancement where the defendant ''pointed a gun at the cashier while demanding money'' but never ''actually touched the cashier'').

By contrast, the Second, Third, Fifth, Seventh, Ninth, and D.C. Circuits largely agree that a restraint must be ''physical'' for the enhancement to apply and that the psychological coercion of pointing a gun at a victim, without more, does not qualify. *See, e.g., United States* v. *Anglin*, 169 F.3d 154, 164 (2d Cir. 1999) (''displaying a gun and telling people to get down and not move, without more, is insufficient to trigger the 'physical restraint' enhancement''); *United States* v. *Bell*, 947 F.3d 49, 57, 60–61 (3d Cir. 2020) (adopting ''the requirement that the restraint involve some physical aspect''; placing fake gun on victim's neck and forcing him to floor did not suffice); *United States* v. *Garcia*, 857 F.3d 708, 713–14 (5th Cir. 2017) (vacating enhancement because ''standing near a door, holding a firearm, and instructing a victim to get on the ground'' did not ''differentiate th[e] case in any meaningful way from a typical armed robbery''); *United States* v. *Herman*, 930 F.3d 872, 877 (7th Cir. 2019) (''more than pointing a gun at someone and ordering that person not to move is necessary''); *United States* v. *Parker*, 241 F.3d 1114, 1118–19 (9th Cir. 2001) (''briefly pointing a gun at a victim and commanding her once to get down'' did not constitute ''physical restraint, given that nearly all armed bank robberies will presumably involve such acts''); *see also United States* v. *Drew*, 200 F.3d 871, 880 (D.C. Cir. 2000) (''the phrase 'being tied, bound, or locked up' indicates that physical restraint requires the defendant either to restrain the victim through bodily contact or to confine the victim in some way''; physically restrained adjustment did not apply where victim was ordered to walk down the stairs at gunpoint).

Part A of the proposed amendment presents three options for responding to this circuit conflict by amending the enhancement at § 2B3.1(b)(4)(B).

Option 1 would generally adopt the approach of the First, Fourth, Sixth, Tenth, and Eleventh Circuits that the enhancement applies with or without physical measures. It would amend the language of § 2B3.1(b)(4)(B) to specify that the increase applies to cases in which ''any person's freedom of movement was restricted through physical contact or confinement (such as being tied, bound, or locked up) or other means (such as being held at gunpoint or having a path of escape blocked) to facilitate commission of the offense or to facilitate escape.'' Option 1 also includes conforming changes to the Commentary to § 2B3.1.

Option 2 would generally adopt the approach of the Second, Third, Fifth, Seventh, Ninth, and D.C. Circuits that physical measures must be used for the enhancement to apply. It would amend the language of § 2B3.1(b)(4)(B) to clarify that the increase applies only in cases in which ''any person's freedom of movement was restricted through physical contact or confinement, such as being tied, bound, or locked up, to facilitate commission of the offense or to facilitate escape.'' Option 2 also includes conforming changes to the Commentary to § 2B3.1.

Option 3 would combine the approaches from both sides of the circuit split into a two-tiered enhancement that would replace the current ''physically restrained'' enhancement at § 2B3.1(b)(4)(B). The new enhancement would provide for a 2-level enhancement for offenses in which ''any person's freedom of movement was restricted through physical contact or confinement, such as being tied, bound, or locked up, to facilitate commission of the offense or to facilitate escape.'' It would also add a 1-level enhancement for offenses in which ''any person's freedom of movement was restricted through means other than physical contact or confinement, such as being held at gunpoint or having a path of escape blocked, to facilitate commission of the offense or to facilitate escape.'' Option 3 includes conforming changes to the Commentary to § 2B3.1.

Issues for comment are also provided.

Proposed Amendment

Option 1 (*First, Fourth, Sixth, Tenth, and Eleventh Approach—Physical or Non-Physical Means*):

Section 2B3.1(b)(4)(B) is amended by striking ''if any person was physically restrained'' and inserting ''if any person's freedom of movement was restricted through physical contact or confinement (such as being tied, bound, or locked up) or other means (such as being held at gunpoint or having a path of escape blocked)''.

The Commentary to § 2B3.1 captioned ''Application Notes'' is amended in Note 1 by striking '' 'abducted,' and 'physically restrained' are defined'' and inserting ''and 'abducted,' have the meaning given such terms''.

The Commentary to § 2B3.1 captioned ''Background'' is amended by striking ''was physically restrained by being tied, bound, or lock up'' and inserting ''a victim's freedom of movement was restricted''.

Option 2 (*Second, Third, Fifth, Seventh, Ninth, and D.C. Circuits Approach—Physical Contact or Confinement Required*):

Section 2B3.1(b)(4)(B) is amended by striking ''if any person was physically restrained'' and inserting ''if any person's freedom of movement was restricted through physical contact or confinement, such as being tied, bound, or locked up,''.

The Commentary to § 2B3.1 captioned ''Application Notes'' is amended in Note 1 by striking '' 'abducted,' and 'physically restrained' are defined'' and inserting ''and 'abducted,' have the meaning given such terms''.

The Commentary to § 2B3.1 captioned ''Background'' is amended by striking ''was physically restrained by being tied, bound, or lock up'' and inserting ''a victim's freedom of movement was restricted''.

Option 3 (*Combination of Both Approaches*):

Section 2B3.1(b)(4) is amended by striking the following:

''(A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by 4 levels; or (B) if any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels'';

and inserting the following:

''(A) If any person was abducted to facilitate escape, increase by 4 levels; (B) if any person's freedom of movement was restricted through physical contact or confinement, such as being tied, bound, or locked up, to facilitate commission of the offense or to facilitate escape, increase by 2 levels; or (C) if any person's freedom of movement was restricted through means other than physical contact or confinement, such as being held at gunpoint or having a path of escape blocked, to facilitate commission of the offense or to facilitate escape, increase by 1 level''.

The Commentary to § 2B3.1 captioned ''Application Notes'' is amended in Note 1 by striking '' 'abducted,' and 'physically restrained' are defined'' and

inserting ''and 'abducted,' have the meaning given such terms''.

The Commentary to § 2B3.1 captioned ''Background'' is amended by striking ''was physically restrained by being tied, bound, or lock up'' and inserting ''a victim's freedom of movement was restricted''.

Issues for Comment

1. Part A of the proposed amendment sets forth three options to address the circuit conflict described in the synopsis above. The Commission seeks comment on whether it should address the circuit conflict in a manner other than the options provided in Part A of the proposed amendment. If so, how?

2. The term ''physically restrained,'' as used in § 2B3.1 (Robbery), is defined in Application Note 1(L) of the Commentary to § 1B1.1 (Application Instructions). Other guidelines also use the term ''physically restrained'' and define such term by reference to the Commentary to § 1B1.1. *See* §§ 2B3.2(b)(5)(B) (''[I]f any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels.''), 2E2.1(b)(3)(B) (''[I]f any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels.''), 3A1.3 (''If a victim was physically restrained in the course of the offense, increase by 2 levels.'').

If the Commission were to promulgate Part A of the proposed amendment, should the Commission also amend any or all of these other guidelines to mirror the proposed approach for § 2B3.1? Instead of amending § 2B3.1 or the other guidelines, should the Commission amend Application Note 1(L) of the Commentary to § 1B1.1 to mirror the proposed approach for § 2B3.1?

(B) Circuit Conflict Concerning Meaning of ''Intervening Arrest'' in § 4A1.2(a)(2)

Synopsis of Proposed Amendment: Subsection (a)(2) of § 4A1.2 (Definitions and Instructions for Computing Criminal History) outlines whether multiple prior sentences should be ''counted separately or treated as a single sentence'' for purposes of assigning criminal history points (''single-sentence rule''). Prior sentences should be ''counted separately if the sentences were imposed for offenses that were separated by an *intervening arrest* (*i.e.,* the defendant is arrested for the first offense prior to committing the second offense).'' USSG § 4A1.2(a)(2) (emphasis added). If ''there is no *intervening arrest,* prior sentences are counted separately unless (A) the sentences resulted from offenses contained in the same charging instrument; or (B) the sentences were imposed on the same day.'' *Id.* (emphasis added).

There is a circuit split over the meaning of ''intervening arrest.'' The Third, Sixth, Ninth, and Eleventh Circuits have held that a formal, custodial arrest is required, and that a citation or summons following a traffic stop does not qualify. *See* United States v. *Ley*, 876 F.3d 103, 109 (3d Cir. 2017) (''[A] traffic stop, followed by the issuance of a summons, is not an arrest. The Court therefore holds that, for purposes of section 4A1.2(a)(2) of the Sentencing Guidelines, an arrest is a formal, custodial arrest.''); *United States* v. *Rogers*, 86 F.4th 259, 264–65 (6th Cir. 2023) (''for purposes of § 4A1.2(a)(2), an arrest requires placing someone in police custody as part of a criminal investigation''; ''subtle interactions with law enforcement—such as traffic stops'' are not ''the focus of the Guidelines' approach'' to prior sentences); *United States* v. *Leal-Felix*, 665 F.3d 1037, 1041 (9th Cir. 2011) (en banc) (for purposes of the guidelines, ''an arrest is a 'formal arrest' '' not a ''mere citation'' and ''may be indicated by informing the suspect that he is under arrest, transporting the suspect to the police station, and/or booking the suspect into jail''); *United States* v. *Wright*, 862 F.3d 1265, 1282 (11th Cir. 2017) (''traffic citation for driving with a suspended license is not an arrest under § 4A1.2(a)(2)''). By contrast, the Seventh Circuit has adopted a broad view of the term, holding that a traffic stop amounts to an intervening arrest. *See United States* v. *Morgan*, 354 F.3d 621, 624 (7th Cir. 2003) (''A traffic stop is an 'arrest' in federal parlance.'').

Part B of the proposed amendment responds to this circuit conflict. It would add a provision to § 4A1.2(a)(2) clarifying that an ''[i]ntervening arrest . . . requires a formal, custodial arrest and is ordinarily indicated by placing someone in police custody as part of a criminal investigation, informing the suspect that the suspect is under arrest, transporting the suspect to the police station, or booking the suspect into jail.'' It would also specify that a ''noncustodial encounter with law enforcement, such as a traffic stop, is not an intervening arrest.''

Proposed Amendment

Section 4A1.2(a)(2) is amended by inserting at the end the following new paragraph:

'' 'Intervening arrest,' for purposes of this provision, requires a formal, custodial arrest and is ordinarily indicated by placing someone in police custody as part of a criminal investigation, informing the suspect that the suspect is under arrest, transporting the suspect to the police station, or booking the suspect into jail. A noncustodial encounter with law enforcement, such as a traffic stop, is not an intervening arrest.''.

4. Simplification of Three-Step Process

Synopsis of Proposed Amendment: In August 2024, the Commission identified as one of its policy priorities for the amendment cycle ending May 1, 2025, ''[s]implifying the guidelines and clarifying their role in sentencing,'' including ''possibly amending the *Guidelines Manual* to address the three-step process set forth in § 1B1.1 (Application Instructions) and the use of departures and policy statements relating to specific personal characteristics.'' U.S. Sent'g Comm'n, ''Notice of Final Priorities,'' 89 FR 66176 (Aug. 14, 2024).

In December 2023, the Commission published a proposed amendment that would have provided for a two-step process in § 1B1.1 (Application Instructions) with accompanying changes throughout the *Guidelines Manual* to convert the Commission's existing departures and policy statements to ''additional considerations.'' More specifically, that proposed amendment would have revised § 1B1.1 to account for a two-step sentencing process, established a new Chapter Six further addressing the court's consideration of the factors set forth in 18 U.S.C. 3553(a), eliminated Chapter Five, Part H and most of Part K, and reclassified most ''departures'' currently provided throughout the *Guidelines Manual* as ''Additional Considerations'' that may be relevant to the court's determination under 18 U.S.C. 3553(a). *See* Proposed Amendments to the Sentencing Guidelines (Dec. 2023) at *https://www.ussc.gov/guidelines/amendments/proposed-2024-amendments-federal-sentencing-guidelines.*

The Three-Step Process in the Guidelines Manual

The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984) (the ''Act'') provides the Commission with broad authority to develop guidelines that will further the basic purposes of criminal sentencing: deterrence, incapacitation, retribution, and rehabilitation. The Act contains detailed instructions as to how this determination should be made, including that the Commission establish categories of offenses and categories of defendants for use in prescribing

guideline ranges that specify an appropriate sentence and to consider whether, and to what extent, specific offense-based and defendant-based factors are relevant to sentencing. *See* 28 U.S.C. 994(c), (d). In relation to the establishment of categories of defendants, the Act placed several limitations upon the Commission's ability to consider certain personal and individual characteristics in establishing the guidelines and policy statements. *See* 28 U.S.C. 994(d), (e).

In *United States* v. *Booker,* 543 U.S. 220 (2005), the Supreme Court held that the portion of 18 U.S.C. 3553 making the guidelines mandatory was unconstitutional. The Court has further explained that the guideline range should continue to be ''the starting point and the initial benchmark'' in sentencing proceedings. *See* Gall v. *United States*, 552 U.S. 38, 49 (2007); *see also Peugh* v. *United States*, 569 U.S. 530 (2013) (noting that ''the post-Booker federal sentencing system adopted procedural measures that make the guidelines the 'lodestone' of sentencing''). After determining the kinds of sentence and guideline range, the court must also fully consider the factors in 18 U.S.C. 3553(a), including, among other factors, ''the nature and circumstances of the offense and the history and characteristics of the defendant,'' to determine a sentence that is sufficient but not greater than necessary. *See Rita* v. *United States*, 551 U.S. 338, 347–48 (2007).

Section 1B1.1 (Application Instructions) sets forth the instructions for determining the applicable guideline range and type of sentence to impose, in accordance with the *Guidelines Manual.* Post-*Booker,* the Commission incorporated a three-step process for determining the sentence to be imposed, which is reflected in the three main subdivisions of § 1B1.1 (subsections (a) through (c)). The three-step process can be summarized as follows: (1) the court calculates the applicable guideline range; (2) the court considers policy statements and guideline commentary relating to departures and specific personal characteristics that might warrant consideration in imposing the sentence; and (3) the court considers the applicable factors in 18 U.S.C. 3553(a) in imposing a sentence that is sufficient, but not greater than necessary (whether within or outside the applicable guideline range).

The first step in the three-step process, as set forth in § 1B1.1(a), requires the court to calculate the applicable guideline range and determine the kind of sentence by applying Chapters Two (Offense Conduct), Three (Adjustments), and Four (Criminal History and Criminal Livelihood), and Parts B through G of Chapter Five (Determining the Sentence).

The second step in the three-step process, as set forth in § 1B1.1(b), requires the court to consider ''Parts H and K of Chapter Five, Specific Offender Characteristics and Departures, and any other policy statements or commentary in the guidelines that might warrant consideration in imposing sentence.'' Authorized grounds for departures based on various circumstances of the offense, specific personal characteristics of the defendant, and certain procedural history of the case are described throughout the *Guidelines Manual:* several Chapter Two offense guidelines and Chapter Eight organizational guidelines contain departure provisions within their corresponding Commentary; grounds for departure based on criminal history are generally provided in Chapter Four; and Chapter Five sets forth various policy statements with additional grounds for departure. Chapter Five, Part H, addresses the relevance of certain specific personal characteristics in sentencing by allocating them into three general categories. The first category includes specific personal characteristics that Congress has prohibited from consideration or that the Commission has determined should be prohibited. *See, e.g.,* USSG § 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status (Policy Statement)). The second category includes specific personal characteristics that Congress directed the Commission to ensure are reflected in the guidelines and policy statements as generally inappropriate in recommending a term of imprisonment or length of a term of imprisonment. *See, e.g.,* §§ 5H1.2 (Employment Record); 5H1.6 (Family Ties and Responsibilities (Policy Statement)). The third category includes specific personal characteristics that Congress directed the Commission to consider in the guidelines only to the extent that they have relevance to sentencing. *See, e.g.,* USSG §§ 5H1.1 (Age (Policy Statement)); 5H1.3 (Mental and Emotional Conditions (Policy Statement)).

The third step in the three-step process, as set forth in § 1B1.1(c), requires the court to ''consider the applicable factors in 18 U.S.C. 3553(a) taken as a whole.'' Specifically, section 3553(a) provides:

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

18 U.S.C. 3553(a).

Post-*Booker,* courts have been using departures provided under step two of the three-step process with less frequency in favor of variances. For further information pertaining to the application of departure provisions other than § 5K1.1 or § 5K3.1 (either alone or in conjunction with § 5K1.1 or § 5K3.1), see *https://www.ussc.gov/education/backgrounders/2024-simplification-data.* Given this trend, the Commission has identified the reconceptualization of the three-step process as one potential method of simplifying the guidelines.

Proposed Amendment

The proposed amendment contains two parts. Part A contains issues for comment on whether any changes should be made to the *Guidelines Manual* relating to the three-step process set forth in § 1B1.1 and the use of departures and policy statements relating to specific personal characteristics. Part B contains a proposed amendment that would restructure the *Guidelines Manual* to simplify both (1) the current three-step process utilized in determining a sentence that is ''sufficient, but not greater than necessary,'' and (2) existing guidance in the *Guidelines Manual* regarding a court's consideration of the individual circumstances of the defendant as well as certain offense characteristics.

Part B of the proposed amendment would make changes to better align the requirements placed on the court and acknowledge the growing shift away from the use of departures provided for within the *Guidelines Manual* in the wake of *Booker* and subsequent decisions. *See United States* v. *Booker,* 543 U.S. 220 (2005); *Irizarry* v. *United States,* 553 U.S. 708 (2008) (holding that Rule 32(h) of the Federal Rules of Criminal Procedure, which requires a court to give ''reasonable notice'' that the court is contemplating a ''departure'' from the recommended guideline range on a ground not identified for departure in the presentence report or in a party's prehearing submission, does not apply to a ''variance'' from a recommended guideline range).

Part B of the proposed amendment would revise Chapter One in multiple ways. First, it would delete the ''Original Introduction to the Guidelines Manual'' currently contained in Chapter One, Part A. This introduction would be published as a historical background in an Appendix of the *Guidelines Manual.* Second, Part B of the proposed amendment would revise the application instructions provided in § 1B1.1 to reflect the simplification of the three-step process into two steps. Part B of the proposed amendment sets forth the calculation of guideline range and determination of sentencing requirements and options under the *Guidelines Manual* as the first step of the sentencing process in § 1B1.1(a). The court's consideration of the section 3553(a) factors is set forth as the second and final step of the sentencing process in § 1B1.1(b). As revised, § 1B1.1(b) expressly lists the factors courts must consider pursuant to 18 U.S.C. 3553(a). Additionally, the definition of ''departures'' is removed from the application notes to § 1B1.1, and the Background Commentary is revised accordingly.

In addition, Part B of the proposed amendment seeks to better address the distinction between the statutory limitations on the Commission's ability to consider certain offense characteristics and individual circumstances in recommending a term of imprisonment or length of imprisonment, and the requirement that the court consider a broad range of individual and offense characteristics in determining an appropriate sentence pursuant to 18 U.S.C. 3553(a). More specifically, Part B of the proposed amendment revises current § 1A3.1 (Authority), which sets forth the Commission's authority in developing the guidelines. First, the provision is redesignated as § 1A1.1 and, for clarity, is retitled as ''Commission's Authority.'' Second, in addition to referring to 28 U.S.C. 994(a) as the basis of the Commission's authority to promulgate guidelines, policy statements, and commentary, the provision would also explain how the Commission has complied with the requirements placed by Congress, noting what is not considered by the Commission in formulating the guidelines used to calculate the guideline range.

A new background commentary explains that the requirements and limitations imposed upon the Commission by 28 U.S.C. 994, do not apply to sentencing courts. It makes clear that ''Congress set forth the factors that a court must consider in imposing a sentence that is 'sufficient but not greater than necessary' to comply with the purposes of sentencing in 18 U.S.C. 3553(a)'' and that ''[t]hese statutory factors permit a sentencing court to consider the 'widest possible breadth of information' about a defendant ensuring the court is in 'possession of the fullest information possible concerning the defendant's life and characteristics.' '' The new background commentary concludes by noting that the application instructions set forth in § 1B1.1 are structured to reflect a two-step process in which the sentencing court must first correctly calculate the applicable guideline range as the ''starting point and initial benchmark'' and then must determine an appropriate sentence upon consideration of all the factors set forth by Congress in 18 U.S.C. 3553(a).

Consistent with the revised approach, Part B of the proposed amendment would delete most ''departures'' currently provided throughout the *Guidelines Manual.* Changes would be made throughout the *Guidelines Manual* by deleting the departure provisions currently contained in commentary to various guidelines. Part B of the proposed amendment would also retitle Chapter Five to reflect its focus on the rules pertaining to the calculation of the guideline range, specifically to better reflect the chapter's purpose in the introductory commentary noting that ''a sentence is within the guidelines if it complies with each applicable section of this chapter.'' All current provisions contained in Chapter Five, Part H (Specific Offender Characteristics) would be deleted. Similarly, all provisions in Chapter Five, Part K (Departures), with the exception of those pertaining to substantial assistance to the authorities and early disposition programs, would be deleted. Only the provisions pertaining to substantial assistance would be retained, while the provision pertaining to early disposition programs would be moved to a new Part F in Chapter Three.

Finally, Chapter Five is also amended by revising the Commentary to § 5B1.1 (Imposition of a Term of Probation) and § 5D1.1 (Imposition of a Term of Supervised Release) to emphasize the factors courts are statutorily required to consider in determining the conditions of probation or supervised release. The commentary is further revised to retain factors the Commission had previously identified as relevant in Chapter Five, Part H pursuant to the congressional guidance provided to the Commission in 28 U.S.C. 994(d) and (e).

The issues for comment set forth below are informed by the proposed amendment contained in Part B.

(A) Issues for Comment

1. Part B of the proposed amendment would remove the second step in the three-step process, as set forth in subsection (b) of § 1B1.1 (Application

Instructions), requiring the court to consider the departure provisions set forth throughout the *Guidelines Manual* and the policy statements contained in Chapter Five, Part H, relating to specific personal characteristics.

The Commission invites general comment on whether reconceptualizing the three-step process in this manner streamlines the application of the *Guidelines Manual* and better reflects the interaction between 18 U.S.C. 3553(a) and the guidelines. Does the approach set forth in Part B of the proposed amendment better achieve these goals than the proposed amendment published in December 2023 (available at *https://www.ussc.gov/guidelines/amendments/proposed-2024-amendments-federal-sentencing-guidelines*), which would have retained current departure provisions in more generalized language and reclassified them as ''Additional Considerations'' that may be relevant to the court's determination under 18 U.S.C. 3553(a)? Are there any other approaches that the Commission should consider to reconceptualize and simplify the three-step process, and if so, what are they?

2. The Commission seeks comment on whether revising the three-step process, either in general or as implemented in Part B of the proposed amendment, is consistent with the Commission's authority under 28 U.S.C. 994 and 995 and all other provisions of federal law. Similarly, the Commission seeks comment on whether revising the three-step process is consistent with other congressional directives to the Commission, such as the restrictions on the Commission's authority to promulgate further reasons for downward departures set forth in the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (''PROTECT Act''), Public Law 108–21, 117 Stat. 649 (2003).

3. The *Guidelines Manual* currently contains more than two hundred departure provisions in Chapter Five, Part K (Departures), and the commentary to various guidelines elsewhere in the Manual. Chapter Five, Part H contains twelve policy statements addressing the relevance of certain specific personal characteristics in sentencing. Such provisions were either included by the original Commission or through subsequent guideline amendments to provide guidance to courts in identifying ''aggravating or mitigating circumstance(s) of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.'' *See* 18 U.S.C. 3553(b).

The proposed amendment contained in Part B would delete most ''departures'' currently provided throughout the *Guidelines Manual.* Only the provisions pertaining to substantial assistance to authorities (currently provided for in Chapter Five, Part K, Subpart 1) and early disposition programs (currently provided for in § 5K3.1 (Early Disposition Programs (Policy Statement)) would be retained in the Manual, while other deleted ''departures'' would be accounted for through the court's consideration of the applicable factors in 18 U.S.C. 3553(a). If the Commission were to remove the second step in the three-step process, as proposed in Part B, should the Commission continue to expressly account for any ''departure provisions'' in the *Guidelines Manual* beside substantial assistance and Early Disposition Programs? If so, which provisions should be retained and how? Alternatively, should the Commission remove the departures contained in Chapter Five, Part K, and the provisions in Chapter Five, Part H, addressing the relevance of certain specific personal characteristics in sentencing, while retaining other departure provisions throughout the *Guidelines Manual*?

The Commission also seeks comment on whether it should consolidate and preserve for historical purposes any deleted departure provisions. If so, how should the Commission do so? For example, should the Commission somehow preserve the content of deleted departures in a new Appendix to the *Guidelines Manual* or in some other format?

4. At some places in the *Guidelines Manual,* commentary including a departure provision also provides background information that the Commission determined was relevant to the court's consideration. For example, in setting forth a series of departure considerations, Application Note 27 of the Commentary to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) also provides background information regarding the nature and impact of certain controlled substances, such as synthetic cathinones and cannabinoids, that may be informative to a court's determination as to whether a departure is warranted. The Commission seeks comment on whether it should retain such type of background information even if the departure language is removed. If so, which provisions in the *Guidelines Manual* currently contain background information that should be retained?

(B) Proposed Amendment

Chapter One is amended by striking Part A as follows:

'' Part A—Introduction and Authority

Introductory Commentary

Subparts 1 and 2 of this Part provide an introduction to the Guidelines Manual describing the historical development and evolution of the federal sentencing guidelines. Subpart 1 sets forth the original introduction to the Guidelines Manual as it first appeared in 1987, with the inclusion of amendments made occasionally thereto between 1987 and 2000. The original introduction, as so amended, explained a number of policy decisions made by the United States Sentencing Commission ('Commission') when it promulgated the initial set of guidelines and therefore provides a useful reference for contextual and historical purposes. Subpart 2 further describes the evolution of the federal sentencing guidelines after the initial guidelines were promulgated.

Subpart 3 of this Part states the authority of the Commission to promulgate federal sentencing guidelines, policy statements, and commentary.

1. Original Introduction to the Guidelines Manual

The following provisions of this Subpart set forth the original introduction to this manual, effective November 1, 1987, and as amended through November 1, 2000:

1. Authority

The United States Sentencing Commission ('Commission') is an independent agency in the judicial branch composed of seven voting and two non-voting, *ex officio* members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes.

The guidelines and policy statements promulgated by the Commission are issued pursuant to Section 994(a) of Title 28, United States Code.

2. The Statutory Mission

The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984) provides for the development of guidelines that will further the basic purposes of criminal punishment: deterrence, incapacitation, just punishment, and rehabilitation. The

Act delegates broad authority to the Commission to review and rationalize the federal sentencing process.

The Act contains detailed instructions as to how this determination should be made, the most important of which directs the Commission to create categories of offense behavior and offender characteristics. An offense behavior category might consist, for example, of 'bank robbery/committed with a gun/$2500 taken.' An offender characteristic category might be 'offender with one prior conviction not resulting in imprisonment.' The Commission is required to prescribe guideline ranges that specify an appropriate sentence for each class of convicted persons determined by coordinating the offense behavior categories with the offender characteristic categories. Where the guidelines call for imprisonment, the range must be narrow: the maximum of the range cannot exceed the minimum by more than the greater of 25 percent or six months. 28 U.S.C. 994(b)(2).

Pursuant to the Act, the sentencing court must select a sentence from within the guideline range. If, however, a particular case presents atypical features, the Act allows the court to depart from the guidelines and sentence outside the prescribed range. In that case, the court must specify reasons for departure. 18 U.S.C. 3553(b). If the court sentences within the guideline range, an appellate court may review the sentence to determine whether the guidelines were correctly applied. If the court departs from the guideline range, an appellate court may review the reasonableness of the departure. 18 U.S.C. 3742. The Act also abolishes parole, and substantially reduces and restructures good behavior adjustments.

The Commission's initial guidelines were submitted to Congress on April 13, 1987. After the prescribed period of Congressional review, the guidelines took effect on November 1, 1987, and apply to all offenses committed on or after that date. The Commission has the authority to submit guideline amendments each year to Congress between the beginning of a regular Congressional session and May 1. Such amendments automatically take effect 180 days after submission unless a law is enacted to the contrary. 28 U.S.C. 994(p).

The initial sentencing guidelines and policy statements were developed after extensive hearings, deliberation, and consideration of substantial public comment. The Commission emphasizes, however, that it views the guideline-writing process as evolutionary. It expects, and the governing statute anticipates, that continuing research, experience, and analysis will result in modifications and revisions to the guidelines through submission of amendments to Congress. To this end, the Commission is established as a permanent agency to monitor sentencing practices in the federal courts.

3. The Basic Approach (Policy Statement)

To understand the guidelines and their underlying rationale, it is important to focus on the three objectives that Congress sought to achieve in enacting the Sentencing Reform Act of 1984. The Act's basic objective was to enhance the ability of the criminal justice system to combat crime through an effective, fair sentencing system. To achieve this end, Congress first sought honesty in sentencing. It sought to avoid the confusion and implicit deception that arose out of the pre-guidelines sentencing system which required the court to impose an indeterminate sentence of imprisonment and empowered the parole commission to determine how much of the sentence an offender actually would serve in prison. This practice usually resulted in a substantial reduction in the effective length of the sentence imposed, with defendants often serving only about one-third of the sentence imposed by the court.

Second, Congress sought reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders. Third, Congress sought proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severity.

Honesty is easy to achieve: the abolition of parole makes the sentence imposed by the court the sentence the offender will serve, less approximately fifteen percent for good behavior. There is a tension, however, between the mandate of uniformity and the mandate of proportionality. Simple uniformity—sentencing every offender to five years—destroys proportionality. Having only a few simple categories of crimes would make the guidelines uniform and easy to administer, but might lump together offenses that are different in important respects. For example, a single category for robbery that included armed and unarmed robberies, robberies with and without injuries, robberies of a few dollars and robberies of millions, would be far too broad.

A sentencing system tailored to fit every conceivable wrinkle of each case would quickly become unworkable and seriously compromise the certainty of punishment and its deterrent effect. For example: a bank robber with (or without) a gun, which the robber kept hidden (or brandished), might have frightened (or merely warned), injured seriously (or less seriously), tied up (or simply pushed) a guard, teller, or customer, at night (or at noon), in an effort to obtain money for other crimes (or for other purposes), in the company of a few (or many) other robbers, for the first (or fourth) time.

The list of potentially relevant features of criminal behavior is long; the fact that they can occur in multiple combinations means that the list of possible permutations of factors is virtually endless. The appropriate relationships among these different factors are exceedingly difficult to establish, for they are often context specific. Sentencing courts do not treat the occurrence of a simple bruise identically in all cases, irrespective of whether that bruise occurred in the context of a bank robbery or in the context of a breach of peace. This is so, in part, because the risk that such a harm will occur differs depending on the underlying offense with which it is connected; and also because, in part, the relationship between punishment and multiple harms is not simply additive. The relation varies depending on how much other harm has occurred. Thus, it would not be proper to assign points for each kind of harm and simply add them up, irrespective of context and total amounts.

The larger the number of subcategories of offense and offender characteristics included in the guidelines, the greater the complexity and the less workable the system. Moreover, complex combinations of offense and offender characteristics would apply and interact in unforeseen ways to unforeseen situations, thus failing to cure the unfairness of a simple, broad category system. Finally, and perhaps most importantly, probation officers and courts, in applying a complex system having numerous subcategories, would be required to make a host of decisions regarding whether the underlying facts were sufficient to bring the case within a particular subcategory. The greater the number of decisions required and the greater their complexity, the greater the risk that different courts would apply the guidelines differently to situations that, in fact, are similar, thereby reintroducing the very disparity that the guidelines were designed to reduce.

In view of the arguments, it would have been tempting to retreat to the

simple, broad category approach and to grant courts the discretion to select the proper point along a broad sentencing range. Granting such broad discretion, however, would have risked correspondingly broad disparity in sentencing, for different courts may exercise their discretionary powers in different ways. Such an approach would have risked a return to the wide disparity that Congress established the Commission to reduce and would have been contrary to the Commission's mandate set forth in the Sentencing Reform Act of 1984.

In the end, there was no completely satisfying solution to this problem. The Commission had to balance the comparative virtues and vices of broad, simple categorization and detailed, complex subcategorization, and within the constraints established by that balance, minimize the discretionary powers of the sentencing court. Any system will, to a degree, enjoy the benefits and suffer from the drawbacks of each approach.

A philosophical problem arose when the Commission attempted to reconcile the differing perceptions of the purposes of criminal punishment. Most observers of the criminal law agree that the ultimate aim of the law itself, and of punishment in particular, is the control of crime. Beyond this point, however, the consensus seems to break down. Some argue that appropriate punishment should be defined primarily on the basis of the principle of 'just deserts.' Under this principle, punishment should be scaled to the offender's culpability and the resulting harms. Others argue that punishment should be imposed primarily on the basis of practical 'crime control' considerations. This theory calls for sentences that most effectively lessen the likelihood of future crime, either by deterring others or incapacitating the defendant.

Adherents of each of these points of view urged the Commission to choose between them and accord one primacy over the other. As a practical matter, however, this choice was unnecessary because in most sentencing decisions the application of either philosophy will produce the same or similar results.

In its initial set of guidelines, the Commission sought to solve both the practical and philosophical problems of developing a coherent sentencing system by taking an empirical approach that used as a starting point data estimating pre-guidelines sentencing practice. It analyzed data drawn from 10,000 presentence investigations, the differing elements of various crimes as distinguished in substantive criminal statutes, the United States Parole Commission's guidelines and statistics, and data from other relevant sources in order to determine which distinctions were important in pre-guidelines practice. After consideration, the Commission accepted, modified, or rationalized these distinctions.

This empirical approach helped the Commission resolve its practical problem by defining a list of relevant distinctions that, although of considerable length, was short enough to create a manageable set of guidelines. Existing categories are relatively broad and omit distinctions that some may believe important, yet they include most of the major distinctions that statutes and data suggest made a significant difference in sentencing decisions. Relevant distinctions not reflected in the guidelines probably will occur rarely and sentencing courts may take such unusual cases into account by departing from the guidelines.

The Commission's empirical approach also helped resolve its philosophical dilemma. Those who adhere to a just deserts philosophy may concede that the lack of consensus might make it difficult to say exactly what punishment is deserved for a particular crime. Likewise, those who subscribe to a philosophy of crime control may acknowledge that the lack of sufficient data might make it difficult to determine exactly the punishment that will best prevent that crime. Both groups might therefore recognize the wisdom of looking to those distinctions that judges and legislators have, in fact, made over the course of time. These established distinctions are ones that the community believes, or has found over time, to be important from either a just deserts or crime control perspective.

The Commission did not simply copy estimates of pre-guidelines practice as revealed by the data, even though establishing offense values on this basis would help eliminate disparity because the data represent averages. Rather, it departed from the data at different points for various important reasons. Congressional statutes, for example, suggested or required departure, as in the case of the Anti-Drug Abuse Act of 1986 that imposed increased and mandatory minimum sentences. In addition, the data revealed inconsistencies in treatment, such as punishing economic crime less severely than other apparently equivalent behavior.

Despite these policy-oriented departures from pre-guidelines practice, the guidelines represent an approach that begins with, and builds upon, empirical data. The guidelines will not please those who wish the Commission to adopt a single philosophical theory and then work deductively to establish a simple and perfect set of categorizations and distinctions. The guidelines may prove acceptable, however, to those who seek more modest, incremental improvements in the status quo, who believe the best is often the enemy of the good, and who recognize that these guidelines are, as the Act contemplates, but the first step in an evolutionary process. After spending considerable time and resources exploring alternative approaches, the Commission developed these guidelines as a practical effort toward the achievement of a more honest, uniform, equitable, proportional, and therefore effective sentencing system.

4. The Guidelines' Resolution of Major Issues (Policy Statement)

The guideline-drafting process required the Commission to resolve a host of important policy questions typically involving rather evenly balanced sets of competing considerations. As an aid to understanding the guidelines, this introduction briefly discusses several of those issues; commentary in the guidelines explains others.

(a) Real Offense vs. Charge Offense Sentencing

One of the most important questions for the Commission to decide was whether to base sentences upon the actual conduct in which the defendant engaged regardless of the charges for which he was indicted or convicted ('real offense' sentencing), or upon the conduct that constitutes the elements of the offense for which the defendant was charged and of which he was convicted ('charge offense' sentencing). A bank robber, for example, might have used a gun, frightened bystanders, taken $50,000, injured a teller, refused to stop when ordered, and raced away damaging property during his escape. A pure real offense system would sentence on the basis of all identifiable conduct. A pure charge offense system would overlook some of the harms that did not constitute statutory elements of the offenses of which the defendant was convicted.

The Commission initially sought to develop a pure real offense system. After all, the pre-guidelines sentencing system was, in a sense, this type of system. The sentencing court and the parole commission took account of the conduct in which the defendant actually engaged, as determined in a presentence report, at the sentencing hearing, or

before a parole commission hearing officer. The Commission's initial efforts in this direction, carried out in the spring and early summer of 1986, proved unproductive, mostly for practical reasons. To make such a system work, even to formalize and rationalize the status quo, would have required the Commission to decide precisely which harms to take into account, how to add them up, and what kinds of procedures the courts should use to determine the presence or absence of disputed factual elements. The Commission found no practical way to combine and account for the large number of diverse harms arising in different circumstances; nor did it find a practical way to reconcile the need for a fair adjudicatory procedure with the need for a speedy sentencing process given the potential existence of hosts of adjudicated 'real harm' facts in many typical cases. The effort proposed as a solution to these problems required the use of, for example, quadratic roots and other mathematical operations that the Commission considered too complex to be workable. In the Commission's view, such a system risked return to wide disparity in sentencing practice.

In its initial set of guidelines submitted to Congress in April 1987, the Commission moved closer to a charge offense system. This system, however, does contain a significant number of real offense elements. For one thing, the hundreds of overlapping and duplicative statutory provisions that make up the federal criminal law forced the Commission to write guidelines that are descriptive of generic conduct rather than guidelines that track purely statutory language. For another, the guidelines take account of a number of important, commonly occurring real offense elements such as role in the offense, the presence of a gun, or the amount of money actually taken, through alternative base offense levels, specific offense characteristics, cross references, and adjustments.

The Commission recognized that a charge offense system has drawbacks of its own. One of the most important is the potential it affords prosecutors to influence sentences by increasing or decreasing the number of counts in an indictment. Of course, the defendant's actual conduct (that which the prosecutor can prove in court) imposes a natural limit upon the prosecutor's ability to increase a defendant's sentence. Moreover, the Commission has written its rules for the treatment of multicount convictions with an eye toward eliminating unfair treatment that might flow from count manipulation. For example, the guidelines treat a three-count indictment, each count of which charges sale of 100 grams of heroin or theft of $10,000, the same as a single-count indictment charging sale of 300 grams of heroin or theft of $30,000. Furthermore, a sentencing court may control any inappropriate manipulation of the indictment through use of its departure power. Finally, the Commission will closely monitor charging and plea agreement practices and will make appropriate adjustments should they become necessary.

(b) Departures

The sentencing statute permits a court to depart from a guideline-specified sentence only when it finds 'an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.' 18 U.S.C. 3553(b). The Commission intends the sentencing courts to treat each guideline as carving out a 'heartland,' a set of typical cases embodying the conduct that each guideline describes. When a court finds an atypical case, one to which a particular guideline linguistically applies but where conduct significantly differs from the norm, the court may consider whether a departure is warranted. Section 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status), § 5H1.12 (Lack of Guidance as a Youth and Similar Circumstances), the third sentence of § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse), the last sentence of § 5K2.12 (Coercion and Duress), and § 5K2.19 (Post-Sentencing Rehabilitative Efforts)* list several factors that the court cannot take into account as grounds for departure. With those specific exceptions, however, the Commission does not intend to limit the kinds of factors, whether or not mentioned anywhere else in the guidelines, that could constitute grounds for departure in an unusual case.

***Note:** Section 5K2.19 (Post-Sentencing Rehabilitative Efforts) was deleted by Amendment 768, effective November 1, 2012. (*See* USSG App. C, amendment 768.)

The Commission has adopted this departure policy for two reasons. First, it is difficult to prescribe a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision. The Commission also recognizes that the initial set of guidelines need not do so. The Commission is a permanent body, empowered by law to write and rewrite guidelines, with progressive changes, over many years. By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so and court decisions with references thereto, the Commission, over time, will be able to refine the guidelines to specify more precisely when departures should and should not be permitted.

Second, the Commission believes that despite the courts' legal freedom to depart from the guidelines, they will not do so very often. This is because the guidelines, offense by offense, seek to take account of those factors that the Commission's data indicate made a significant difference in pre-guidelines sentencing practice. Thus, for example, where the presence of physical injury made an important difference in pre-guidelines sentencing practice (as in the case of robbery or assault), the guidelines specifically include this factor to enhance the sentence. Where the guidelines do not specify an augmentation or diminution, this is generally because the sentencing data did not permit the Commission to conclude that the factor was empirically important in relation to the particular offense. Of course, an important factor (*e.g.,* physical injury) may infrequently occur in connection with a particular crime (*e.g.,* fraud). Such rare occurrences are precisely the type of events that the courts' departure powers were designed to cover—unusual cases outside the range of the more typical offenses for which the guidelines were designed.

It is important to note that the guidelines refer to two different kinds of departure. The first involves instances in which the guidelines provide specific guidance for departure by analogy or by other numerical or non-numerical suggestions. The Commission intends such suggestions as policy guidance for the courts. The Commission expects that most departures will reflect the suggestions and that the courts of appeals may prove more likely to find departures 'unreasonable' where they fall outside suggested levels.

A second type of departure will remain unguided. It may rest upon grounds referred to in Chapter Five, Part K (Departures) or on grounds not mentioned in the guidelines. While Chapter Five, Part K lists factors that the Commission believes may constitute grounds for departure, the list is not exhaustive. The Commission recognizes that there may be other grounds for departure that are not mentioned; it also believes there may be cases in which a departure outside suggested levels is warranted. In its view, however, such cases will be highly infrequent.

(c) Plea Agreements

Nearly ninety percent of all federal criminal cases involve guilty pleas and many of these cases involve some form of plea agreement. Some commentators on early Commission guideline drafts urged the Commission not to attempt any major reforms of the plea agreement process on the grounds that any set of guidelines that threatened to change pre-guidelines practice radically also threatened to make the federal system unmanageable. Others argued that guidelines that failed to control and limit plea agreements would leave untouched a 'loophole' large enough to undo the good that sentencing guidelines would bring.

The Commission decided not to make major changes in plea agreement practices in the initial guidelines, but rather to provide guidance by issuing general policy statements concerning the acceptance of plea agreements in Chapter Six, Part B (Plea Agreements). The rules set forth in Fed. R. Crim. P. 11(e) govern the acceptance or rejection of such agreements. The Commission will collect data on the courts' plea practices and will analyze this information to determine when and why the courts accept or reject plea agreements and whether plea agreement practices are undermining the intent of the Sentencing Reform Act. In light of this information and analysis, the Commission will seek to further regulate the plea agreement process as appropriate. Importantly, if the policy statements relating to plea agreements are followed, circumvention of the Sentencing Reform Act and the guidelines should not occur.

The Commission expects the guidelines to have a positive, rationalizing impact upon plea agreements for two reasons. First, the guidelines create a clear, definite expectation in respect to the sentence that a court will impose if a trial takes place. In the event a prosecutor and defense attorney explore the possibility of a negotiated plea, they will no longer work in the dark. This fact alone should help to reduce irrationality in respect to actual sentencing outcomes. Second, the guidelines create a norm to which courts will likely refer when they decide whether, under Rule 11(e), to accept or to reject a plea agreement or recommendation.

(d) Probation and Split Sentences

The statute provides that the guidelines are to 'reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense . . . .' 28 U.S.C. 994(j). Under pre-guidelines sentencing practice, courts sentenced to probation an inappropriately high percentage of offenders guilty of certain economic crimes, such as theft, tax evasion, antitrust offenses, insider trading, fraud, and embezzlement, that in the Commission's view are 'serious.'

The Commission's solution to this problem has been to write guidelines that classify as serious many offenses for which probation previously was frequently given and provide for at least a short period of imprisonment in such cases. The Commission concluded that the definite prospect of prison, even though the term may be short, will serve as a significant deterrent, particularly when compared with pre-guidelines practice where probation, not prison, was the norm.

More specifically, the guidelines work as follows in respect to a first offender. For offense levels one through eight, the sentencing court may elect to sentence the offender to probation (with or without confinement conditions) or to a prison term. For offense levels nine and ten, the court may substitute probation for a prison term, but the probation must include confinement conditions (community confinement, intermittent confinement, or home detention). For offense levels eleven and twelve, the court must impose at least one-half the minimum confinement sentence in the form of prison confinement, the remainder to be served on supervised release with a condition of community confinement or home detention.* The Commission, of course, has not dealt with the single acts of aberrant behavior that still may justify probation at higher offense levels through departures.**

*** Note:** The Commission expanded Zones B and C of the Sentencing Table in 2010 to provide a greater range of sentencing options to courts with respect to certain offenders. (*See* USSG App. C, amendment 738.) In 2018, the Commission added a new application note to the Commentary to § 5C1.1 (Imposition of a Term of Imprisonment), stating that if a defendant is a 'nonviolent first offender and the applicable guideline range is in Zone A or B of the Sentencing Table, the court should consider imposing a sentence other than a sentence of imprisonment.' (*See* USSG App. C, amendment 801.) In 2023, the Commission added a new Chapter Four guideline, at § 4C1.1 (Adjustment for Certain Zero-Point Offenders), providing a decrease of 2 levels from the offense level determined under Chapters Two and Three for 'zero-point' offenders who meet certain criteria. In addition, the Commission further amended the Commentary to § 5C1.1 to address the alternatives to incarceration available to 'zero-point' offenders by revising the application note in § 5C1.1 that addressed 'nonviolent first offenders' to focus on 'zero-point' offenders. (*See* USSG App. C, amendment 821.)

**** Note:** Although the Commission had not addressed 'single acts of aberrant behavior' at the time the Introduction to the Guidelines Manual originally was written, it subsequently addressed the issue in Amendment 603, effective November 1, 2000. (*See* USSG App. C, amendment 603.)

(e) Multi-Count Convictions

The Commission, like several state sentencing commissions, has found it particularly difficult to develop guidelines for sentencing defendants convicted of multiple violations of law, each of which makes up a separate count in an indictment. The difficulty is that when a defendant engages in conduct that causes several harms, each additional harm, even if it increases the extent to which punishment is warranted, does not necessarily warrant a proportionate increase in punishment. A defendant who assaults others during a fight, for example, may warrant more punishment if he injures ten people than if he injures one, but his conduct does not necessarily warrant ten times the punishment. If it did, many of the simplest offenses, for reasons that are often fortuitous, would lead to sentences of life imprisonment—sentences that neither just deserts nor crime control theories of punishment would justify.

Several individual guidelines provide special instructions for increasing punishment when the conduct that is the subject of that count involves multiple occurrences or has caused several harms. The guidelines also provide general rules for aggravating punishment in light of multiple harms charged separately in separate counts. These rules may produce occasional anomalies, but normally they will permit an appropriate degree of aggravation of punishment for multiple offenses that are the subjects of separate counts.

These rules are set out in Chapter Three, Part D (Multiple Counts). They essentially provide: (1) when the conduct involves fungible items (*e.g.,* separate drug transactions or thefts of money), the amounts are added and the guidelines apply to the total amount; (2) when nonfungible harms are involved, the offense level for the most serious count is increased (according to a diminishing scale) to reflect the existence of other counts of conviction. The guidelines have been written in order to minimize the possibility that an arbitrary casting of a single transaction

into several counts will produce a longer sentence. In addition, the sentencing court will have adequate power to prevent such a result through departures.

(f) Regulatory Offenses

Regulatory statutes, though primarily civil in nature, sometimes contain criminal provisions in respect to particularly harmful activity. Such criminal provisions often describe not only substantive offenses, but also more technical, administratively-related offenses such as failure to keep accurate records or to provide requested information. These statutes pose two problems: first, which criminal regulatory provisions should the Commission initially consider, and second, how should it treat technical or administratively-related criminal violations?

In respect to the first problem, the Commission found that it could not comprehensively treat all regulatory violations in the initial set of guidelines. There are hundreds of such provisions scattered throughout the United States Code. To find all potential violations would involve examination of each individual federal regulation. Because of this practical difficulty, the Commission sought to determine, with the assistance of the Department of Justice and several regulatory agencies, which criminal regulatory offenses were particularly important in light of the need for enforcement of the general regulatory scheme. The Commission addressed these offenses in the initial guidelines.

In respect to the second problem, the Commission has developed a system for treating technical recordkeeping and reporting offenses that divides them into four categories. First, in the simplest of cases, the offender may have failed to fill out a form intentionally, but without knowledge or intent that substantive harm would likely follow. He might fail, for example, to keep an accurate record of toxic substance transport, but that failure may not lead, nor be likely to lead, to the release or improper handling of any toxic substance. Second, the same failure may be accompanied by a significant likelihood that substantive harm will occur; it may make a release of a toxic substance more likely. Third, the same failure may have led to substantive harm. Fourth, the failure may represent an effort to conceal a substantive harm that has occurred.

The structure of a typical guideline for a regulatory offense provides a low base offense level (*e.g.,* 6) aimed at the first type of recordkeeping or reporting offense. Specific offense characteristics designed to reflect substantive harms that do occur in respect to some regulatory offenses, or that are likely to occur, increase the offense level. A specific offense characteristic also provides that a recordkeeping or reporting offense that conceals a substantive offense will have the same offense level as the substantive offense.

(g) Sentencing Ranges

In determining the appropriate sentencing ranges for each offense, the Commission estimated the average sentences served within each category under the pre-guidelines sentencing system. It also examined the sentences specified in federal statutes, in the parole guidelines, and in other relevant, analogous sources. The Commission's Supplementary Report on the Initial Sentencing Guidelines (1987) contains a comparison between estimates of pre-guidelines sentencing practice and sentences under the guidelines.

While the Commission has not considered itself bound by pre-guidelines sentencing practice, it has not attempted to develop an entirely new system of sentencing on the basis of theory alone. Guideline sentences, in many instances, will approximate average pre-guidelines practice and adherence to the guidelines will help to eliminate wide disparity. For example, where a high percentage of persons received probation under pre-guidelines practice, a guideline may include one or more specific offense characteristics in an effort to distinguish those types of defendants who received probation from those who received more severe sentences. In some instances, short sentences of incarceration for all offenders in a category have been substituted for a pre-guidelines sentencing practice of very wide variability in which some defendants received probation while others received several years in prison for the same offense. Moreover, inasmuch as those who pleaded guilty under pre-guidelines practice often received lesser sentences, the guidelines permit the court to impose lesser sentences on those defendants who accept responsibility for their misconduct. For defendants who provide substantial assistance to the government in the investigation or prosecution of others, a downward departure may be warranted.

The Commission has also examined its sentencing ranges in light of their likely impact upon prison population. Specific legislation, such as the Anti-Drug Abuse Act of 1986 and the career offender provisions of the Sentencing Reform Act of 1984 (28 U.S.C. 994(h)), required the Commission to promulgate guidelines that will lead to substantial prison population increases. These increases will occur irrespective of the guidelines. The guidelines themselves, insofar as they reflect policy decisions made by the Commission (rather than legislated mandatory minimum or career offender sentences), are projected to lead to an increase in prison population that computer models, produced by the Commission and the Bureau of Prisons in 1987, estimated at approximately 10 percent over a period of ten years.

(h) The Sentencing Table

The Commission has established a sentencing table that for technical and practical reasons contains 43 levels. Each level in the table prescribes ranges that overlap with the ranges in the preceding and succeeding levels. By overlapping the ranges, the table should discourage unnecessary litigation. Both prosecution and defense will realize that the difference between one level and another will not necessarily make a difference in the sentence that the court imposes. Thus, little purpose will be served in protracted litigation trying to determine, for example, whether $10,000 or $11,000 was obtained as a result of a fraud. At the same time, the levels work to increase a sentence proportionately. A change of six levels roughly doubles the sentence irrespective of the level at which one starts. The guidelines, in keeping with the statutory requirement that the maximum of any range cannot exceed the minimum by more than the greater of 25 percent or six months (28 U.S.C. 994(b)(2)), permit courts to exercise the greatest permissible range of sentencing discretion. The table overlaps offense levels meaningfully, works proportionately, and at the same time preserves the maximum degree of allowable discretion for the court within each level.

Similarly, many of the individual guidelines refer to tables that correlate amounts of money with offense levels. These tables often have many rather than a few levels. Again, the reason is to minimize the likelihood of unnecessary litigation. If a money table were to make only a few distinctions, each distinction would become more important and litigation over which category an offender fell within would become more likely. Where a table has many small monetary distinctions, it minimizes the likelihood of litigation because the precise amount of money involved is of considerably less importance.

5. A Concluding Note

The Commission emphasizes that it drafted the initial guidelines with considerable caution. It examined the many hundreds of criminal statutes in the United States Code. It began with those that were the basis for a significant number of prosecutions and sought to place them in a rational order. It developed additional distinctions relevant to the application of these provisions and it applied sentencing ranges to each resulting category. In doing so, it relied upon pre-guidelines sentencing practice as revealed by its own statistical analyses based on summary reports of some 40,000 convictions, a sample of 10,000 augmented presentence reports, the parole guidelines, and policy judgments.

The Commission recognizes that some will criticize this approach as overly cautious, as representing too little a departure from pre-guidelines sentencing practice. Yet, it will cure wide disparity. The Commission is a permanent body that can amend the guidelines each year. Although the data available to it, like all data, are imperfect, experience with the guidelines will lead to additional information and provide a firm empirical basis for consideration of revisions.

Finally, the guidelines will apply to more than 90 percent of all felony and Class A misdemeanor cases in the federal courts. Because of time constraints and the nonexistence of statistical information, some offenses that occur infrequently are not considered in the guidelines. Their exclusion does not reflect any judgment regarding their seriousness and they will be addressed as the Commission refines the guidelines over time.

2. Continuing Evolution and Role of the Guidelines

The Sentencing Reform Act of 1984 changed the course of federal sentencing. Among other things, the Act created the United States Sentencing Commission as an independent agency in the Judicial Branch, and directed it to develop guidelines and policy statements for sentencing courts to use when sentencing offenders convicted of federal crimes. Moreover, it empowered the Commission with ongoing responsibilities to monitor the guidelines, submit to Congress appropriate modifications of the guidelines and recommended changes in criminal statutes, and establish education and research programs. The mandate rested on congressional awareness that sentencing is a dynamic field that requires continuing review by an expert body to revise sentencing policies, in light of application experience, as new criminal statutes are enacted, and as more is learned about what motivates and controls criminal behavior.

This statement finds resonance in a line of Supreme Court cases that, taken together, echo two themes. The first theme is that the guidelines are the product of a deliberative process that seeks to embody the purposes of sentencing set forth in the Sentencing Reform Act, and as such they continue to play an important role in the sentencing court's determination of an appropriate sentence in a particular case. The Supreme Court alluded to this in *Mistretta* v. *United States,* 488 U.S. 361 (1989), which upheld the constitutionality of both the federal sentencing guidelines and the Commission against nondelegation and separation of powers challenges. Therein the Court stated:

Developing proportionate penalties for hundreds of different crimes by a virtually limitless array of offenders is precisely the sort of intricate, labor-intensive task for which delegation to an expert body is especially appropriate. Although Congress has delegated significant discretion to the Commission to draw judgments from its analysis of existing sentencing practice and alternative sentencing models, . . . [w]e have no doubt that in the hands of the Commission 'the criteria which Congress has supplied are wholly adequate for carrying out the general policy and purpose' of the Act.

Id. at 379 (internal quotation marks and citations omitted).

The continuing importance of the guidelines in federal sentencing was further acknowledged by the Court in *United States* v. *Booker,* 543 U.S. 220 (2005), even as that case rendered the guidelines advisory in nature. In *Booker,* the Court held that the imposition of an enhanced sentence under the federal sentencing guidelines based on the sentencing judge's determination of a fact (other than a prior conviction) that was not found by the jury or admitted by the defendant violated the Sixth Amendment. The Court reasoned that an advisory guideline system, while lacking the mandatory features that Congress enacted, retains other features that help to further congressional objectives, including providing certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities, and maintaining sufficient flexibility to permit individualized sentences when warranted. The Court concluded that an advisory guideline system would 'continue to move sentencing in Congress' preferred direction, helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary.' *Id.* at 264–65. An advisory guideline system continues to assure transparency by requiring that sentences be based on articulated reasons stated in open court that are subject to appellate review. An advisory guideline system also continues to promote certainty and predictability in sentencing, thereby enabling the parties to better anticipate the likely sentence based on the individualized facts of the case.

The continuing importance of the guidelines in the sentencing determination is predicated in large part on the Sentencing Reform Act's intent that, in promulgating guidelines, the Commission must take into account the purposes of sentencing as set forth in 18 U.S.C. 3553(a). *See* 28 U.S.C. 994(f), 991(b)(1). The Supreme Court reinforced this view in *Rita* v. *United States,* 551 U.S. 338 (2007), which held that a court of appeals may apply a presumption of reasonableness to a sentence imposed by a district court within a properly calculated guideline range without violating the Sixth Amendment. In *Rita,* the Court relied heavily on the complementary roles of the Commission and the sentencing court in federal sentencing, stating:

[T]he presumption reflects the nature of the Guidelines-writing task that Congress set for the Commission and the manner in which the Commission carried out that task. In instructing both the *sentencing judge* and the *Commission* what to do, Congress referred to the basic sentencing objectives that the statute sets forth in 18 U.S.C. 3553(a) . . . . The provision also tells the sentencing judge to 'impose a sentence sufficient, but not greater than necessary, to comply with' the basic aims of sentencing as set out above. Congressional statutes then tell the *Commission* to write Guidelines that will carry out these same § 3553(a) objectives.

Id. at 347–48 (emphasis in original). The Court concluded that '[t]he upshot is that the sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic § 3553(a) objectives, the one, at retail, the other at wholesale[,]' *id.* at 348, and that the Commission's process for promulgating guidelines results in 'a set of Guidelines that seek to embody the § 3553(a) considerations, both in principle and in practice.' *Id.* at 350.

Consequently, district courts are required to properly calculate and consider the guidelines when sentencing, even in an advisory guideline system. *See* 18 U.S.C. 3553(a)(4), (a)(5); *Booker,* 543 U.S. at 264 ('The district courts, while not bound to apply the Guidelines, must . . . take them into account when sentencing.'); *Rita,* 551 U.S. at 351 (stating that a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range); *Gall* v. *United States,* 552 U.S. 38, 49 (2007) ('As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.'). The district court, in determining the appropriate sentence in a particular case, therefore, must consider the properly calculated guideline range, the grounds for departure provided in the policy statements, and then the factors under 18 U.S.C. 3553(a). *See Rita,* 551 U.S. at 351. The appellate court engages in a two-step process upon review. The appellate court 'first ensure[s] that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range . . . [and] then consider[s] the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard[,] . . . tak[ing] into account the totality of the circumstances, including the extent of any variance from the Guidelines range.' *Gall,* 552 U.S. at 51.

The second and related theme resonant in this line of Supreme Court cases is that, as contemplated by the Sentencing Reform Act, the guidelines are evolutionary in nature. They are the product of the Commission's fulfillment of its statutory duties to monitor federal sentencing law and practices, to seek public input on the operation of the guidelines, and to revise the guidelines accordingly. As the Court acknowledged in *Rita:*

The Commission's work is ongoing. The statutes and the Guidelines themselves foresee continuous evolution helped by the sentencing courts and courts of appeals in that process. The sentencing courts, applying the Guidelines in individual cases may depart (either pursuant to the Guidelines or, since *Booker,* by imposing a non-Guidelines sentence). The judges will set forth their reasons. The Courts of Appeals will determine the reasonableness of the resulting sentence. The Commission will collect and examine the results. In doing so, it may obtain advice from prosecutors, defenders, law enforcement groups, civil liberties associations, experts in penology, and others. And it can revise the Guidelines accordingly.

Rita, 551 U.S. at 350; *see also Booker,* 543 U.S. at 264 ('[T]he Sentencing Commission remains in place, writing Guidelines, collecting information about actual district court sentencing decisions, undertaking research, and revising the Guidelines accordingly.'); *Gall,* 552 U.S. at 46 ('[E]ven though the Guidelines are advisory rather than mandatory, they are, as we pointed out in *Rita,* the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions.').

Provisions of the Sentencing Reform Act promote and facilitate this evolutionary process. For example, pursuant to 28 U.S.C. 994(x), the Commission publishes guideline amendment proposals in the **Federal Register** and conducts hearings to solicit input on those proposals from experts and other members of the public. Pursuant to 28 U.S.C. 994(o), the Commission periodically reviews and revises the guidelines in consideration of comments it receives from members of the federal criminal justice system, including the courts, probation officers, the Department of Justice, the Bureau of Prisons, defense attorneys and the federal public defenders, and in consideration of data it receives from sentencing courts and other sources. Statutory mechanisms such as these bolster the Commission's ability to take into account fully the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2) in its promulgation of the guidelines.

Congress retains authority to require certain sentencing practices and may exercise its authority through specific directives to the Commission with respect to the guidelines. As the Supreme Court noted in *Kimbrough* v. *United States,* 552 U.S. 85 (2007), 'Congress has shown that it knows how to direct sentencing practices in express terms. For example, Congress has specifically required the Sentencing Commission to set Guideline sentences for serious recidivist offenders 'at or near' the statutory maximum.' *Id.* at 103; 28 U.S.C. 994(h).

As envisioned by Congress, implemented by the Commission, and reaffirmed by the Supreme Court, the guidelines are the product of a deliberative and dynamic process that seeks to embody within federal sentencing policy the purposes of sentencing set forth in the Sentencing Reform Act. As such, the guidelines continue to be a key component of federal sentencing and to play an important role in the sentencing court's determination of an appropriate sentence in any particular case.

3. Authority

§ 1A3.1. Authority

The guidelines, policy statements, and commentary set forth in this Guidelines Manual, including amendments thereto, are promulgated by the United States Sentencing Commission pursuant to: (1) section 994(a) of title 28, United States Code; and (2) with respect to guidelines, policy statements, and commentary promulgated or amended pursuant to specific congressional directive, pursuant to the authority contained in that directive in addition to the authority under section 994(a) of title 28, United States Code.'';

and inserting the following:

'' Part A—Introduction and Authority

Introductory Commentary

The United States Sentencing Commission ('Commission') is an independent agency in the judicial branch composed of seven voting and two non-voting, *ex officio* members. Congress directed the Commission to establish sentencing policies and practices for the federal criminal justice system and develop guidelines that further the purposes of sentencing. The guidelines set forth throughout this Manual represent the first step in the sentencing process and are one of multiple factors judges must consider in arriving at sentence that is sufficient but not greater than necessary under 18 U.S.C. 3553(a).

This Part provides the statutory authority and mission of the Commission to promulgate federal sentencing guidelines, policy statements, and commentary. Information describing the historical development and evolution of the federal sentencing guidelines is set forth in [Appendix D of the Guidelines Manual].

1. Authority

§ 1A1.1. Commission's Authority

The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984) provides that a sentencing court 'shall impose a sentence sufficient, but not greater than necessary, to comply with' the purposes of sentencing: (1) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (2) deterrence; (3) protection of the public from further crimes; and (4) rehabilitation. *See* 18 U.S.C. 3553(a).

The Act also provides for the development of guidelines by the Commission that further those purposes.

The guidelines, policy statements, and commentary set forth in this Guidelines Manual, including amendments thereto, are promulgated by the United States Sentencing Commission pursuant to: (1) section 994(a) of title 28, United States Code; and (2) with respect to guidelines, policy statements, and commentary promulgated or amended pursuant to specific congressional directive, pursuant to the authority contained in that directive in addition to the authority under section 994(a) of title 28, United States Code.

The Commission has ensured that the guidelines, policy statements, and commentary used to calculate the guideline range are: (1) neutral as to the race, sex, national origin, creed, and socioeconomic status of the defendant; and (2) generally do not reflect consideration of education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant, in recommending a term of imprisonment or length of imprisonment. *See* 28 U.S.C. 994(d), (e).

Commentary

Background: The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984) (the 'Act') provides that courts must consider a variety of factors when imposing a sentence 'sufficient, but not greater than necessary' to comply with the purposes of sentencing as set forth in the Act—to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, deterrence, protection of the public from further crimes, and rehabilitation. 18 U.S.C. 3553(a). The Act provides for the development of guidelines that will (1) further these statutory purposes of sentencing; (2) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and (3) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process. 28 U.S.C. 994(f).

As background, Congress provided specific directives to the Commission when setting a guideline range for 'each category of offense involving each category of defendant.' 28 U.S.C. 994(b)(1).

First, the Act directs the Commission to consider, for purposes of establishing categories of offenses, whether the following seven matters, 'among others,' have any relevance to the nature, extent, place of service, or other aspects of an appropriate sentence: (1) the grade of the offense; (2) the circumstances under which the offense was committed which mitigate or aggravate the seriousness of the offense; (3) the nature and degree of the harm caused by the offense, including whether it involved property, irreplaceable property, a person, a number of persons, or a breach of public trust; (4) the community view of the gravity of the offense; (5) the public concern generated by the offense; (6) the deterrent effect a particular sentence may have on the commission of the offense by others; and (7) the current incidence of the offense in the community and in the Nation as a whole. *See* 28 U.S.C. 994(c).

Second, the Act directs the Commission to consider, for purposes of establishing categories of defendants, whether the following eleven matters, 'among others,' have any relevance to the nature, extent, place of service, or other aspects of an appropriate sentence, and to take them into account in the guidelines and policy statements only to the extent that they do have relevance: (1) age; (2) education; (3) vocational skills; (4) mental and emotional condition to the extent that such condition mitigates the defendant's culpability or to the extent that such condition is otherwise plainly relevant; (5) physical condition, including drug dependence; (6) previous employment record; (7) family ties and responsibilities; (8) community ties; (9) role in the offense; (10) criminal history; and (11) degree of dependence upon criminal activity for a livelihood. *See* 28 U.S.C. 994(d). The Act also directs the Commission to ensure that the guidelines and policy statements 'are entirely neutral' as to five characteristics—race, sex, national origin, creed, and socioeconomic status. *See* 28 U.S.C. 994(d).

Third, the Act directs the Commission to ensure that the guidelines and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the 'general inappropriateness' of considering five of those characteristics—education; vocational skills; employment record; family ties and responsibilities; and community ties. *See* 28 U.S.C. 994(e).

In formulating the guidelines used to calculate the guideline range, the Commission remains cognizant of these detailed instructions directing the Commission to consider whether, and to what extent, specific offense-based and offender-based factors are relevant to sentencing. *See* 28 U.S.C. 994(c), (d). Similarly, the Commission has ensured that the guidelines, policy statements, and commentary used to calculate the guideline range are: (1) neutral as to the race, sex, national origin, creed, and socioeconomic status of the defendant; and (2) generally do not reflect consideration of education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant in recommending a term of imprisonment or length of imprisonment. *See* 28 U.S.C. 994(d), (e).

The requirements and limitations imposed upon the Commission by 28 U.S.C. 994, however, do not apply to the sentencing court. To the contrary, Congress set forth the factors that a court must consider in imposing a sentence that is 'sufficient but not greater than necessary' to comply with the purposes of sentencing in 18 U.S.C. 3553(a). These statutory factors permit a sentencing court to consider the 'widest possible breadth of information' about a defendant ensuring the court is in 'possession of the fullest information possible concerning the defendant's life and characteristics.' *See Pepper* v. *United States,* 562 U.S. 476, 488 (2011); *see also Concepcion* v. *United States,* 597 U.S. 481, 493 (2022). Accordingly, the application instructions set forth in the following part are structured to reflect this two-step process whereby the sentencing court must first correctly calculate the applicable guideline range as the 'starting point and initial benchmark' and then must determine an appropriate sentence upon consideration of all the factors set forth by Congress in 18 U.S.C. 3553(a). *See Gall* v. *United States,* 552 U.S. 38, 49–51 (2007).''.

Section 1B1.1(a) is amended—

by inserting at the beginning the following new heading: ''*Step One: Calculation of Guideline Range and Determination of Sentencing Requirements and Options under the Guidelines Manual.*—'';

in paragraph 5 by striking ''Apply the adjustment as appropriate for the defendant's acceptance of responsibility from Part E of Chapter Three'' and inserting ''Apply the adjustment for the defendant's acceptance of responsibility and the reduction pursuant to an early disposition program, as appropriate, from Parts E and F of Chapter Three'';

and by inserting at the end the following new paragraph 9:

''(9) Apply, as appropriate, Part K of Chapter Five.''.

Section 1B1.1 is amended by striking subsections (b) and (c) as follows:

''(b) The court shall then consider Parts H and K of Chapter Five, Specific Offender Characteristics and Departures, and any other policy statements or commentary in the guidelines that might warrant consideration in imposing sentence. *See* 18 U.S.C. 3553(a)(5).

(c) The court shall then consider the applicable factors in 18 U.S.C. 3553(a) taken as a whole. *See* 18 U.S.C. 3553(a).'';

and inserting the following new subsection (b):

''(b) *Step Two: Consideration of Factors Set Forth in 18 U.S.C. 3553(a).*— After determining the kinds of sentence and guidelines range pursuant to subsection (a) of § 1B1.1 (Application Instructions) and 18 U.S.C. 3553(a)(4) and (5), the court shall consider the other applicable factors in 18 U.S.C. 3553(a) to determine a sentence that is sufficient, but not greater than necessary, to comply with the purposes of sentencing. Specifically, as set forth in 18 U.S.C. 3553(a), in determining the particular sentence to be imposed, the court shall also consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed to meet the purposes of sentencing listed in 18 U.S.C. 3553(a)(2);

(3) the kinds of sentences available;

(4) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(5) the need to provide restitution to any victims of the offense.''.

The Commentary to § 1B1.1 captioned ''Application Notes'' is amended in Note 1—

by striking subparagraph (F) as follows:

''(F) 'Departure' means (i) for purposes other than those specified in clause (ii), imposition of a sentence outside the applicable guideline range or of a sentence that is otherwise different from the guideline sentence; and (ii) for purposes of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category), assignment of a criminal history category other than the otherwise applicable criminal history category, in order to effect a sentence outside the applicable guideline range. 'Depart' means grant a departure.

'Downward departure' means departure that effects a sentence less than a sentence that could be imposed under the applicable guideline range or a sentence that is otherwise less than the guideline sentence. 'Depart downward' means grant a downward departure.

'Upward departure' means departure that effects a sentence greater than a sentence that could be imposed under the applicable guideline range or a sentence that is otherwise greater than the guideline sentence. 'Depart upward' means grant an upward departure.'';

and by redesignating subparagraphs (G) through (M) as subparagraphs (F) through (L), respectively.

The Commentary to § 1B1.1 captioned ''Background'' is amended by striking the following:

''The court must impose a sentence 'sufficient, but not greater than necessary,' to comply with the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2). *See* 18 U.S.C. 3553(a). Subsections (a), (b), and (c) are structured to reflect the three-step process used in determining the particular sentence to be imposed. If, after step (c), the court imposes a sentence that is outside the guidelines framework, such a sentence is considered a 'variance'. *See Irizarry* v. *United States,* 553 U.S. 708, 709–16 (2008) (describing within-range sentences and departures as 'sentences imposed under the framework set out in the Guidelines').'';

and inserting the following:

''The court must impose a sentence 'sufficient, but not greater than necessary,' to comply with the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2). *See* 18 U.S.C. 3553(a). This guideline is structured to reflect the advisory sentencing scheme established following the Supreme Court's decision in *United States* v. *Booker,* 543 U.S. 220 (2005), by setting forth both essential steps of the court's inquiry in making this determination.

Originally, the guidelines were mandatory, with limited exceptions. *See* 18 U.S.C. 3553(b). Later, in *United States* v. *Booker,* 543 U.S. 220 (2005), the Supreme Court held that the provision in 18 U.S.C. 3553(b) making the guidelines mandatory was unconstitutional. Following *Booker,* district courts are first required to properly calculate and consider the guidelines when sentencing. *See* 18 U.S.C. 3553(a)(4), (a)(5); *Booker,* 543 U.S. at 264 ('The district courts, while not bound to apply the Guidelines, must . . . take them into account when sentencing.'); *Rita* v. *United States,* 551 U.S. 338, 351 (2007) (stating that a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range); *Gall* v. *United States,* 552 U.S. 38, 49 (2007) ('As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.'); *Peugh* v. *United States,* 569 U.S. 530 (2013) (noting that 'the post-*Booker* federal sentencing system adopted procedural measures that make the guidelines the 'lodestone' of sentencing'). Step one sets forth the steps for properly calculating the guidelines.

District courts are then required to fully and carefully consider the additional factors set forth in 18 U.S.C. 3553(a), which include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to meet the purposes of sentencing listed in 18 U.S.C. 3553(a)(2); (3) the kinds of sentence available; (4) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (5) the need to provide restitution to any victims of the offense. *See Rita,* 551 U.S. at 351. Step two, as set forth in subsection (b), reflects this step of the sentencing process.''.

The Commentary to § 1B1.2 captioned ''Application Notes'' is amended in Note 1 by striking ''the court would be forced to use an artificial guideline and then depart from it'' and inserting ''the court would be forced to use an artificial guideline and then impose a sentence that is greater than the otherwise applicable guideline range''; and by striking ''the probation officer might need to calculate the robbery guideline to assist the court in determining the appropriate degree of departure'' and inserting ''the probation officer might need to calculate the robbery guideline to assist the court in determining an appropriate sentence''.

Section 1B1.3(b) is amended in the heading by striking ''*Five (Determining the Sentence)*'' and inserting ''*Five (Determining the Sentencing Range and Options Under the Guidelines)*''.

The Commentary to § 1B1.3 captioned ''Application Notes'' is amended—

in Note 3(B) by striking ''The Commission does not foreclose the possibility that there may be some unusual set of circumstances in which the exclusion of such conduct may not adequately reflect the defendant's culpability; in such a case, an upward departure may be warranted.'';

and in Note 6(B) by striking ''In a case in which creation of risk is not adequately taken into account by the applicable offense guideline, an upward departure may be warranted. *See*

generally § 1B1.4 (Information to be Used in Imposing Sentence); § 5K2.0 (Grounds for Departure).''.

Section 1B1.4 is amended—

in the heading by striking ''*(Selecting a Point Within the Guideline Range or Departing from the Guidelines)*'';

and by striking ''In determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted'' and inserting ''In determining the sentence to impose''.

The Commentary to 1B1.4 captioned ''Background'' is amended by striking the following:

''This section distinguishes between factors that determine the applicable guideline sentencing range (§ 1B1.3) and information that a court may consider in imposing a sentence within that range. The section is based on 18 U.S.C. 3661, which recodifies 18 U.S.C. 3577. The recodification of this 1970 statute in 1984 with an effective date of 1987 (99 Stat. 1728), makes it clear that Congress intended that no limitation would be placed on the information that a court may consider in imposing an appropriate sentence under the future guideline sentencing system. A court is not precluded from considering information that the guidelines do not take into account in determining a sentence within the guideline range or from considering that information in determining whether and to what extent to depart from the guidelines. For example, if the defendant committed two robberies, but as part of a plea negotiation entered a guilty plea to only one, the robbery that was not taken into account by the guidelines would provide a reason for sentencing at the top of the guideline range and may provide a reason for an upward departure. Some policy statements do, however, express a Commission policy that certain factors should not be considered for any purpose, or should be considered only for limited purposes. *See, e.g.,* Chapter Five, Part H (Specific Offender Characteristics).'';

and inserting the following:

''This section distinguishes between factors that determine the applicable guideline sentencing range (§ 1B1.3) and information that a court may consider in imposing a sentence. The section is based on 18 U.S.C. 3661, which recodifies 18 U.S.C. 3577. The recodification of this 1970 statute in 1984 with an effective date of 1987 (99 Stat. 1728), makes it clear that Congress intended that no limitation would be placed on the information that a court may consider in imposing an appropriate sentence under the future guideline sentencing system. A court is not precluded from considering information that the guidelines do not take into account. For example, if the defendant committed two robberies, but as part of a plea negotiation entered a guilty plea to only one, the robbery that was not taken into account by the guidelines may provide a reason for sentencing at the top of, or above, the guideline range.''.

Section 1B1.7 is amended by striking the following:

''The Commentary that accompanies the guideline sections may serve a number of purposes. First, it may interpret the guideline or explain how it is to be applied. Failure to follow such commentary could constitute an incorrect application of the guidelines, subjecting the sentence to possible reversal on appeal. *See* 18 U.S.C. 3742. Second, the commentary may suggest circumstances which, in the view of the Commission, may warrant departure from the guidelines. Such commentary is to be treated as the legal equivalent of a policy statement. Finally, the commentary may provide background information, including factors considered in promulgating the guideline or reasons underlying promulgation of the guideline. As with a policy statement, such commentary may provide guidance in assessing the reasonableness of any departure from the guidelines.'';

and inserting the following:

''The Commentary that accompanies the guideline sections may serve a number of purposes. It may interpret the guideline or explain how it is to be applied. Failure to follow such commentary could constitute an incorrect application of the guidelines, subjecting the sentence to possible reversal on appeal. *See* 18 U.S.C. 3742. In addition, the commentary may provide background information, including factors considered in promulgating the guideline or reasons underlying promulgation of the guideline.''.

Section 1B1.8(b)(5) is amended by striking ''in determining whether, or to what extent, a downward departure from the guidelines is warranted pursuant to a government motion under § 5K1.1 (Substantial Assistance to Authorities)'' and inserting ''in determining whether, or to what extent, to impose a sentence that is below the otherwise applicable guideline range pursuant to a government motion under § 5K1.1 (Substantial Assistance to Authorities)''.

The Commentary to § 1B1.8 captioned ''Application Notes'' is amended in Note 1 by striking ''Although the guideline itself affects only the determination of the guideline range, the policy of the Commission, as a corollary, is that information prohibited from being used to determine the applicable guideline range shall not be used to depart upward. In contrast, subsection (b)(5) provides that consideration of such information is appropriate in determining whether, and to what extent, a downward departure is warranted pursuant to a government motion under § 5K1.1 (Substantial Assistance to Authorities); *e.g.,* a court may refuse to depart downward on the basis of such information.'' and inserting ''In contrast, subsection (b)(5) provides that consideration of such information is appropriate in determining whether, or to what extent, to impose a sentence that is below the otherwise applicable guideline range pursuant to a government motion under § 5K1.1 (Substantial Assistance to Authorities). For example, a court may refuse to impose a sentence that is below the otherwise applicable guideline range on the basis of such information.''.

The Commentary to § 1B1.10 captioned ''Application Notes'' is amended—

in Note 1(A) by striking ''(*i.e.,* the guideline range that corresponds to the offense level and criminal history category determined pursuant to § 1B1.1(a), which is determined before consideration of any departure provision in the Guidelines Manual or any variance)'' and inserting ''(*i.e.,* the guideline range that corresponds to the offense level and criminal history category determined pursuant to § 1B1.1(a)(1)–(7), which is determined before consideration of Part K of Chapter Five and § 1B1.1(b))'';

and in Note 3 by striking ''(constituting a downward departure or variance)'' and inserting ''(constituting a sentence that is below the otherwise applicable guideline range)''; by striking ''representing a downward departure of 20 percent'' and inserting ''representing a reduction of 20 percent''; and by striking ''authorizing, upon government motion, a downward departure based on the defendant's substantial assistance'' and inserting ''authorizing the court, upon government motion, to impose a sentence that is below the otherwise applicable guideline range based on the defendant's substantial assistance''.

Section 1B1.12 is amended by striking ''sufficient to warrant an upward departure from that guideline range. *United States* v. *R.L.C.,* 503 U.S. 291 (1992)'' and inserting ''sufficient to warrant imposing a sentence greater than that guideline range in determining the appropriate sentence to impose

pursuant to 18 U.S.C. 3553(a). *See* 18 U.S.C. 5037(c); *United States* v. *R.L.C.,* 503 U.S. 291 (1992)''.

Chapter Two is amended in the Introductory Commentary by striking ''Chapter Four, Parts B (Career Offenders and Criminal Livelihood) and C (Adjustment for Certain Zero-Point Offenders); and Chapter Five, Part K (Departures)'' and inserting: ''and Chapter Four, Parts B (Career Offenders and Criminal Livelihood) and C (Adjustment for Certain Zero-Point Offenders)''.

The Commentary to § 2A1.1 captioned ''Application Notes'' is amended in Note 2 by striking the following:

''*Imposition of Life Sentence.*—

(A) *Offenses Involving Premeditated Killing.*—In the case of premeditated killing, life imprisonment is the appropriate sentence if a sentence of death is not imposed. A downward departure would not be appropriate in such a case. A downward departure from a mandatory statutory term of life imprisonment is permissible only in cases in which the government files a motion for a downward departure for the defendant's substantial assistance, as provided in 18 U.S.C. 3553(e).

(B) *Felony Murder.*—If the defendant did not cause the death intentionally or knowingly, a downward departure may be warranted. For example, a downward departure may be warranted if in robbing a bank, the defendant merely passed a note to the teller, as a result of which the teller had a heart attack and died. The extent of the departure should be based upon the defendant's state of mind (*e.g.,* recklessness or negligence), the degree of risk inherent in the conduct, and the nature of the underlying offense conduct. However, departure below the minimum guideline sentence provided for second degree murder in § 2A1.2 (Second Degree Murder) is not likely to be appropriate. Also, because death obviously is an aggravating factor, it necessarily would be inappropriate to impose a sentence at a level below that which the guideline for the underlying offense requires in the absence of death.'';

and inserting the following:

''*Offenses Involving Premeditated Killing.*—In the case of premeditated killing, life imprisonment is the appropriate sentence if a sentence of death is not imposed. If a mandatory statutory term of life imprisonment applies, a lesser term of imprisonment is permissible only in cases in which the government files a motion pertaining to the defendant's substantial assistance, as provided in 18 U.S.C. 3553(e).''.

The Commentary to § 2A1.2 is amended by striking the Commentary captioned ''Application Note'' in its entirety as follows:

''*Application Note:*

1. *Upward Departure Provision.*—If the defendant's conduct was exceptionally heinous, cruel, brutal, or degrading to the victim, an upward departure may be warranted. *See* § 5K2.8 (Extreme Conduct).''.

The Commentary to § 2A2.1 captioned ''Application Notes'' is amended—

in the caption by striking ''Notes'' and inserting ''Note'';

and by striking Note 2 as follows:

''2. *Upward Departure Provision.*—If the offense created a substantial risk of death or serious bodily injury to more than one person, an upward departure may be warranted.''.

The Commentary to § 2A2.4 captioned ''Application Notes'' is amended by striking Note 3 as follows:

''3. *Upward Departure Provision.*—The base offense level does not assume any significant disruption of governmental functions. In situations involving such disruption, an upward departure may be warranted. *See* § 5K2.7 (Disruption of Governmental Function).''.

The Commentary to § 2A3.1 captioned ''Application Notes'' is amended by striking Note 6 as follows:

''6. *Upward Departure Provision.*—If a victim was sexually abused by more than one participant, an upward departure may be warranted. *See* § 5K2.8 (Extreme Conduct).''.

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended by striking Note 6 as follows:

''6. *Upward Departure Consideration.*—There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such cases, an upward departure may be warranted. For example, an upward departure may be warranted if the defendant committed the criminal sexual act in furtherance of a commercial scheme such as pandering, transporting persons for the purpose of prostitution, or the production of pornography.''.

The Commentary to § 2A3.6 captioned ''Application Notes'' is amended by striking Note 4 as follows:

''4. *Upward Departure.*—In a case in which the guideline sentence is determined under subsection (a), a sentence above the minimum term required by 18 U.S.C. 2250(d) is an upward departure from the guideline sentence. A departure may be warranted, for example, in a case involving a sex offense committed against a minor or if the offense resulted in serious bodily injury to a minor.''.

The Commentary to § 2A5.3 captioned ''Application Notes'' is amended—

in the caption by striking ''Notes'' and inserting ''Note'';

and by striking Note 2 as follows:

''2. If the conduct intentionally or recklessly endangered the safety of the aircraft or passengers, an upward departure may be warranted.''.

The Commentary to § 2A6.1 captioned ''Application Notes'' is amended by striking Note 4 as follows:

''4. *Departure Provisions.*—

(A) *In General.*—The Commission recognizes that offenses covered by this guideline may include a particularly wide range of conduct and that it is not possible to include all of the potentially relevant circumstances in the offense level. Factors not incorporated in the guideline may be considered by the court in determining whether a departure from the guidelines is warranted. *See* Chapter Five, Part K (Departures).

(B) *Multiple Threats, False Liens or Encumbrances, or Victims; Pecuniary Harm.*—If the offense involved (i) substantially more than two threatening communications to the same victim, (ii) a prolonged period of making harassing communications to the same victim, (iii) substantially more than two false liens or encumbrances against the real or personal property of the same victim, (iv) multiple victims, or (v) substantial pecuniary harm to a victim, an upward departure may be warranted.''.

The Commentary to § 2A6.2 captioned ''Application Notes'' is amended by striking Note 5 as follows:

''5. If the defendant received an enhancement under subsection (b)(1) but that enhancement does not adequately reflect the extent or seriousness of the conduct involved, an upward departure may be warranted. For example, an upward departure may be warranted if the defendant stalked the victim on many occasions over a prolonged period of time.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended—

in Note 8(A) by striking ''If, in a particular case, however, more than one of the enumerated factors applied, an upward departure may be warranted.'';

and by striking Note 21 as follows:

''21. *Departure Considerations.*—

(A) *Upward Departure Considerations.*—There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such cases, an upward departure may be warranted. The following is a non-exhaustive list of

factors that the court may consider in determining whether an upward departure is warranted:

(i) A primary objective of the offense was an aggravating, non-monetary objective. For example, a primary objective of the offense was to inflict emotional harm.

(ii) The offense caused or risked substantial non-monetary harm. For example, the offense caused physical harm, psychological harm, or severe emotional trauma, or resulted in a substantial invasion of a privacy interest (through, for example, the theft of personal information such as medical, educational, or financial records). An upward departure would be warranted, for example, in an 18 U.S.C. 1030 offense involving damage to a protected computer, if, as a result of that offense, death resulted. An upward departure also would be warranted, for example, in a case involving animal enterprise terrorism under 18 U.S.C. 43, if, in the course of the offense, serious bodily injury or death resulted, or substantial scientific research or information were destroyed. Similarly, an upward departure would be warranted in a case involving conduct described in 18 U.S.C. 670 if the offense resulted in serious bodily injury or death, including serious bodily injury or death resulting from the use of the pre-retail medical product.

(iii) The offense involved a substantial amount of interest of any kind, finance charges, late fees, penalties, amounts based on an agreed-upon return or rate of return, or other similar costs, not included in the determination of loss for purposes of subsection (b)(1).

(iv) The offense created a risk of substantial loss beyond the loss determined for purposes of subsection (b)(1), such as a risk of a significant disruption of a national financial market.

(v) In a case involving stolen information from a 'protected computer', as defined in 18 U.S.C. 1030(e)(2), the defendant sought the stolen information to further a broader criminal purpose.

(vi) In a case involving access devices or unlawfully produced or unlawfully obtained means of identification:

(I) The offense caused substantial harm to the victim's reputation, or the victim suffered a substantial inconvenience related to repairing the victim's reputation.

(II) An individual whose means of identification the defendant used to obtain unlawful means of identification is erroneously arrested or denied a job because an arrest record has been made in that individual's name.

(III) The defendant produced or obtained numerous means of identification with respect to one individual and essentially assumed that individual's identity.

(B) *Upward Departure for Debilitating Impact on a Critical Infrastructure.*—An upward departure would be warranted in a case in which subsection (b)(19)(A)(iii) applies and the disruption to the critical infrastructure(s) is so substantial as to have a debilitating impact on national security, national economic security, national public health or safety, or any combination of those matters.

(C) *Downward Departure Consideration.*—There may be cases in which the offense level determined under this guideline substantially overstates the seriousness of the offense. In such cases, a downward departure may be warranted.

For example, a securities fraud involving a fraudulent statement made publicly to the market may produce an aggregate loss amount that is substantial but diffuse, with relatively small loss amounts suffered by a relatively large number of victims. In such a case, the loss table in subsection (b)(1) and the victims table in subsection (b)(2) may combine to produce an offense level that substantially overstates the seriousness of the offense. If so, a downward departure may be warranted.

(D) *Downward Departure for Major Disaster or Emergency Victims.*—If (i) the minimum offense level of level 12 in subsection (b)(12) applies; (ii) the defendant sustained damage, loss, hardship, or suffering caused by a major disaster or an emergency as those terms are defined in 42 U.S.C. 5122; and (iii) the benefits received illegally were only an extension or overpayment of benefits received legitimately, a downward departure may be warranted.''.

The Commentary to § 2B1.5 captioned ''Application Notes'' is amended by striking Note 9 as follows:

''9. *Upward Departure Provision.*—There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such cases, an upward departure may be warranted. For example, an upward departure may be warranted if (A) in addition to cultural heritage resources or paleontological resources, the offense involved theft of, damage to, or destruction of, items that are not cultural heritage resources (such as an offense involving the theft from a national cemetery of lawnmowers and other administrative property in addition to historic gravemarkers or other cultural heritage resources) or paleontological resources; or (B) the offense involved a cultural heritage resource that has profound significance to cultural identity (*e.g.,* the Statue of Liberty or the Liberty Bell).''.

The Commentary to § 2B2.1 captioned ''Background'' is amended by striking ''Weapon use would be a ground for upward departure.''.

The Commentary to § 2B3.1 captioned ''Application Notes'' is amended—

by striking Note 5 as follows:

''5. *Upward Departure Provision.*—If the defendant intended to murder the victim, an upward departure may be warranted; *see* § 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder).'';

and by renumbering Note 6 as Note 5.

The Commentary to § 2B3.2 captioned ''Application Notes'' is amended by striking Notes 7 and 8 as follows:

''7. *Upward Departure Based on Threat of Death or Serious Bodily Injury to Numerous Victims.*—If the offense involved the threat of death or serious bodily injury to numerous victims (*e.g.,* in the case of a plan to derail a passenger train or poison consumer products), an upward departure may be warranted.

8. *Upward Departure Based on Organized Criminal Activity or Threat to Family Member of Victim.*—If the offense involved organized criminal activity, or a threat to a family member of the victim, an upward departure may be warranted.''.

The Commentary to § 2B5.3 captioned ''Application Notes'' is amended by striking Note 5 as follows:

''5. *Departure Considerations.*—If the offense level determined under this guideline substantially understates or overstates the seriousness of the offense, a departure may be warranted. The following is a non-exhaustive list of factors that the court may consider in determining whether a departure may be warranted:

(A) The offense involved substantial harm to the reputation of the copyright or trademark owner.

(B) The offense was committed in connection with, or in furtherance of, the criminal activities of a national, or international, organized criminal enterprise.

(C) The method used to calculate the infringement amount is based upon a formula or extrapolation that results in an estimated amount that may substantially exceed the actual pecuniary harm to the copyright or trademark owner.

(D) The offense resulted in death or serious bodily injury.''.

The Commentary to § 2C1.1 captioned ''Application Notes'' is amended—

in Note 5 by striking ''Chapter Three, Parts A–D'' and inserting ''Chapter Three, Parts A–E'';

and by striking Note 7 as follows:

''7. *Upward Departure Provisions.*—In some cases the monetary value of the unlawful payment may not be known or may not adequately reflect the seriousness of the offense. For example, a small payment may be made in exchange for the falsification of inspection records for a shipment of defective parachutes or the destruction of evidence in a major narcotics case. In part, this issue is addressed by the enhancements in § 2C1.1(b)(2) and (c)(1), (2), and (3). However, in cases in which the seriousness of the offense is still not adequately reflected, an upward departure is warranted. *See* Chapter Five, Part K (Departures).

In a case in which the court finds that the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted. *See* § 5K2.7 (Disruption of Governmental Function).''.

The Commentary to § 2C1.8 captioned ''Application Notes'' is amended by striking Note 4 as follows:

''4. *Departure Provision.*—In a case in which the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted.''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended—

in Note 3 by striking the following:

''An upward departure nonetheless may be warranted when the mixture or substance counted in the Drug Quantity Table is combined with other, non-countable material in an unusually sophisticated manner in order to avoid detection.'';

in Note 10 by striking the following:

''In the case of liquid LSD (LSD that has not been placed onto a carrier medium), using the weight of the LSD alone to calculate the offense level may not adequately reflect the seriousness of the offense. In such a case, an upward departure may be warranted.'';

in Note 18(A) by striking ''In some cases, the enhancement under subsection (b)(14)(A) may not account adequately for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, in determining''; and inserting ''In determining'';

in Note 22 by striking the following:

''*Application of Subsection (e)(1).*—

(A) *Definition.*—For purposes of this guideline, 'sexual offense' means a 'sexual act' or 'sexual contact' as those terms are defined in 18 U.S.C. 2246(2) and (3), respectively.

(B) *Upward Departure Provision.*—If the defendant committed a sexual offense against more than one individual, an upward departure would be warranted.'',

and inserting the following:

''*Application of Subsection (e)(1).*—For purposes of this guideline, 'sexual offense' means a 'sexual act' or 'sexual contact' as those terms are defined in 18 U.S.C. 2246(2) and (3), respectively.'';

in Note 24 by striking ''a lower sentence imposed (including a downward departure)'' and inserting ''a lower sentence imposed'';

and by striking Note 27 as follows:

''27. *Departure Considerations.*—

(A) *Downward Departure Based on Drug Quantity in Certain Reverse Sting Operations.*—If, in a reverse sting (an operation in which a government agent sells or negotiates to sell a controlled substance to a defendant), the court finds that the government agent set a price for the controlled substance that was substantially below the market value of the controlled substance, thereby leading to the defendant's purchase of a significantly greater quantity of the controlled substance than his available resources would have allowed him to purchase except for the artificially low price set by the government agent, a downward departure may be warranted.

(B) *Upward Departure Based on Drug Quantity.*—In an extraordinary case, an upward departure above offense level 38 on the basis of drug quantity may be warranted. For example, an upward departure may be warranted where the quantity is at least ten times the minimum quantity required for level 38. Similarly, in the case of a controlled substance for which the maximum offense level is less than level 38, an upward departure may be warranted if the drug quantity substantially exceeds the quantity for the highest offense level established for that particular controlled substance.

(C) *Upward Departure Based on Unusually High Purity.*—Trafficking in controlled substances, compounds, or mixtures of unusually high purity may warrant an upward departure, except in the case of PCP, amphetamine, methamphetamine, hydrocodone, or oxycodone for which the guideline itself provides for the consideration of purity (*see* the footnote to the Drug Quantity Table). The purity of the controlled substance, particularly in the case of heroin, may be relevant in the sentencing process because it is probative of the defendant's role or position in the chain of distribution. Since controlled substances are often diluted and combined with other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise and proximity to the source of the drugs. As large quantities are normally associated with high purities, this factor is particularly relevant where smaller quantities are involved.

(D) *Departure Based on Potency of Synthetic Cathinones.*—In addition to providing converted drug weights for specific controlled substances and groups of substances, the Drug Conversion Tables provide converted drug weights for certain classes of controlled substances, such as synthetic cathinones. In the case of a synthetic cathinone that is not specifically referenced in this guideline, the converted drug weight for the class should be used to determine the appropriate offense level. However, there may be cases in which a substantially lesser or greater quantity of a synthetic cathinone is needed to produce an effect on the central nervous system similar to the effect produced by a typical synthetic cathinone in the class, such as methcathinone or alpha-PVP. In such a case, a departure may be warranted. For example, an upward departure may be warranted in cases involving MDPV, a substance of which a lesser quantity is usually needed to produce an effect on the central nervous system similar to the effect produced by a typical synthetic cathinone. In contrast, a downward departure may be warranted in cases involving methylone, a substance of which a greater quantity is usually needed to produce an effect on the central nervous system similar to the effect produced by a typical synthetic cathinone.

(E) *Departures for Certain Cases involving Synthetic Cannabinoids.*—

(i) *Departure Based on Concentration of Synthetic Cannabinoids.*—Synthetic cannabinoids are manufactured as powder or crystalline substances. The concentrated substance is then usually sprayed on or soaked into a plant or other base material, and trafficked as part of a mixture. Nonetheless, there may be cases in which the substance involved in the offense is a synthetic cannabinoid not combined with any other substance. In such a case, an upward departure would be warranted.

There also may be cases in which the substance involved in the offense is a mixture containing a synthetic cannabinoid diluted with an unusually high quantity of base material. In such a case, a downward departure may be warranted.

(ii) *Downward Departure Based on Potency of Synthetic Cannabinoids.*—In the case of a synthetic cannabinoid that is not specifically referenced in this guideline, the converted drug weight for the class should be used to determine the appropriate offense level. However, there may be cases in which a substantially greater quantity of a synthetic cannabinoid is needed to produce an effect on the central nervous system similar to the effect produced by a typical synthetic cannabinoid in the class, such as JWH–018 or AM–2201. In such a case, a downward departure may be warranted.''.

The Commentary to § 2D1.5 captioned ''Application Notes'' is amended—

by striking Note 2 as follows:

''2. *Upward Departure Provision.*—If as part of the enterprise the defendant sanctioned the use of violence, or if the number of persons managed by the defendant was extremely large, an upward departure may be warranted.'';

and by renumbering Notes 3 and 4 as Notes 2 and 3, respectively.

The Commentary to § 2D1.7 is amended by striking the Commentary captioned ''Application Note'' in its entirety as follows:

''*Application Note:*

1. The typical case addressed by this guideline involves small-scale trafficking in drug paraphernalia (generally from a retail establishment that also sells items that are not unlawful). In a case involving a large-scale dealer, distributor, or manufacturer, an upward departure may be warranted. Conversely, where the offense was not committed for pecuniary gain (*e.g.,* transportation for the defendant's personal use), a downward departure may be warranted.''.

The Commentary to § 2D1.11 captioned ''Application Notes'' is amended—

in Note 1 by striking subparagraph (C) as follows:

''(C) *Upward Departure.*—In a case involving two or more chemicals used to manufacture different controlled substances, or to manufacture one controlled substance by different manufacturing processes, an upward departure may be warranted if the offense level does not adequately address the seriousness of the offense.'';

and in Note 4 by striking ''In some cases, the enhancement under subsection (b)(3) may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs''; and inserting ''Any costs''.

The Commentary to § 2D1.12 captioned ''Application Notes'' is amended—

by striking Note 1 as follows:

''1. If the offense involved the large-scale manufacture, distribution, transportation, exportation, or importation of prohibited flasks, equipment, chemicals, products, or material, an upward departure may be warranted.'';

by redesignating Notes 2, 3, and 4 as Notes 1, 2, and 3, respectively;

and in Note 2 (as so redesignated) by striking ''In some cases, the enhancement under subsection (b)(2) may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs''; and inserting ''Any costs''.

The Commentary to § 2D2.1 is amended by striking the Commentary captioned ''Application Note'' in its entirety as follows:

''*Application Note:*

1. The typical case addressed by this guideline involves possession of a controlled substance by the defendant for the defendant's own consumption. Where the circumstances establish intended consumption by a person other than the defendant, an upward departure may be warranted.''.

The Commentary to § 2D2.3 captioned ''Background'' is amended by striking ''If no or only a few passengers were placed at risk, a downward departure may be warranted. If the offense resulted in the death or serious bodily injury of a large number of persons, such that the resulting offense level under subsection (b) would not adequately reflect the seriousness of the offense, an upward departure may be warranted.''.

The Commentary to § 2E1.1 captioned ''Application Notes'' is amended in Note 4 by striking ''If this treatment produces an anomalous result in a particular case, a guideline departure may be warranted.''.

The Commentary to § 2E3.1 captioned ''Application Notes'' is amended—

in the caption by striking ''Notes'' and inserting ''Note'';

and by striking Note 2 as follows:

''2. *Upward Departure Provision.*—The base offense levels provided for animal fighting ventures in subsection (a)(1) and (a)(3) reflect that an animal fighting venture involves one or more violent fights between animals and that a defeated animal often is severely injured in the fight, dies as a result of the fight, or is killed afterward. Nonetheless, there may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such a case, an upward departure may be warranted. For example, an upward departure may be warranted if (A) the offense involved extraordinary cruelty to an animal beyond the violence inherent in such a venture (such as by killing an animal in a way that prolongs the suffering of the animal); or (B) the offense involved animal fighting on an exceptional scale (such as an offense involving an unusually large number of animals).''.

The Commentary to § 2G1.1 captioned ''Application Notes'' is amended—

in Note 2 by striking ''If bodily injury results, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).'';

and by striking Note 6 as follows:

''6. *Upward Departure Provision.*—If the offense involved more than ten victims, an upward departure may be warranted.''.

The Commentary to § 2G1.3 captioned ''Application Notes'' is amended by striking Note 7 as follows:

''7. *Upward Departure Provision.*—If the offense involved more than ten minors, an upward departure may be warranted.''.

The Commentary to § 2G2.1 captioned ''Application Notes'' is amended by striking Note 8 as follows:

''8. *Upward Departure Provision.*—An upward departure may be warranted if the offense involved more than 10 minors.''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended—

in Note 6(B)(i) by striking ''If the number of images substantially underrepresents the number of minors depicted, an upward departure may be warranted.'';

in Note 6(B)(ii) by striking ''If the length of the visual depiction is substantially more than 5 minutes, an upward departure may be warranted.'';

and by striking Note 9 as follows:

''9. *Upward Departure Provision.*—If the defendant engaged in the sexual abuse or exploitation of a minor at any time (whether or not such abuse or exploitation occurred during the course of the offense or resulted in a conviction for such conduct) and subsection (b)(5)

does not apply, an upward departure may be warranted. In addition, an upward departure may be warranted if the defendant received an enhancement under subsection (b)(5) but that enhancement does not adequately reflect the seriousness of the sexual abuse or exploitation involved.''.

The Commentary to § 2H2.1 is amended by striking the Commentary captioned ''Application Note'' in its entirety as follows:

''*Application Note:*

1. *Upward Departure Provision.*—If the offense resulted in bodily injury or significant property damage, or involved corrupting a public official, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).''.

The Commentary to § 2H3.1 captioned ''Application Notes'' is amended by striking Note 5 as follows:

''5. *Upward Departure.*—There may be cases in which the offense level determined under this guideline substantially understates the seriousness of the offense. In such a case, an upward departure may be warranted. The following are examples of cases in which an upward departure may be warranted:

(A) The offense involved personal information, means of identification, confidential phone records information, or tax return information of a substantial number of individuals.

(B) The offense caused or risked substantial non-monetary harm (*e.g.,* physical harm, psychological harm, or severe emotional trauma, or resulted in a substantial invasion of privacy interest) to individuals whose private or protected information was obtained.''.

The Commentary to § 2H4.1 captioned ''Application Notes'' is amended by striking Notes 3 and 4 as follows:

''3. If the offense involved the holding of more than ten victims in a condition of peonage or involuntary servitude, an upward departure may be warranted.

4. In a case in which the defendant was convicted under 18 U.S.C. 1589(b) or 1593A, a downward departure may be warranted if the defendant benefitted from participating in a venture described in those sections without knowing that (*i.e.,* in reckless disregard of the fact that) the venture had engaged in the criminal activity described in those sections.''.

The Commentary to § 2J1.2 captioned ''Application Notes'' is amended—

by striking Note 4 as follows:

''4. *Upward Departure Considerations.*—If a weapon was used, or bodily injury or significant property damage resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures). In a case involving an act of extreme violence (for example, retaliating against a government witness by throwing acid in the witness's face) or a particularly serious sex offense, an upward departure would be warranted.'';

and by redesignating Note 5 as Note 4.

The Commentary to § 2J1.3 captioned ''Application Notes'' is amended—

by striking Note 4 as follows:

''4. If a weapon was used, or bodily injury or significant property damage resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).'';

and by redesignating Note 5 as Note 4.

The Commentary to § 2J1.6 captioned ''Application Notes'' is amended—

by striking Note 4 as follows:

''4. If a defendant is convicted of both the underlying offense and the failure to appear count, and the defendant committed additional acts of obstructive behavior (*e.g.,* perjury) during the investigation, prosecution, or sentencing of the instant offense, an upward departure may be warranted. The upward departure will ensure an enhanced sentence for obstructive conduct for which no adjustment under § 3C1.1 (Obstructing or Impeding the Administration of Justice) is made because of the operation of the rules set out in Application Note 3.'';

and by redesignating Note 5 as Note 4.

The Commentary to § 2K1.3 captioned ''Application Notes'' is amended—

by striking Note 10 as follows:

''10. An upward departure may be warranted in any of the following circumstances: (A) the quantity of explosive materials significantly exceeded 1000 pounds; (B) the explosive materials were of a nature more volatile or dangerous than dynamite or conventional powder explosives (*e.g.,* plastic explosives); (C) the defendant knowingly distributed explosive materials to a person under twenty-one years of age; or (D) the offense posed a substantial risk of death or bodily injury to multiple individuals.'';

by redesignating Note 11 as Note 10;

and in Note 10 (as so redesignated) by striking ''However, where the defendant used or possessed a firearm or explosive to facilitate another firearms or explosives offense (*e.g.,* the defendant used or possessed a firearm to protect the delivery of an unlawful shipment of explosives), an upward departure under § 5K2.6 (Weapons and Dangerous Instrumentalities) may be warranted.''.

The Commentary to § 2K1.4 captioned ''Application Notes'' is amended by striking Note 3 as follows:

''3. *Upward Departure Provision.*—If bodily injury resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).''.

Section 2K2.1(b)(9)(B) is amended by striking '', before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category)''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended—

in Note 7 by striking the following:

''Offenses involving such devices cover a wide range of offense conduct and involve different degrees of risk to the public welfare depending on the type of destructive device involved and the location or manner in which that destructive device was possessed or transported. For example, a pipe bomb in a populated train station creates a substantially greater risk to the public welfare, and a substantially greater risk of death or serious bodily injury, than an incendiary device in an isolated area. In a case in which the cumulative result of the increased base offense level and the enhancement under subsection (b)(3) does not adequately capture the seriousness of the offense because of the type of destructive device involved, the risk to the public welfare, or the risk of death or serious bodily injury that the destructive device created, an upward departure may be warranted. *See also* §§ 5K2.1 (Death), 5K2.2 (Physical Injury), and 5K2.14 (Public Welfare).'';

by striking Note 11 as follows:

''11. *Upward Departure Provisions.*—An upward departure may be warranted in any of the following circumstances: (A) the number of firearms substantially exceeded 200; (B) the offense involved multiple National Firearms Act weapons (*e.g.,* machineguns, destructive devices), military type assault rifles, non-detectable ('plastic') firearms (defined at 18 U.S.C. 922(p)); (C) the offense involved large quantities of armor-piercing ammunition (defined at 18 U.S.C. 921(a)(17)(B)); or (D) the offense posed a substantial risk of death or bodily injury to multiple individuals (*see* Application Note 7).'';

by redesignating Notes 12, 13, and 14 as Notes 11, 12, and 13, respectively;

in Note 12 (as so redesignated)—

by striking subparagraph (B) as follows:

''(B) *Upward Departure Provision.*—If the defendant transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, substantially more than 25

firearms, an upward departure may be warranted.'';

and by redesignating subparagraph (C) as subparagraph (B);

and in Note 13 (as so redesignated)—

by striking subparagraph (D) as follows:

''(D) *Upward Departure Provision.*—In a case in which the defendant used or possessed a firearm or explosive to facilitate another firearms or explosives offense (*e.g.,* the defendant used or possessed a firearm to protect the delivery of an unlawful shipment of explosives), an upward departure under § 5K2.6 (Weapons and Dangerous Instrumentalities) may be warranted.'';

and by redesignating subparagraph (E) as subparagraph (D).

Section 2K2.4(a) is amended by striking ''Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood)'' and inserting ''Chapters Three (Adjustments), Parts A through E, and Four (Criminal History and Criminal Livelihood)''.

Section 2K2.4(b) is amended by striking ''Chapters Three and Four'' and inserting ''Chapters Three, Parts A through E, and Four''.

Section 2K2.4(c) is amended by striking ''Chapters Three and Four'' and inserting ''Chapters Three, Parts A through E, and Four''.

The Commentary to § 2K2.4 captioned ''Application Notes'' is amended—

in Note 2 by striking the following:

''*Application of Subsection (b).*—

(A) *In General.*—Sections 924(c) and 929(a) of title 18, United States Code, provide mandatory minimum terms of imprisonment (*e.g.,* not less than five years). Except as provided in subsection (c), in a case in which the defendant is convicted under 18 U.S.C. 924(c) or § 929(a), the guideline sentence is the minimum term required by the relevant statute. Each of 18 U.S.C. 924(c) and 929(a) also requires that a term of imprisonment imposed under that section shall run consecutively to any other term of imprisonment.

(B) *Upward Departure Provision.*—In a case in which the guideline sentence is determined under subsection (b), a sentence above the minimum term required by 18 U.S.C. 924(c) or § 929(a) is an upward departure from the guideline sentence. A departure may be warranted, for example, to reflect the seriousness of the defendant's criminal history in a case in which the defendant is convicted of an 18 U.S.C. 924(c) or § 929(a) offense but is not determined to be a career offender under § 4B1.1.'';

and inserting the following:

''*Application of Subsection (b).*—Sections 924(c) and 929(a) of title 18, United States Code, provide mandatory minimum terms of imprisonment (*e.g.,* not less than five years). Except as provided in subsection (c), in a case in which the defendant is convicted under 18 U.S.C. 924(c) or § 929(a), the guideline sentence is the minimum term required by the relevant statute. Each of 18 U.S.C. 924(c) and 929(a) also requires that a term of imprisonment imposed under that section shall run consecutively to any other term of imprisonment.'';

in Note 4 by striking the subparagraph (C) as follows:

''(C) *Upward Departure Provision.*—In a few cases in which the defendant is determined not to be a career offender, the offense level for the underlying offense determined under the preceding paragraphs may result in a guideline range that, when combined with the mandatory consecutive sentence under 18 U.S.C. 844(h), § 924(c), or § 929(a), produces a total maximum penalty that is less than the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a) (*i.e.,* the guideline range that would have resulted if the enhancements for possession, use, or discharge of a firearm had been applied). In such a case, an upward departure may be warranted so that the conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a) does not result in a decrease in the total punishment. An upward departure under this paragraph shall not exceed the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a).'';

and in Note 5 by striking ''Chapter Three (Adjustment) and Chapter Four (Criminal History and Criminal Livelihood)'' and inserting ''Chapter Three (Adjustment), Parts A through E, and Chapter Four (Criminal History and Criminal Livelihood)''; and by striking ''no other adjustments in Chapter Three'' and inserting ''no other adjustments in Chapter Three, Parts A through D,''.

The Commentary to § 2K2.5 captioned ''Application Notes'' is amended by striking Note 4 as follows:

''4. Where the firearm was brandished, discharged, or otherwise used, in a federal facility, federal court facility, or school zone, and the cross reference from subsection (c)(1) does not apply, an upward departure may be warranted.''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended—

in Note 4 by striking ''Application Note 1(M) of § 1B1.1'' and inserting ''Application Note 1(L) of § 1B1.1'';

and by striking Note 7 as follows:

''7. *Upward Departure Provisions.*—An upward departure may be warranted in any of the following cases:

(A) The defendant smuggled, transported, or harbored an alien knowing that the alien intended to enter the United States to engage in subversive activity, drug trafficking, or other serious criminal behavior.

(B) The defendant smuggled, transported, or harbored an alien the defendant knew was inadmissible for reasons of security and related grounds, as set forth under 8 U.S.C. 1182(a)(3).

(C) The offense involved substantially more than 100 aliens.''.

The Commentary to § 2L1.2 captioned ''Application Notes'' is amended by striking Notes 6, 7, and 8 as follows:

''6. *Departure Based on Seriousness of a Prior Offense.*—There may be cases in which the offense level provided by an enhancement in subsection (b)(2) or (b)(3) substantially understates or overstates the seriousness of the conduct underlying the prior offense, because (A) the length of the sentence imposed does not reflect the seriousness of the prior offense; (B) the prior conviction is too remote to receive criminal history points (*see* § 4A1.2(e)); or (C) the time actually served was substantially less than the length of the sentence imposed for the prior offense. In such a case, a departure may be warranted.

7. *Departure Based on Time Served in State Custody.*—In a case in which the defendant is located by immigration authorities while the defendant is serving time in state custody, whether pre- or post-conviction, for a state offense, the time served is not covered by an adjustment under § 5G1.3(b) and, accordingly, is not covered by a departure under § 5K2.23 (Discharged Terms of Imprisonment). *See* § 5G1.3(a). In such a case, the court may consider whether a departure is appropriate to reflect all or part of the time served in state custody, from the time immigration authorities locate the defendant until the service of the federal sentence commences, that the court determines will not be credited to the federal sentence by the Bureau of Prisons. Any such departure should be fashioned to achieve a reasonable punishment for the instant offense.

Such a departure should be considered only in cases where the departure is not likely to increase the risk to the public from further crimes of the defendant. In determining whether such a departure is appropriate, the court should consider, among other things, (A) whether the defendant engaged in additional criminal activity

after illegally reentering the United States; (B) the seriousness of any such additional criminal activity, including (1) whether the defendant used violence or credible threats of violence or possessed a firearm or other dangerous weapon (or induced another person to do so) in connection with the criminal activity, (2) whether the criminal activity resulted in death or serious bodily injury to any person, and (3) whether the defendant was an organizer, leader, manager, or supervisor of others in the criminal activity; and (C) the seriousness of the defendant's other criminal history.

8. *Departure Based on Cultural Assimilation.*—There may be cases in which a downward departure may be appropriate on the basis of cultural assimilation. Such a departure should be considered only in cases where (A) the defendant formed cultural ties primarily with the United States from having resided continuously in the United States from childhood, (B) those cultural ties provided the primary motivation for the defendant's illegal reentry or continued presence in the United States, and (C) such a departure is not likely to increase the risk to the public from further crimes of the defendant.

In determining whether such a departure is appropriate, the court should consider, among other things, (1) the age in childhood at which the defendant began residing continuously in the United States, (2) whether and for how long the defendant attended school in the United States, (3) the duration of the defendant's continued residence in the United States, (4) the duration of the defendant's presence outside the United States, (5) the nature and extent of the defendant's familial and cultural ties inside the United States, and the nature and extent of such ties outside the United States, (6) the seriousness of the defendant's criminal history, and (7) whether the defendant engaged in additional criminal activity after illegally reentering the United States.''.

The Commentary to § 2L2.1 captioned ''Application Notes'' is amended—

by striking Note 3 as follows:

''3. Subsection (b)(3) provides an enhancement if the defendant knew, believed, or had reason to believe that a passport or visa was to be used to facilitate the commission of a felony offense, other than an offense involving violation of the immigration laws. If the defendant knew, believed, or had reason to believe that the felony offense to be committed was of an especially serious type, an upward departure may be warranted.'';

by redesignating Note 4 as Note 3;

and by striking Note 5 as follows:

''5. If the offense involved substantially more than 100 documents, an upward departure may be warranted.''.

The Commentary to § 2L2.2 captioned ''Application Notes'' is amended by striking Note 6 as follows:

''6. *Upward Departure Provision.*—If the defendant fraudulently obtained or used a United States passport for the purpose of entering the United States to engage in terrorist activity, an upward departure may be warranted. *See* Application Note 4 of the Commentary to § 3A1.4 (Terrorism).''.

The Commentary to § 2M3.1 captioned ''Application Notes'' is amended—

in Note 2 by striking ''When revelation is likely to cause little or no harm, a downward departure may be warranted. *See* Chapter Five, Part K (Departures).'';

and by striking Note 3 as follows:

''3. The court may depart from the guidelines upon representation by the President or his duly authorized designee that the imposition of a sanction other than authorized by the guideline is necessary to protect national security or further the objectives of the nation's foreign policy.''.

The Commentary to § 2M4.1 is amended by striking the Commentary captioned ''Application Note'' in its entirety as follows:

''*Application Note:*

1. Subsection (b)(1) does not distinguish between whether the offense was committed in peacetime or during time of war or armed conflict. If the offense was committed when persons were being inducted for compulsory military service during time of war or armed conflict, an upward departure may be warranted.''.

The Commentary to § 2M5.1 captioned ''Application Notes'' is amended by striking Note 3 as follows:

''3. *Departure Provisions.*—

(A) *In General.*—In determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences. Where such factors are present in an extreme form, a departure from the guidelines may be warranted. *See* Chapter Five, Part K (Departures).

(B) *War or Armed Conflict.*—In the case of a violation during time of war or armed conflict, an upward departure may be warranted.''.

The Commentary to § 2M5.2 captioned ''Application Notes'' is amended—

in the caption by striking ''Notes'' and inserting ''Note'';

in Note 1 by striking the following:

''The base offense level assumes that the offense conduct was harmful or had the potential to be harmful to a security or foreign policy interest of the United States. In the unusual case where the offense conduct posed no such risk, a downward departure may be warranted. In the case of a violation during time of war or armed conflict, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).'';

and by striking Note 2 as follows:

''2. In determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security or foreign policy interest of the United States, the volume of commerce involved, the extent of planning or sophistication, and whether there were multiple occurrences. Where such factors are present in an extreme form, a departure from the guidelines may be warranted.''.

The Commentary to § 2M5.3 captioned ''Application Notes'' is amended—

in the caption by striking ''Notes'' and inserting ''Note'';

and by striking Note 2 as follows:

''2. *Departure Provisions.*—

(A) *In General.*—In determining the sentence within the applicable guideline range, the court may consider the degree to which the violation threatened a security interest of the United States, the volume of the funds or other material support or resources involved, the extent of planning or sophistication, and whether there were multiple occurrences. In a case in which such factors are present in an extreme form, a departure from the guidelines may be warranted. *See* Chapter Five, Part K (Departures).

(B) *War or Armed Conflict.*—In the case of a violation during time of war or armed conflict, an upward departure may be warranted.''.

The Commentary to § 2N1.1 captioned ''Application Notes'' is amended—

in the caption by striking ''Notes'' and inserting ''Note'';

by striking Note 1 as follows:

''1. The base offense level reflects that this offense typically poses a risk of death or serious bodily injury to one or more victims; or causes, or is intended to cause, bodily injury. Where the offense posed a substantial risk of death or serious bodily injury to numerous victims, or caused extreme psychological injury or substantial

property damage or monetary loss, an upward departure may be warranted. In the unusual case in which the offense did not cause a risk of death or serious bodily injury, and neither caused nor was intended to cause bodily injury, a downward departure may be warranted.'';

and by redesignating Note 2 as Note 1.

The Commentary to § 2N1.2 is amended by striking the Commentary captioned ''Application Note'' in its entirety as follows:

''*Application Note:*

1. If death or bodily injury, extreme psychological injury, or substantial property damage or monetary loss resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).''.

The Commentary to § 2N1.3 is amended by striking the Commentary captioned ''Application Note'' in its entirety as follows:

''*Application Note:*

1. If death or bodily injury, extreme psychological injury, or substantial property damage or monetary loss resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).''.

The Commentary to § 2N2.1 captioned ''Application Notes'' is amended—

by striking Note 1 as follows:

''1. This guideline assumes a regulatory offense that involved knowing or reckless conduct. Where only negligence was involved, a downward departure may be warranted. *See* Chapter Five, Part K (Departures).'';

by redesignating Note 2 as Note 1;

by striking Note 3 as follows:

''3. *Upward Departure Provisions.*—The following are circumstances in which an upward departure may be warranted:

(A) The offense created a substantial risk of bodily injury or death; or bodily injury, death, extreme psychological injury, property damage, or monetary loss resulted from the offense. *See* Chapter Five, Part K (Departures).

(B) The defendant was convicted under 7 U.S.C. 7734.'';

and by redesignating Note 4 as Note 2.

The Commentary to § 2P1.1 captioned ''Application Notes'' is amended—

by striking Note 4 as follows:

''4. If death or bodily injury resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).'';

and by redesignating Notes 5 and 6 as Notes 4 and 5, respectively.

The Commentary to § 2P1.3 is amended by striking the Commentary captioned ''Application Note'' in its entirety as follows:

''*Application Note:*

1. If death or bodily injury resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).''.

The Commentary to § 2Q1.1 is amended by striking the Commentary captioned ''Application Note'' in its entirety as follows:

''*Application Note:*

1. If death or serious bodily injury resulted, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).''.

The Commentary to § 2Q1.2 captioned ''Application Notes'' is amended—

by striking Note 4 as follows:

''4. Except when the adjustment in subsection (b)(6) for simple recordkeeping offenses applies, this section assumes knowing conduct. In cases involving negligent conduct, a downward departure may be warranted.'';

by redesignating Notes 5 through 8 as Notes 4 through 7, respectively;

in Note 4 (as so redesignated) by striking ''Depending upon the harm resulting from the emission, release or discharge, the quantity and nature of the substance or pollutant, the duration of the offense and the risk associated with the violation, a departure of up to two levels in either direction from the offense levels prescribed in these specific offense characteristics may be appropriate.'';

in Note 5 (as so redesignated) by striking ''Depending upon the nature of the risk created and the number of people placed at risk, a departure of up to three levels upward or downward may be warranted. If death or serious bodily injury results, a departure would be called for. *See* Chapter Five, Part K (Departures).'';

in Note 6 (as so redesignated) by striking ''Depending upon the nature of the contamination involved, a departure of up to two levels either upward or downward could be warranted.'';

in Note 7 (as so redesignated) by striking ''Depending upon the nature and quantity of the substance involved and the risk associated with the offense, a departure of up to two levels either upward or downward may be warranted.'';

and by striking Note 9 as follows:

''9. *Other Upward Departure Provisions.*—

(A) *Civil Adjudications and Failure to Comply with Administrative Order.*—In a case in which the defendant has previously engaged in similar misconduct established by a civil adjudication or has failed to comply with an administrative order, an upward departure may be warranted. *See* § 4A1.3 (Departures Based on Inadequacy of Criminal History Category).

(B) *Extreme Psychological Injury.*—If the offense caused extreme psychological injury, an upward departure may be warranted. *See* § 5K2.3 (Extreme Psychological Injury).

(C) *Terrorism.*—If the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, an upward departure would be warranted. *See* Application Note 4 of the Commentary to § 3A1.4 (Terrorism).''.

The Commentary to § 2Q1.3 captioned ''Application Notes'' is amended—

by striking Note 3 as follows:

''3. The specific offense characteristics in this section assume knowing conduct. In cases involving negligent conduct, a downward departure may be warranted.'';

by redesignating Notes 4 through 7 as Notes 3 through 6, respectively;

in Note 3 (as so redesignated) by striking ''Depending upon the harm resulting from the emission, release or discharge, the quantity and nature of the substance or pollutant, the duration of the offense and the risk associated with the violation, a departure of up to two levels in either direction from that prescribed in these specific offense characteristics may be appropriate.'';

in Note 4 (as so redesignated) by striking ''Depending upon the nature of the risk created and the number of people placed at risk, a departure of up to three levels upward or downward may be warranted. If death or serious bodily injury results, a departure would be called for. *See* Chapter Five, Part K (Departures).'';

in Note 5 (as so redesignated) by striking ''Depending upon the nature of the contamination involved, a departure of up to two levels in either direction could be warranted.'';

in Note 6 (as so redesignated) by striking ''Depending upon the nature and quantity of the substance involved and the risk associated with the offense, a departure of up to two levels in either direction may be warranted.'';

and by striking Note 8 as follows:

''8. Where a defendant has previously engaged in similar misconduct established by a civil adjudication or has failed to comply with an administrative order, an upward departure may be warranted. *See* § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)).''.

The Commentary to § 2Q1.4 captioned ''Application Notes'' is amended by striking Note 3 as follows:

''3. *Departure Provisions.*—

(A) *Downward Departure Provision.*—The base offense level in subsection (a)(1) reflects that offenses covered by that subsection typically pose a risk of death or serious bodily injury to one or more victims, or cause, or are intended to cause, bodily injury. In the unusual case in which such an offense did not cause a risk of death or serious bodily injury, and neither caused nor was intended to cause bodily injury, a downward departure may be warranted.

(B) *Upward Departure Provisions.*—If the offense caused extreme psychological injury, or caused substantial property damage or monetary loss, an upward departure may be warranted.

If the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct, an upward departure would be warranted. *See* Application Note 4 of § 3A1.4 (Terrorism).''.

The Commentary to § 2Q2.1 captioned ''Application Notes'' is amended—

by striking Note 5 as follows:

''5. If the offense involved the destruction of a substantial quantity of fish, wildlife, or plants, and the seriousness of the offense is not adequately measured by the market value, an upward departure may be warranted.'';

and by redesignating Note 6 as Note 5.

The Commentary to § 2R1.1 captioned ''Application Notes'' is amended in Note 7 by striking ''a sentence at the maximum of the applicable guideline range, or an upward departure, may be warranted. *See* § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement))'' and inserting ''a sentence at the maximum of the applicable guideline range may be warranted''.

The Commentary to § 2T1.8 is amended by striking the Commentary captioned ''Application Note'' in its entirety as follows:

''*Application Note:*

1. If the defendant was attempting to evade, rather than merely delay, payment of taxes, an upward departure may be warranted.''.

The Commentary to § 2T2.1 captioned ''Application Notes'' is amended—

in the caption by striking ''Notes'' and inserting ''Note'';

and by striking Note 2 as follows:

''2. Offense conduct directed at more than tax evasion (*e.g.,* theft or fraud) may warrant an upward departure.''.

Chapter Two, Part T, Subpart 3 is amended in the Introductory Commentary by striking '', or for departing upward if there is not another more specific applicable guideline''.

The Commentary to § 2T3.1 captioned ''Application Notes'' is amended—

by striking Note 2 as follows:

''2. Particular attention should be given to those items for which entry is prohibited, limited, or restricted. Especially when such items are harmful or protective quotas are in effect, the duties evaded on such items may not adequately reflect the harm to society or protected industries resulting from their importation. In such instances, an upward departure may be warranted. A sentence based upon an alternative measure of the 'duty' evaded, such as the increase in market value due to importation, or 25 percent of the items' fair market value in the United States if the increase in market value due to importation is not readily ascertainable, might be considered.'';

and by redesignating Note 3 as Note 2.

The Commentary to § 2X5.1 captioned ''Application Notes'' is amended—

in Note 1 by inserting after ''include:'' the following: ''§ 3F1.1 (Early Disposition Programs (Policy Statement));''; by striking ''Chapter Five, Part H (Specific Offender Characteristics); Chapter Five, Part J (Relief from Disability); Chapter Five, Part K (Departures); Chapter Six, Part A (Sentencing Procedures); Chapter Six, Part B (Plea Agreements)'' and inserting ''Chapter Five, Part J (Relief from Disability); Chapter Five, Part K (Assistance to Authorities); Chapter Six, Part A (Sentencing Procedures); and Chapter Six, Part B (Plea Agreements)'';

and in Note 2 by striking the following:

''*Convictions under 18 U.S.C. 1841(a)(1).*—

(A) *In General.*—If the defendant is convicted under 18 U.S.C. 1841(a)(1), the Chapter Two offense guideline that applies is the guideline that covers the conduct the defendant is convicted of having engaged in, *i.e.,* the conduct of which the defendant is convicted that violates a specific provision listed in 18 U.S.C. 1841(b) and that results in the death of, or bodily injury to, a child in utero at the time of the offense of conviction. For example, if the defendant committed aggravated sexual abuse against the unborn child's mother and it caused the death of the child in utero, the applicable Chapter Two guideline would be § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

(B) *Upward Departure Provision.*—For offenses under 18 U.S.C. 1841(a)(1), an upward departure may be warranted if the offense level under the applicable guideline does not adequately account for the death of, or serious bodily injury to, the child in utero.'';

and inserting the following:

''*Convictions under 18 U.S.C. 1841(a)(1).*—If the defendant is convicted under 18 U.S.C. 1841(a)(1), the Chapter Two offense guideline that applies is the guideline that covers the conduct the defendant is convicted of having engaged in, *i.e.,* the conduct of which the defendant is convicted that violates a specific provision listed in 18 U.S.C. 1841(b) and that results in the death of, or bodily injury to, a child in utero at the time of the offense of conviction. For example, if the defendant committed aggravated sexual abuse against the unborn child's mother and it caused the death of the child in utero, the applicable Chapter Two guideline would be § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).''.

The Commentary to § 2X7.2 is amended by striking the Commentary captioned ''Application Note'' in its entirety as follows:

''*Application Note:*

1. *Upward Departure Provisions.*—An upward departure may be warranted in any of the following cases:

(A) The defendant engaged in a pattern of activity involving use of a submersible vessel or semi-submersible vessel described in 18 U.S.C. 2285 to facilitate other felonies.

(B) The offense involved use of the vessel as part of an ongoing criminal organization or enterprise.''.

The Commentary to § 3A1.1 captioned ''Application Notes'' is amended—

by striking Note 4 as follows:

''4. If an enhancement from subsection (b) applies and the defendant's criminal history includes a prior sentence for an offense that involved the selection of a vulnerable victim, an upward departure may be warranted.'';

and by redesignating Note 5 as Note 4.

The Commentary to § 3A1.2 captioned ''Application Notes'' is amended by striking Note 5 as follows:

''5. *Upward Departure Provision.*—If the official victim is an exceptionally high-level official, such as the President or the Vice President of the United States, an upward departure may be warranted due to the potential disruption of the governmental function.''.

The Commentary to § 3A1.3 captioned ''Application Notes'' is amended by striking Note 3 as follows:

''3. If the restraint was sufficiently egregious, an upward departure may be

warranted. *See* § 5K2.4 (Abduction or Unlawful Restraint).''.

The Commentary to § 3A1.4 captioned ''Application Notes'' is amended by striking Note 4 as follows:

''4. *Upward Departure Provision.*—By the terms of the directive to the Commission in section 730 of the Antiterrorism and Effective Death Penalty Act of 1996, the adjustment provided by this guideline applies only to federal crimes of terrorism. However, there may be cases in which (A) the offense was calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct but the offense involved, or was intended to promote, an offense other than one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B); or (B) the offense involved, or was intended to promote, one of the offenses specifically enumerated in 18 U.S.C. 2332b(g)(5)(B), but the terrorist motive was to intimidate or coerce a civilian population, rather than to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct. In such cases an upward departure would be warranted, except that the sentence resulting from such a departure may not exceed the top of the guideline range that would have resulted if the adjustment under this guideline had been applied.''.

The Commentary to § 3B1.1 captioned ''Application Notes'' is amended in Note 2 by striking ''An upward departure may be warranted, however, in the case of a defendant who did not organize, lead, manage, or supervise another participant, but who nevertheless exercised management responsibility over the property, assets, or activities of a criminal organization.''.

The Commentary to § 3B1.4 captioned ''Application Notes'' is amended by striking Note 3 as follows:

''3. If the defendant used or attempted to use more than one person less than eighteen years of age, an upward departure may be warranted.''.

The Commentary to § 3C1.2 captioned ''Application Notes'' is amended—

in Note 2 by striking ''However, where a higher degree of culpability was involved, an upward departure above the 2-level increase provided in this section may be warranted.'';

and by striking Note 6 as follows:

''6. If death or bodily injury results or the conduct posed a substantial risk of death or bodily injury to more than one person, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).''.

The Commentary to § 3D1.1 captioned ''Background'' is amended by striking ''Chapter Three, Part E (Acceptance of Responsibility)'' and inserting ''Chapter Three, Parts E (Acceptance of Responsibility) and F (Early Disposition Program),''; and by striking ''Chapter Five (Determining the Sentence)'' both places such phrase appears and inserting ''Chapter Five (Determining the Sentencing Range and Options Under the Guidelines)''.

The Commentary to § 3D1.2 captioned ''Background'' is amended by striking ''it was rejected because it probably would require departure in many cases in order to capture adequately the criminal behavior'' and inserting ''it was rejected because, in many cases, it would not adequately capture the scope and impact of the criminal behavior''.

The Commentary to § 3D1.3 captioned ''Application Notes'' is amended by striking Note 4 as follows:

''4. Sometimes the rule specified in this section may not result in incremental punishment for additional criminal acts because of the grouping rules. For example, if the defendant commits forcible criminal sexual abuse (rape), aggravated assault, and robbery, all against the same victim on a single occasion, all of the counts are grouped together under § 3D1.2. The aggravated assault will increase the guideline range for the rape. The robbery, however, will not. This is because the offense guideline for rape (§ 2A3.1) includes the most common aggravating factors, including injury, that data showed to be significant in actual practice. The additional factor of property loss ordinarily can be taken into account adequately within the guideline range for rape, which is fairly wide. However, an exceptionally large property loss in the course of the rape would provide grounds for an upward departure. *See* § 5K2.5 (Property Damage or Loss).''.

The Commentary to § 3D1.4 captioned ''Background'' is amended by striking the following:

''When Groups are of roughly comparable seriousness, each Group will represent one Unit. When the most serious Group carries an offense level substantially higher than that applicable to the other Groups, however, counting the lesser Groups fully for purposes of the table could add excessive punishment, possibly even more than those offenses would carry if prosecuted separately. To avoid this anomalous result and produce declining marginal punishment, Groups 9 or more levels less serious than the most serious Group should not be counted for purposes of the table, and that Groups 5 to 8 levels less serious should be treated as equal to one-half of a Group. Thus, if the most serious Group is at offense level 15 and if two other Groups are at level 10, there would be a total of two Units for purposes of the table (one plus one-half plus one-half) and the combined offense level would be 17. Inasmuch as the maximum increase provided in the guideline is 5 levels, departure would be warranted in the unusual case where the additional offenses resulted in a total of significantly more than 5 Units.

In unusual circumstances, the approach adopted in this section could produce adjustments for the additional counts that are inadequate or excessive. If there are several groups and the most serious offense is considerably more serious than all of the others, there will be no increase in the offense level resulting from the additional counts. Ordinarily, the court will have latitude to impose added punishment by sentencing toward the upper end of the range authorized for the most serious offense. Situations in which there will be inadequate scope for ensuring appropriate additional punishment for the additional crimes are likely to be unusual and can be handled by departure from the guidelines. Conversely, it is possible that if there are several minor offenses that are not grouped together, application of the rules in this part could result in an excessive increase in the sentence range. Again, such situations should be infrequent and can be handled through departure. An alternative method for ensuring more precise adjustments would have been to determine the appropriate offense level adjustment through a more complicated mathematical formula; that approach was not adopted because of its complexity.'';

and inserting the following:

''When Groups are of roughly comparable seriousness, each Group will represent one Unit. When the most serious Group carries an offense level substantially higher than that applicable to the other Groups, however, counting the lesser Groups fully for purposes of the table could add excessive punishment, possibly even more than those offenses would carry if prosecuted separately. To avoid this anomalous result and produce declining marginal punishment, Groups 9 or more levels less serious than the most serious Group should not be counted for purposes of the table, and that Groups 5 to 8 levels less serious should be treated as equal to one-half of a Group. Thus, if the most serious Group is at offense level 15 and if two other Groups are at level 10, there would be a total of two Units for purposes of the table (one plus one-half

plus one-half) and the combined offense level would be 17.''.

The Commentary to § 3D1.5 is amended by striking ''Chapter Five (Determining the Sentence)'' and inserting ''Chapter Five (Determining the Sentencing Range and Options Under the Guidelines)''; and by striking ''Chapter Three, Part E (Acceptance of Responsibility)'' and inserting ''Chapter Three, Parts E (Acceptance of Responsibility) and F (Early Disposition Program),''.

Chapter Three is amended by inserting at the end the following new Part F:

''Part F—Early Disposition Program

§ 3F1.1. Early Disposition Programs (Policy Statement)

Upon motion of the Government, the court may decrease the defendant's offense level pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the court resides. The level of the decrease shall be consistent with the authorized program within the filing district and the government motion filed, but shall be not more than 4 levels.

Commentary

Background: This policy statement implements the directive to the Commission in section 401(m)(2)(B) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (the 'PROTECT Act', Public Law 108–21).''.

Chapter Four, Part A is amended in the Introductory Commentary by striking ''and § 4A1.3''.

The Commentary to § 4A1.1 captioned ''Background'' is amended by striking ''In recognition of the imperfection of this measure however, § 4A1.3 authorizes the court to depart from the otherwise applicable criminal history category in certain circumstances.''.

Section 4A1.2(h) is amended by striking '', but may be considered under § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement))''.

Section 4A1.2(i) is amended by striking '', but may be considered under § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement))''.

Section 4A1.2(j) is amended by striking '', but may be considered under § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement))''.

The Commentary to § 4A1.2 captioned ''Applications Notes'' is amended—

in Note 3 by striking the following:

''*Application of 'Single Sentence' Rule (Subsection (a)(2)).*—

(A) *Predicate Offenses.*—In some cases, multiple prior sentences are treated as a single sentence for purposes of calculating the criminal history score under § 4A1.1(a), (b), and (c). However, for purposes of determining predicate offenses, a prior sentence included in the single sentence should be treated as if it received criminal history points, if it independently would have received criminal history points. Therefore, an individual prior sentence may serve as a predicate under the career offender guideline (*see* § 4B1.2(c)) or other guidelines with predicate offenses, if it independently would have received criminal history points. However, because predicate offenses may be used only if they are counted 'separately' from each other (*see* § 4B1.2(c)), no more than one prior sentence in a given single sentence may be used as a predicate offense.

For example, a defendant's criminal history includes one robbery conviction and one theft conviction. The sentences for these offenses were imposed on the same day, eight years ago, and are treated as a single sentence under § 4A1.2(a)(2). If the defendant received a one-year sentence of imprisonment for the robbery and a two-year sentence of imprisonment for the theft, to be served concurrently, a total of 3 points is added under § 4A1.1(a). Because this particular robbery met the definition of a felony crime of violence and independently would have received 2 criminal history points under § 4A1.1(b), it may serve as a predicate under the career offender guideline.

Note, however, that if the sentences in the example above were imposed thirteen years ago, the robbery independently would have received no criminal history points under § 4A1.1(b), because it was not imposed within ten years of the defendant's commencement of the instant offense. *See* § 4A1.2(e)(2). Accordingly, it may not serve as a predicate under the career offender guideline.

(B) *Upward Departure Provision.*—Treating multiple prior sentences as a single sentence may result in a criminal history score that underrepresents the seriousness of the defendant's criminal history and the danger that the defendant presents to the public. In such a case, an upward departure may be warranted. For example, if a defendant was convicted of a number of serious non-violent offenses committed on different occasions, and the resulting sentences were treated as a single sentence because either the sentences resulted from offenses contained in the same charging instrument or the defendant was sentenced for these offenses on the same day, the assignment of a single set of points may not adequately reflect the seriousness of the defendant's criminal history or the frequency with which the defendant has committed crimes.'';

and inserting the following:

''*Application of 'Single Sentence' Rule (Subsection (a)(2)).*—In some cases, multiple prior sentences are treated as a single sentence for purposes of calculating the criminal history score under § 4A1.1(a), (b), and (c). However, for purposes of determining predicate offenses, a prior sentence included in the single sentence should be treated as if it received criminal history points, if it independently would have received criminal history points. Therefore, an individual prior sentence may serve as a predicate under the career offender guideline (*see* § 4B1.2(c)) or other guidelines with predicate offenses, if it independently would have received criminal history points. However, because predicate offenses may be used only if they are counted 'separately' from each other (*see* § 4B1.2(c)), no more than one prior sentence in a given single sentence may be used as a predicate offense.

For example, a defendant's criminal history includes one robbery conviction and one theft conviction. The sentences for these offenses were imposed on the same day, eight years ago, and are treated as a single sentence under § 4A1.2(a)(2). If the defendant received a one-year sentence of imprisonment for the robbery and a two-year sentence of imprisonment for the theft, to be served concurrently, a total of 3 points is added under § 4A1.1(a). Because this particular robbery met the definition of a felony crime of violence and independently would have received 2 criminal history points under § 4A1.1(b), it may serve as a predicate under the career offender guideline.

Note, however, that if the sentences in the example above were imposed thirteen years ago, the robbery independently would have received no criminal history points under § 4A1.1(b), because it was not imposed within ten years of the defendant's commencement of the instant offense. *See* § 4A1.2(e)(2). Accordingly, it may not serve as a predicate under the career offender guideline.'';

in Note 6 by striking the following:

''Nonetheless, the criminal conduct underlying any conviction that is not counted in the criminal history score may be considered pursuant to § 4A1.3 (Departures Based on Inadequacy of

Criminal History Category (Policy Statement)).'';

and in Note 8 by striking ''If the court finds that a sentence imposed outside this time period is evidence of similar, or serious dissimilar, criminal conduct, the court may consider this information in determining whether an upward departure is warranted under § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)).''.

Chapter Four, Part A is amended by striking § 4A1.3 and its accompanying commentary in its entirety as follows:

''§ 4A1.3. Departures Based on Inadequacy of Criminal History Category (Policy Statement)

(a) *Upward Departures.*—

(1) *Standard for Upward Departure.*—If reliable information indicates that the defendant's criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, an upward departure may be warranted.

(2) *Types of Information Forming the Basis for Upward Departure.*—The information described in subsection (a)(1) may include information concerning the following:

(A) Prior sentence(s) not used in computing the criminal history category (*e.g.,* sentences for foreign and tribal convictions).

(B) Prior sentence(s) of substantially more than one year imposed as a result of independent crimes committed on different occasions.

(C) Prior similar misconduct established by a civil adjudication or by a failure to comply with an administrative order.

(D) Whether the defendant was pending trial or sentencing on another charge at the time of the instant offense.

(E) Prior similar adult criminal conduct not resulting in a criminal conviction.

(3) *Prohibition.*—A prior arrest record itself shall not be considered for purposes of an upward departure under this policy statement.

(4) *Determination of Extent of Upward Departure.*—

(A) *In General.*—Except as provided in subdivision (B), the court shall determine the extent of a departure under this subsection by using, as a reference, the criminal history category applicable to defendants whose criminal history or likelihood to recidivate most closely resembles that of the defendant's.

(B) *Upward Departures From Category VI.*—In a case in which the court determines that the extent and nature of the defendant's criminal history, taken together, are sufficient to warrant an upward departure from Criminal History Category VI, the court should structure the departure by moving incrementally down the sentencing table to the next higher offense level in Criminal History Category VI until it finds a guideline range appropriate to the case.

(b) *Downward Departures.*—

(1) *Standard for Downward Departure.*—If reliable information indicates that the defendant's criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, a downward departure may be warranted.

(2) *Prohibitions.*—

(A) *Criminal History Category I.*—Unless otherwise specified, a departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited.

(B) *Armed Career Criminal and Repeat and Dangerous Sex Offender.*—A downward departure under this subsection is prohibited for (i) an armed career criminal within the meaning of § 4B1.4 (Armed Career Criminal); and (ii) a repeat and dangerous sex offender against minors within the meaning of § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors).

(3) *Limitations.*—

(A) *Limitation on Extent of Downward Departure for Career Offender.*—The extent of a downward departure under this subsection for a career offender within the meaning of § 4B1.1 (Career Offender) may not exceed one criminal history category.

(B) *Limitation on Applicability of § 5C1.2 in Event of Downward Departure.*—A defendant who receives a downward departure under this subsection does not meet the criminal history requirement of subsection (a)(1) of § 5C1.2 (Limitation on Applicability of Statutory Maximum Sentences in Certain Cases) if the defendant did not otherwise meet such requirement before receipt of the downward departure.

(c) *Written Specification of Basis for Departure.*—In departing from the otherwise applicable criminal history category under this policy statement, the court shall specify in writing the following:

(1) In the case of an upward departure, the specific reasons why the applicable criminal history category substantially under-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

(2) In the case of a downward departure, the specific reasons why the applicable criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes.

Commentary

Application Notes:

1. *Definitions.*—For purposes of this policy statement, the terms 'depart', 'departure', 'downward departure', and 'upward departure' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

2. *Upward Departures.*—

(A) *Examples.*—An upward departure from the defendant's criminal history category may be warranted based on any of the following circumstances:

(i) A previous foreign sentence for a serious offense.

(ii) Receipt of a prior consolidated sentence of ten years for a series of serious assaults.

(iii) A similar instance of large scale fraudulent misconduct established by an adjudication in a Securities and Exchange Commission enforcement proceeding.

(iv) Commission of the instant offense while on bail or pretrial release for another serious offense.

(B) *Upward Departures From Criminal History Category VI.*—In the case of an egregious, serious criminal record in which even the guideline range for Criminal History Category VI is not adequate to reflect the seriousness of the defendant's criminal history, a departure above the guideline range for a defendant with Criminal History Category VI may be warranted. In determining whether an upward departure from Criminal History Category VI is warranted, the court should consider that the nature of the prior offenses rather than simply their number is often more indicative of the seriousness of the defendant's criminal record. For example, a defendant with five prior sentences for very large-scale fraud offenses may have 15 criminal history points, within the range of points typical for Criminal History Category VI, yet have a substantially more serious criminal history overall because of the nature of the prior offenses.

(C) *Upward Departures Based on Tribal Court Convictions.*—In determining whether, or to what extent, an upward departure based on a tribal court conviction is appropriate, the court shall consider the factors set forth in § 4A1.3(a) above and, in addition,

may consider relevant factors such as the following:

(i) The defendant was represented by a lawyer, had the right to a trial by jury, and received other due process protections consistent with those provided to criminal defendants under the United States Constitution.

(ii) The defendant received the due process protections required for criminal defendants under the Indian Civil Rights Act of 1968, Public Law 90–284, as amended.

(iii) The tribe was exercising expanded jurisdiction under the Tribal Law and Order Act of 2010, Public Law 111–211.

(iv) The tribe was exercising expanded jurisdiction under the Violence Against Women Reauthorization Act of 2013, Public Law 113–4.

(v) The tribal court conviction is not based on the same conduct that formed the basis for a conviction from another jurisdiction that receives criminal history points pursuant to this chapter.

(vi) The tribal court conviction is for an offense that otherwise would be counted under § 4A1.2 (Definitions and Instructions for Computing Criminal History).

3. *Downward Departures.*—

(A) *Examples.*—A downward departure from the defendant's criminal history category may be warranted based on any of the following circumstances:

(i) The defendant had two minor misdemeanor convictions close to ten years prior to the instant offense and no other evidence of prior criminal behavior in the intervening period.

(ii) The defendant received criminal history points from a sentence for possession of marihuana for personal use, without an intent to sell or distribute it to another person.

(B) *Downward Departures From Criminal History Category I.*—A departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited under subsection (b)(2)(A), unless otherwise specified.

Background: This policy statement recognizes that the criminal history score is unlikely to take into account all the variations in the seriousness of criminal history that may occur. For example, a defendant with an extensive record of serious, assaultive conduct who had received what might now be considered extremely lenient treatment in the past might have the same criminal history category as a defendant who had a record of less serious conduct. Yet, the first defendant's criminal history clearly may be more serious. This may be particularly true in the case of younger defendants (*e.g.,* defendants in their early twenties or younger) who are more likely to have received repeated lenient treatment, yet who may actually pose a greater risk of serious recidivism than older defendants. This policy statement authorizes the consideration of a departure from the guidelines in the limited circumstances where reliable information indicates that the criminal history category does not adequately reflect the seriousness of the defendant's criminal history or likelihood of recidivism, and provides guidance for the consideration of such departures.''.

The Commentary to § 4B1.1 captioned ''Application Notes'' is amended by striking Note 4 as follows:

''4. *Departure Provision for State Misdemeanors.*—In a case in which one or both of the defendant's 'two prior felony convictions' is based on an offense that was classified as a misdemeanor at the time of sentencing for the instant federal offense, application of the career offender guideline may result in a guideline range that substantially overrepresents the seriousness of the defendant's criminal history or substantially overstates the seriousness of the instant offense. In such a case, a downward departure may be warranted without regard to the limitation in § 4A1.3(b)(3)(A).''.

The Commentary to § 4B1.2 captioned ''Application Notes'' is amended by striking Note 4 as follows:

''4. *Upward Departure for Burglary Involving Violence.*—There may be cases in which a burglary involves violence, but does not qualify as a 'crime of violence' as defined in § 4B1.2(a) and, as a result, the defendant does not receive a higher offense level or higher Criminal History Category that would have applied if the burglary qualified as a 'crime of violence.' In such a case, an upward departure may be appropriate.''.

The Commentary to § 4B1.4 captioned ''Application Notes'' is amended in Note 2 by striking the following:

''In a few cases, the rule provided in the preceding paragraph may result in a guideline range that, when combined with the mandatory consecutive sentence under 18 U.S.C. 844(h), § 924(c), or § 929(a), produces a total maximum penalty that is less than the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a) (*i.e.,* the guideline range that would have resulted if subsections (b)(3)(A) and (c)(2) had been applied). In such a case, an upward departure may be warranted so that the conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a) does not result in a decrease in the total punishment. An upward departure under this paragraph shall not exceed the maximum of the guideline range that would have resulted had there not been a count of conviction under 18 U.S.C. 844(h), § 924(c), or § 929(a).''.

The Commentary to § 4B1.4 captioned ''Background'' is amended by striking ''In some cases, the criminal history category may not adequately reflect the defendant's criminal history; *see* § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)).''.

The Commentary to § 4C1.1 captioned ''Application Notes'' is amended—in the heading by striking ''Notes'' and inserting ''Note''; and by striking Note 2 as follows:

''2. *Upward Departure.*—An upward departure may be warranted if an adjustment under this guideline substantially underrepresents the seriousness of the defendant's criminal history. For example, an upward departure may be warranted if the defendant has a prior conviction or other comparable judicial disposition for an offense that involved violence or credible threats of violence.''.

Chapter Five is amended—

in the heading by striking ''Determining the Sentence'' and inserting ''Determining the Sentencing Range and Options Under the Guidelines'';

and in the Introductory Commentary by striking the following:

'' For certain categories of offenses and offenders, the guidelines permit the court to impose either imprisonment or some other sanction or combination of sanctions. In determining the type of sentence to impose, the sentencing judge should consider the nature and seriousness of the conduct, the statutory purposes of sentencing, and the pertinent offender characteristics. A sentence is within the guidelines if it complies with each applicable section of this chapter. The court should impose a sentence sufficient, but not greater than necessary, to comply with the statutory purposes of sentencing. 18 U.S.C. 3553(a).'';

and inserting the following:

'' Chapter Five sets forth the steps used to determine the applicable sentencing range based upon the guideline calculations made in Chapters Two through Four. Additionally, the provisions in this chapter set forth the sentencing requirements and options under the guidelines related to probation, imprisonment, supervision

conditions, fines, and restitution for the particular guideline range. For example, for certain categories of offenses and offenders, the guidelines permit the court to impose either imprisonment or some other sanction or combination of sanctions. After applying the provisions of this chapter to determine the sentencing options recommended under the guidelines pursuant to subsection (a) of § 1B1.1 (Application Instructions), the court shall consider the other applicable factors in 18 U.S.C. 3553(a) to determine the length and type of sentence that is sufficient but not greater than necessary. A sentence is within the guidelines if it complies with each applicable section of this chapter.''.

The Commentary to § 5B1.1 captioned ''Applications Notes'' is amended by inserting at the end the following new Note 3—

''3. *Factors To Be Considered.*—

(A) *Statutory Factors.*—The court, in determining whether to impose a term of probation, and, if a term of probation is to be imposed, in determining the length of the term and the conditions of probation, is required by statute to consider the factors set forth in 18 U.S.C. 3553(a) to the extent that they are applicable. *See* 18 U.S.C. 3562(a).

(B) *Substance Abuse.*—In a case in which a defendant sentenced to probation is an abuser of controlled substances or alcohol, it is recommended that the court consider imposing a condition requiring the defendant to participate in a program approved by the United States Probation Office for substance abuse may be appropriate. *See* § 5B1.3(d)(4).

(C) *Domestic Violence.*—If the defendant is convicted for the first time of a domestic violence crime as defined in 18 U.S.C. 3561(b), a term of probation is required by statute if the defendant is not sentenced to a term of imprisonment. *See* 18 U.S.C. 3561(b). Such a defendant is also required by statute to attend an approved rehabilitation program, if available within a 50-mile radius of the legal residence of the defendant. *See* 18 U.S.C. 3563(a); § 5B1.3(a)(4).

(D) *Mental and Emotional Conditions.*—In a case in which a defendant sentenced to probation is in need of psychological or psychiatric treatment, it is recommended that the court consider imposing a condition requiring that the defendant participate in a mental health program approved by the United States Probation Office. *See* § 5B1.3(d)(5).

(E) *Education and Vocational Skills.*—Education and vocational skills may be relevant in determining the conditions of probation for rehabilitative purposes, for public protection by restricting activities that allow for the utilization of a certain skill, or in determining the appropriate type of community service.

(F) *Employment Record.*—A defendant's employment record may be relevant in determining the conditions of probation *(e.g.,* the appropriate hours of home detention).''.

The Commentary to § 5C1.1 captioned ''Application Notes'' is amended—

by striking Note 6 as follows:

''6. *Departures Based on Specific Treatment Purpose.*—There may be cases in which a departure from the sentencing options authorized for Zone C of the Sentencing Table (under which at least half the minimum term must be satisfied by imprisonment) to the sentencing options authorized for Zone B of the Sentencing Table (under which all or most of the minimum term may be satisfied by intermittent confinement, community confinement, or home detention instead of imprisonment) is appropriate to accomplish a specific treatment purpose. Such a departure should be considered only in cases where the court finds that (A) the defendant is an abuser of narcotics, other controlled substances, or alcohol, or suffers from a significant mental illness, and (B) the defendant's criminality is related to the treatment problem to be addressed.

In determining whether such a departure is appropriate, the court should consider, among other things, (1) the likelihood that completion of the treatment program will successfully address the treatment problem, thereby reducing the risk to the public from further crimes of the defendant, and (2) whether imposition of less imprisonment than required by Zone C will increase the risk to the public from further crimes of the defendant.

Examples: The following examples both assume the applicable guideline range is 12–18 months and the court departs in accordance with this application note. Under Zone C rules, the defendant must be sentenced to at least six months imprisonment. (1) The defendant is a nonviolent drug offender in Criminal History Category I and probation is not prohibited by statute. The court departs downward to impose a sentence of probation, with twelve months of intermittent confinement, community confinement, or home detention and participation in a substance abuse treatment program as conditions of probation. (2) The defendant is convicted of a Class A or B felony, so probation is prohibited by statute (*see* § 5B1.1(b)). The court departs downward to impose a sentence of one month imprisonment, with eleven months in community confinement or home detention and participation in a substance abuse treatment program as conditions of supervised release.'';

by redesignating Notes 7 through 10 as Notes 6 through 9, respectively;

and in Note 9 (as so redesignated) by striking the following:

''*Zero-Point Offenders.*—

(A) *Zero-Point Offenders in Zones A and B of the Sentencing Table.*—If the defendant received an adjustment under § 4C1.1 (Adjustment for Certain Zero-Point Offenders) and the defendant's applicable guideline range is in Zone A or B of the Sentencing Table, a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3), is generally appropriate. *See* 28 U.S.C. 994(j).

(B) *Departure for Cases Where the Applicable Guideline Range Overstates the Gravity of the Offense.*—A departure, including a departure to a sentence other than a sentence of imprisonment, may be appropriate if the defendant received an adjustment under § 4C1.1 (Adjustment for Certain Zero-Point Offenders) and the defendant's applicable guideline range overstates the gravity of the offense because the offense of conviction is not a crime of violence or an otherwise serious offense. *See* 28 U.S.C. 994(j).'';

and inserting the following:

''*Zero-Point Offenders in Zones A and B of the Sentencing Table.*—If the defendant received an adjustment under § 4C1.1 (Adjustment for Certain Zero-Point Offenders) and the defendant's applicable guideline range is in Zone A or B of the Sentencing Table, a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3), is generally appropriate. *See* 28 U.S.C. 994(j).''.

The Commentary to § 5D1.1 captioned ''Application Notes'' is amended—

in Note 1 by striking ''The court may depart from this guideline and not impose a term of supervised release'' and inserting ''The court need not impose a term of supervised release'';

and in Note 3—

in subparagraph (C), by striking ''*See* § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction)'' and inserting ''*See* § 5D1.3(d)(4)'';

and by inserting at the end the following new subparagraphs (E), (F), and (G):

''(E) *Mental and Emotional Conditions.*—In a case in which a defendant sentenced to imprisonment is in need of psychological or psychiatric treatment, it is recommended that the

court consider imposing a condition requiring that the defendant participate in a mental health program approved by the United States Probation Office. *See* 5D1.3(d)(5).

(F) *Education and Vocational Skills.*—Education and vocational skills may be relevant in determining the conditions of supervised release for rehabilitative purposes, for public protection by restricting activities that allow for the utilization of a certain skill, or in determining the appropriate type of community service.

(G) *Employment Record.*—A defendant's employment record may be relevant in determining the conditions of supervised release *(e.g.,* the appropriate hours of home detention).''.

Section 5D1.3(d)(4) is amended by inserting after ''possess alcohol.'' the following: ''If participation in a substance abuse program is required, the length of the term of supervised release should take into account the length of time necessary for the probation office to judge the success of the program.''.

The Commentary to § 5E1.2 captioned ''Applications Notes'' is amended—

by striking Note 4 as follows:

''4. The Commission envisions that for most defendants, the maximum of the guideline fine range from subsection (c) will be at least twice the amount of gain or loss resulting from the offense. Where, however, two times either the amount of gain to the defendant or the amount of loss caused by the offense exceeds the maximum of the fine guideline, an upward departure from the fine guideline may be warranted.

Moreover, where a sentence within the applicable fine guideline range would not be sufficient to ensure both the disgorgement of any gain from the offense that otherwise would not be disgorged (*e.g.,* by restitution or forfeiture) and an adequate punitive fine, an upward departure from the fine guideline range may be warranted.'';

and by redesignating Notes 5, 6, and 7 as Notes 4, 5, and 6, respectively.

The Commentary to § 5G1.1 is amended by striking ''; a sentence of less than 48 months would be a guideline departure''; and by striking ''; a sentence of more than 60 months would be a guideline departure''.

The Commentary to § 5G1.3 captioned ''Application Notes'' is amended—

by striking Note 4(E) as follows:

''(E) *Downward Departure.*—Unlike subsection (b), subsection (d) does not authorize an adjustment of the sentence for the instant offense for a period of imprisonment already served on the undischarged term of imprisonment. However, in an extraordinary case involving an undischarged term of imprisonment under subsection (d), it may be appropriate for the court to downwardly depart. This may occur, for example, in a case in which the defendant has served a very substantial period of imprisonment on an undischarged term of imprisonment that resulted from conduct only partially within the relevant conduct for the instant offense. In such a case, a downward departure may be warranted to ensure that the combined punishment is not increased unduly by the fortuity and timing of separate prosecutions and sentencings. Nevertheless, it is intended that a departure pursuant to this application note result in a sentence that ensures a reasonable incremental punishment for the instant offense of conviction.

To avoid confusion with the Bureau of Prisons' exclusive authority provided under 18 U.S.C. 3585(b) to grant credit for time served under certain circumstances, the Commission recommends that any downward departure under this application note be clearly stated on the Judgment in a Criminal Case Order as a downward departure pursuant to § 5G1.3(d), rather than as a credit for time served.'';

and by striking Note 5 as follows:

''5. *Downward Departure Provision.*—In the case of a discharged term of imprisonment, a downward departure is not prohibited if the defendant (A) has completed serving a term of imprisonment; and (B) subsection (b) would have provided an adjustment had that completed term of imprisonment been undischarged at the time of sentencing for the instant offense. *See* § 5K2.23 (Discharged Terms of Imprisonment).''.

Chapter Five is amended by striking Part H in its entirety as follows:

''Part H—Specific Offender Characteristics

Introductory Commentary

This part addresses the relevance of certain specific offender characteristics in sentencing. The Sentencing Reform Act (the 'Act') contains several provisions regarding specific offender characteristics:

First, the Act directs the Commission to ensure that the guidelines and policy statements 'are entirely neutral' as to five characteristics—race, sex, national origin, creed, and socioeconomic status. *See* 28 U.S.C. 994(d).

Second, the Act directs the Commission to consider whether eleven specific offender characteristics, 'among others', have any relevance to the nature, extent, place of service, or other aspects of an appropriate sentence, and to take them into account in the guidelines and policy statements only to the extent that they do have relevance. *See* 28 U.S.C. 994(d).

Third, the Act directs the Commission to ensure that the guidelines and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the 'general inappropriateness' of considering five of those characteristics—education; vocational skills; employment record; family ties and responsibilities; and community ties. *See* 28 U.S.C. 994(e).

Fourth, the Act also directs the sentencing court, in determining the particular sentence to be imposed, to consider, among other factors, 'the history and characteristics of the defendant'. *See* 18 U.S.C. 3553(a)(1).

Specific offender characteristics are taken into account in the guidelines in several ways. One important specific offender characteristic is the defendant's criminal history, *see* 28 U.S.C. 994(d)(10), which is taken into account in the guidelines in Chapter Four (Criminal History and Criminal Livelihood). *See* § 5H1.8 (Criminal History). Another specific offender characteristic in the guidelines is the degree of dependence upon criminal history for a livelihood, *see* 28 U.S.C. 994(d)(11), which is taken into account in Chapter Four, Part B (Career Offenders and Criminal Livelihood). *See* § 5H1.9 (Dependence upon Criminal Activity for a Livelihood). Other specific offender characteristics are accounted for elsewhere in this manual. *See, e.g.,* §§ 2C1.1(a)(1) and 2C1.2(a)(1) (providing alternative base offense levels if the defendant was a public official); 3B1.3 (Abuse of Position of Trust or Use of Special Skill); and 3E1.1 (Acceptance of Responsibility).

The Supreme Court has emphasized that the advisory guideline system should 'continue to move sentencing in Congress' preferred direction, helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary.' *See United States* v. *Booker,* 543 U.S. 220, 264–65 (2005). Although the court must consider 'the history and characteristics of the defendant' among other factors, *see* 18 U.S.C. 3553(a), in order to avoid unwarranted sentencing disparities the court should not give them excessive weight. Generally, the most appropriate use of specific offender characteristics is to consider them not as a reason for a sentence outside the applicable guideline range but for other reasons, such as in determining the sentence within the applicable guideline range, the type of

sentence (*e.g.,* probation or imprisonment) within the sentencing options available for the applicable Zone on the Sentencing Table, and various other aspects of an appropriate sentence. To avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct, *see* 18 U.S.C. 3553(a)(6), 28 U.S.C. 991(b)(1)(B), the guideline range, which reflects the defendant's criminal conduct and the defendant's criminal history, should continue to be 'the starting point and the initial benchmark.' *Gall* v. *United States,* 552 U.S. 38, 49 (2007).

Accordingly, the purpose of this part is to provide sentencing courts with a framework for addressing specific offender characteristics in a reasonably consistent manner. Using such a framework in a uniform manner will help 'secure nationwide consistency,' *see Gall* v. *United States,* 552 U.S. 38, 49 (2007), 'avoid unwarranted sentencing disparities,' *see* 28 U.S.C. 991(b)(1)(B), 18 U.S.C. 3553(a)(6), 'provide certainty and fairness,' *see* 28 U.S.C. 991(b)(1)(B), and 'promote respect for the law,' *see* 18 U.S.C. 3553(a)(2)(A).

This part allocates specific offender characteristics into three general categories.

In the first category are specific offender characteristics the consideration of which Congress has prohibited (*e.g.,* § 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status)) or that the Commission has determined should be prohibited.

In the second category are specific offender characteristics that Congress directed the Commission to take into account in the guidelines only to the extent that they have relevance to sentencing. *See* 28 U.S.C. 994(d). For some of these, the policy statements indicate that these characteristics may be relevant in determining whether a sentence outside the applicable guideline range is warranted (*e.g.,* age; mental and emotional condition; physical condition). These characteristics may warrant a sentence outside the applicable guideline range if the characteristic, individually or in combination with other such characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines. These specific offender characteristics also may be considered for other reasons, such as in determining the sentence within the applicable guideline range, the type of sentence (*e.g.,* probation or imprisonment) within the sentencing options available for the applicable Zone on the Sentencing Table, and various other aspects of an appropriate sentence.

In the third category are specific offender characteristics that Congress directed the Commission to ensure are reflected in the guidelines and policy statements as generally inappropriate in recommending a term of imprisonment or length of a term of imprisonment. *See* 28 U.S.C. 994(e). The policy statements indicate that these characteristics are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range. Unless expressly stated, this does not mean that the Commission views such circumstances as necessarily inappropriate to the determination of the sentence within the applicable guideline range, the type of sentence (*e.g.,* probation or imprisonment) within the sentencing options available for the applicable Zone on the Sentencing Table, or various other aspects of an appropriate sentence (*e.g.,* the appropriate conditions of probation or supervised release). Furthermore, although these circumstances are not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range, they may be relevant to this determination in exceptional cases. They also may be relevant if a combination of such circumstances makes the case an exceptional one, but only if each such circumstance is identified as an affirmative ground for departure and is present in the case to a substantial degree. *See* § 5K2.0 (Grounds for Departure).

As with the other provisions in this manual, these policy statements 'are evolutionary in nature'. *See* Chapter One, Part A, Subpart 2 (Continuing Evolution and Role of the Guidelines); 28 U.S.C. 994(o). The Commission expects, and the Sentencing Reform Act contemplates, that continuing research, experience, and analysis will result in modifications and revisions.

The nature, extent, and significance of specific offender characteristics can involve a range of considerations. The Commission will continue to provide information to the courts on the relevance of specific offender characteristics in sentencing, as the Sentencing Reform Act contemplates. *See, e.g.,* 28 U.S.C. 995(a)(12)(A) (the Commission serves as a 'clearinghouse and information center' on federal sentencing). Among other things, this may include information on the use of specific offender characteristics, individually and in combination, in determining the sentence to be imposed (including, where available, information on rates of use, criteria for use, and reasons for use); the relationship, if any, between specific offender characteristics and (A) the 'forbidden factors' specified in 28 U.S.C. 994(d) and (B) the 'discouraged factors' specified in 28 U.S.C. 994(e); and the relationship, if any, between specific offender characteristics and the statutory purposes of sentencing.

§ 5H1.1. Age (Policy Statement)

Age may be relevant in determining whether a departure is warranted.

Age may be a reason to depart downward in a case in which the defendant is elderly and infirm and where a form of punishment such as home confinement might be equally efficient as and less costly than incarceration.

A downward departure also may be warranted due to the defendant's youthfulness at the time of the offense or prior offenses. Certain risk factors may affect a youthful individual's development into the mid-20's and contribute to involvement in criminal justice systems, including environment, adverse childhood experiences, substance use, lack of educational opportunities, and familial relationships. In addition, youthful individuals generally are more impulsive, risk-seeking, and susceptible to outside influence as their brains continue to develop into young adulthood. Youthful individuals also are more amenable to rehabilitation.

The age-crime curve, one of the most consistent findings in criminology, demonstrates that criminal behavior tends to decrease with age. Age-appropriate interventions and other protective factors may promote desistance from crime. Accordingly, in an appropriate case, the court may consider whether a form of punishment other than imprisonment might be sufficient to meet the purposes of sentencing.

Physical condition, which may be related to age, is addressed at § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction).

§ 5H1.2. Education and Vocational Skills (Policy Statement)

Education and vocational skills are not ordinarily relevant in determining whether a departure is warranted, but the extent to which a defendant may have misused special training or education to facilitate criminal activity is an express guideline factor. *See*

§ 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

Education and vocational skills may be relevant in determining the conditions of probation or supervised release for rehabilitative purposes, for public protection by restricting activities that allow for the utilization of a certain skill, or in determining the appropriate type of community service.

§ 5H1.3. Mental and Emotional Conditions (Policy Statement)

Mental and emotional conditions may be relevant in determining whether a departure is warranted, if such conditions, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines. *See also* Chapter Five, Part K, Subpart 2 (Other Grounds for Departure).

In certain cases a downward departure may be appropriate to accomplish a specific treatment purpose. *See* § 5C1.1, Application Note 7.

Mental and emotional conditions may be relevant in determining the conditions of probation or supervised release; *e.g.,* participation in a mental health program (*see* §§ 5B1.3(d)(5) and 5D1.3(d)(5)).

§ 5H1.4. Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction (Policy Statement)

Physical condition or appearance, including physique, may be relevant in determining whether a departure is warranted, if the condition or appearance, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines. An extraordinary physical impairment may be a reason to depart downward; *e.g.,* in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.

Drug or alcohol dependence or abuse ordinarily is not a reason for a downward departure. Substance abuse is highly correlated to an increased propensity to commit crime. Due to this increased risk, it is highly recommended that a defendant who is incarcerated also be sentenced to supervised release with a requirement that the defendant participate in an appropriate substance abuse program (*see* § 5D1.3(d)(4)). If participation in a substance abuse program is required, the length of supervised release should take into account the length of time necessary for the probation office to judge the success of the program.

In certain cases a downward departure may be appropriate to accomplish a specific treatment purpose. *See* § 5C1.1, Application Note 7.

In a case in which a defendant who is a substance abuser is sentenced to probation, it is strongly recommended that the conditions of probation contain a requirement that the defendant participate in an appropriate substance abuse program (*see* § 5B1.3(d)(4)).

Addiction to gambling is not a reason for a downward departure.

§ 5H1.5. Employment Record (Policy Statement)

Employment record is not ordinarily relevant in determining whether a departure is warranted.

Employment record may be relevant in determining the conditions of probation or supervised release (*e.g.,* the appropriate hours of home detention).

§ 5H1.6. Family Ties and Responsibilities (Policy Statement)

In sentencing a defendant convicted of an offense other than an offense described in the following paragraph, family ties and responsibilities are not ordinarily relevant in determining whether a departure may be warranted.

In sentencing a defendant convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, family ties and responsibilities and community ties are not relevant in determining whether a sentence should be below the applicable guideline range.

Family responsibilities that are complied with may be relevant to the determination of the amount of restitution or fine.

Commentary

Application Note:

1. *Circumstances to Consider.*—

(A) *In General.*—In determining whether a departure is warranted under this policy statement, the court shall consider the following non-exhaustive list of circumstances:

(i) The seriousness of the offense.

(ii) The involvement in the offense, if any, of members of the defendant's family.

(iii) The danger, if any, to members of the defendant's family as a result of the offense.

(B) *Departures Based on Loss of Caretaking or Financial Support.*—A departure under this policy statement based on the loss of caretaking or financial support of the defendant's family requires, in addition to the court's consideration of the non-exhaustive list of circumstances in subdivision (A), the presence of the following circumstances:

(i) The defendant's service of a sentence within the applicable guideline range will cause a substantial, direct, and specific loss of essential caretaking, or essential financial support, to the defendant's family.

(ii) The loss of caretaking or financial support substantially exceeds the harm ordinarily incident to incarceration for a similarly situated defendant. For example, the fact that the defendant's family might incur some degree of financial hardship or suffer to some extent from the absence of a parent through incarceration is not in itself sufficient as a basis for departure because such hardship or suffering is of a sort ordinarily incident to incarceration.

(iii) The loss of caretaking or financial support is one for which no effective remedial or ameliorative programs reasonably are available, making the defendant's caretaking or financial support irreplaceable to the defendant's family.

(iv) The departure effectively will address the loss of caretaking or financial support.

Background: Section 401(b)(4) of Public Law 108–21 directly amended this policy statement to add the second paragraph, effective April 30, 2003.

§ 5H1.7. Role in the Offense (Policy Statement)

A defendant's role in the offense is relevant in determining the applicable guideline range (*see* Chapter Three, Part B (Role in the Offense)) but is not a basis for departing from that range (*see* subsection (d) of § 5K2.0 (Grounds for Departures)).

§ 5H1.8. Criminal History (Policy Statement)

A defendant's criminal history is relevant in determining the applicable criminal history category. *See* Chapter Four (Criminal History and Criminal Livelihood). For grounds of departure based on the defendant's criminal history, *see* § 4A1.3 (Departures Based on Inadequacy of Criminal History Category).

§ 5H1.9. Dependence Upon Criminal Activity for a Livelihood (Policy Statement)

The degree to which a defendant depends upon criminal activity for a livelihood is relevant in determining the appropriate sentence. *See* Chapter Four,

Part B (Career Offenders and Criminal Livelihood).

§ 5H1.10. Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status (Policy Statement)

These factors are not relevant in the determination of a sentence.

§ 5H1.11. Military, Civic, Charitable, or Public Service; Employment-Related Contributions; Record of Prior Good Works (Policy Statement)

Military service may be relevant in determining whether a departure is warranted, if the military service, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines.

Civic, charitable, or public service; employment-related contributions; and similar prior good works are not ordinarily relevant in determining whether a departure is warranted.

§ 5H1.12. Lack of Guidance as a Youth and Similar Circumstances (Policy Statement)

Lack of guidance as a youth and similar circumstances indicating a disadvantaged upbringing are not relevant grounds in determining whether a departure is warranted.''.

Chapter Five, Part K is amended in the heading by striking ''DEPARTURES'' and inserting ''ASSISTANCE TO AUTHORITIES''.

Chapter Five, Part K, Subpart 1 is amended by striking the heading as follows:

''1. Substantial Assistance to Authorities''

Section 5K1.1 is amended by striking ''the court may depart from the guidelines'' and inserting ''a sentence that is below the otherwise applicable guideline range may be appropriate''.

Chapter Five, Part K is amended by striking Subparts 2 and 3 in their entirety as follows:

''2. Other Grounds for Departure

§ 5K2.0. Grounds for Departure (Policy Statement)

(a) *Upward Departures in General and Downward Departures in Criminal Cases Other Than Child Crimes and Sexual Offenses.*—

(1) *In General.*—The sentencing court may depart from the applicable guideline range if—

(A) in the case of offenses other than child crimes and sexual offenses, the court finds, pursuant to 18 U.S.C. 3553(b)(1), that there exists an aggravating or mitigating circumstance; or

(B) in the case of child crimes and sexual offenses, the court finds, pursuant to 18 U.S.C. 3553(b)(2)(A)(i), that there exists an aggravating circumstance,

of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that, in order to advance the objectives set forth in 18 U.S.C. 3553(a)(2), should result in a sentence different from that described.

(2) *Departures Based on Circumstances of a Kind Not Adequately Taken Into Consideration.*—

(A) *Identified Circumstances.*—This subpart (Chapter Five, Part K, Subpart 2 (Other Grounds for Departure)) identifies some of the circumstances that the Commission may have not adequately taken into consideration in determining the applicable guideline range (*e.g.,* as a specific offense characteristic or other adjustment). If any such circumstance is present in the case and has not adequately been taken into consideration in determining the applicable guideline range, a departure consistent with 18 U.S.C. 3553(b) and the provisions of this subpart may be warranted.

(B) *Unidentified Circumstances.*—A departure may be warranted in the exceptional case in which there is present a circumstance that the Commission has not identified in the guidelines but that nevertheless is relevant to determining the appropriate sentence.

(3) *Departures Based on Circumstances Present to a Degree Not Adequately Taken into Consideration.*—A departure may be warranted in an exceptional case, even though the circumstance that forms the basis for the departure is taken into consideration in determining the guideline range, if the court determines that such circumstance is present in the offense to a degree substantially in excess of, or substantially below, that which ordinarily is involved in that kind of offense.

(4) *Departures Based on Not Ordinarily Relevant Offender Characteristics and Other Circumstances.*—An offender characteristic or other circumstance identified in Chapter Five, Part H (Offender Characteristics) or elsewhere in the guidelines as not ordinarily relevant in determining whether a departure is warranted may be relevant to this determination only if such offender characteristic or other circumstance is present to an exceptional degree.

(b) *Downward Departures in Child Crimes and Sexual Offenses.*—Under 18 U.S.C. 3553(b)(2)(A)(ii), the sentencing court may impose a sentence below the range established by the applicable guidelines only if the court finds that there exists a mitigating circumstance of a kind, or to a degree, that—

(1) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, United States Code, taking account of any amendments to such sentencing guidelines or policy statements by act of Congress;

(2) has not adequately been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(3) should result in a sentence different from that described.

The grounds enumerated in this Part K of Chapter Five are the sole grounds that have been affirmatively and specifically identified as a permissible ground of downward departure in these sentencing guidelines and policy statements. Thus, notwithstanding any other reference to authority to depart downward elsewhere in this Sentencing Manual, a ground of downward departure has not been affirmatively and specifically identified as a permissible ground of downward departure within the meaning of section 3553(b)(2) unless it is expressly enumerated in this Part K as a ground upon which a downward departure may be granted.

(c) *Limitation on Departures Based on Multiple Circumstances.*—The court may depart from the applicable guideline range based on a combination of two or more offender characteristics or other circumstances, none of which independently is sufficient to provide a basis for departure, only if—

(1) such offender characteristics or other circumstances, taken together, make the case an exceptional one; and

(2) each such offender characteristic or other circumstance is—

(A) present to a substantial degree; and

(B) identified in the guidelines as a permissible ground for departure, even if such offender characteristic or other circumstance is not ordinarily relevant to a determination of whether a departure is warranted.

(d) *Prohibited Departures.*—Notwithstanding subsections (a) and (b) of this policy statement, or any other provision in the guidelines, the court may not depart from the applicable guideline range based on any of the following circumstances:

(1) Any circumstance specifically prohibited as a ground for departure in §§ 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status), 5H1.12 (Lack of Guidance as a Youth and Similar Circumstances), the last sentence of 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction), and the last sentence of 5K2.12 (Coercion and Duress).

(2) The defendant's acceptance of responsibility for the offense, which may be taken into account only under § 3E1.1 (Acceptance of Responsibility).

(3) The defendant's aggravating or mitigating role in the offense, which may be taken into account only under § 3B1.1 (Aggravating Role) or § 3B1.2 (Mitigating Role), respectively.

(4) The defendant's decision, in and of itself, to plead guilty to the offense or to enter a plea agreement with respect to the offense (*i.e.,* a departure may not be based merely on the fact that the defendant decided to plead guilty or to enter into a plea agreement, but a departure may be based on justifiable, non-prohibited reasons as part of a sentence that is recommended, or agreed to, in the plea agreement and accepted by the court. *See* § 6B1.2 (Standards for Acceptance of Plea Agreement).

(5) The defendant's fulfillment of restitution obligations only to the extent required by law including the guidelines (*i.e.,* a departure may not be based on unexceptional efforts to remedy the harm caused by the offense).

(6) Any other circumstance specifically prohibited as a ground for departure in the guidelines.

(e) *Requirement of Specific Written Reasons for Departure.*—If the court departs from the applicable guideline range, it shall state, pursuant to 18 U.S.C. 3553(c), its specific reasons for departure in open court at the time of sentencing and, with limited exception in the case of statements received in camera, shall state those reasons with specificity in the statement of reasons form.

Commentary

Application Notes:

1. *Definitions.*—For purposes of this policy statement:

'Circumstance' includes, as appropriate, an offender characteristic or any other offense factor.

'Depart', 'departure', 'downward departure', and 'upward departure' have the meaning given those terms in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).

2. *Scope of this Policy Statement.*—

(A) *Departures Covered by this Policy Statement.*—This policy statement covers departures from the applicable guideline range based on offense characteristics or offender characteristics of a kind, or to a degree, not adequately taken into consideration in determining that range. *See* 18 U.S.C. 3553(b).

Subsection (a) of this policy statement applies to upward departures in all cases covered by the guidelines and to downward departures in all such cases except for downward departures in child crimes and sexual offenses.

Subsection (b) of this policy statement applies only to downward departures in child crimes and sexual offenses.

(B) *Departures Covered by Other Guidelines.*—This policy statement does not cover the following departures, which are addressed elsewhere in the guidelines: (i) departures based on the defendant's criminal history (*see* Chapter Four (Criminal History and Criminal Livelihood), particularly § 4A1.3 (Departures Based on Inadequacy of Criminal History Category)); (ii) departures based on the defendant's substantial assistance to the authorities (*see* § 5K1.1 (Substantial Assistance to Authorities)); and (iii) departures based on early disposition programs (*see* § 5K3.1 (Early Disposition Programs)).

3. *Kinds and Expected Frequency of Departures under Subsection (a).*—As set forth in subsection (a), there generally are two kinds of departures from the guidelines based on offense characteristics and/or offender characteristics: (A) departures based on circumstances of a kind not adequately taken into consideration in the guidelines; and (B) departures based on circumstances that are present to a degree not adequately taken into consideration in the guidelines.

(A) *Departures Based on Circumstances of a Kind Not Adequately Taken into Account in Guidelines.*—Subsection (a)(2) authorizes the court to depart if there exists an aggravating or a mitigating circumstance in a case under 18 U.S.C. 3553(b)(1), or an aggravating circumstance in a case under 18 U.S.C. 3553(b)(2)(A)(i), of a kind not adequately taken into consideration in the guidelines.

(i) *Identified Circumstances.*—This subpart (Chapter Five, Part K, Subpart 2) identifies several circumstances that the Commission may have not adequately taken into consideration in setting the offense level for certain cases. Offense guidelines in Chapter Two (Offense Conduct) and adjustments in Chapter Three (Adjustments) sometimes identify circumstances the Commission may have not adequately taken into consideration in setting the offense level for offenses covered by those guidelines. If the offense guideline in Chapter Two or an adjustment in Chapter Three does not adequately take that circumstance into consideration in setting the offense level for the offense, and only to the extent not adequately taken into consideration, a departure based on that circumstance may be warranted.

(ii) *Unidentified Circumstances.*—A case may involve circumstances, in addition to those identified by the guidelines, that have not adequately been taken into consideration by the Commission, and the presence of any such circumstance may warrant departure from the guidelines in that case. However, inasmuch as the Commission has continued to monitor and refine the guidelines since their inception to take into consideration relevant circumstances in sentencing, it is expected that departures based on such unidentified circumstances will occur rarely and only in exceptional cases.

(B) *Departures Based on Circumstances Present to a Degree Not Adequately Taken into Consideration in Guidelines.*—

(i) *In General.*—Subsection (a)(3) authorizes the court to depart if there exists an aggravating or a mitigating circumstance in a case under 18 U.S.C. 3553(b)(1), or an aggravating circumstance in a case under 18 U.S.C. 3553(b)(2)(A)(i), to a degree not adequately taken into consideration in the guidelines. However, inasmuch as the Commission has continued to monitor and refine the guidelines since their inception to determine the most appropriate weight to be accorded the mitigating and aggravating circumstances specified in the guidelines, it is expected that departures based on the weight accorded to any such circumstance will occur rarely and only in exceptional cases.

(ii) *Examples.*—As set forth in subsection (a)(3), if the applicable offense guideline and adjustments take into consideration a circumstance identified in this subpart, departure is warranted only if the circumstance is present to a degree substantially in excess of that which ordinarily is involved in the offense. Accordingly, a departure pursuant to § 5K2.7 for the disruption of a governmental function would have to be substantial to warrant departure from the guidelines when the applicable offense guideline is bribery or obstruction of justice. When the guideline covering the mailing of injurious articles is applicable, however,

and the offense caused disruption of a governmental function, departure from the applicable guideline range more readily would be appropriate. Similarly, physical injury would not warrant departure from the guidelines when the robbery offense guideline is applicable because the robbery guideline includes a specific adjustment based on the extent of any injury. However, because the robbery guideline does not deal with injury to more than one victim, departure may be warranted if several persons were injured.

(C) *Departures Based on Circumstances Identified as Not Ordinarily Relevant.*—Because certain circumstances are specified in the guidelines as not ordinarily relevant to sentencing (*see, e.g.,* Chapter Five, Part H (Specific Offender Characteristics)), a departure based on any one of such circumstances should occur only in exceptional cases, and only if the circumstance is present in the case to an exceptional degree. If two or more of such circumstances each is present in the case to a substantial degree, however, and taken together make the case an exceptional one, the court may consider whether a departure would be warranted pursuant to subsection (c). Departures based on a combination of not ordinarily relevant circumstances that are present to a substantial degree should occur extremely rarely and only in exceptional cases.

In addition, as required by subsection (e), each circumstance forming the basis for a departure described in this subparagraph shall be stated with specificity in the statement of reasons form.

4. *Downward Departures in Child Crimes and Sexual Offenses.*—

(A) *Definition.*—For purposes of this policy statement, the term 'child crimes and sexual offenses' means offenses under any of the following: 18 U.S.C. 1201 (involving a minor victim), 18 U.S.C. 1591, or chapter 71, 109A, 110, or 117 of title 18, United States Code.

(B) *Standard for Departure.*—

(i) *Requirement of Affirmative and Specific Identification of Departure Ground.*—The standard for a downward departure in child crimes and sexual offenses differs from the standard for other departures under this policy statement in that it includes a requirement, set forth in 18 U.S.C. 3553(b)(2)(A)(ii)(I) and subsection (b)(1) of this guideline, that any mitigating circumstance that forms the basis for such a downward departure be affirmatively and specifically identified as a ground for downward departure in this part (*i.e.,* Chapter Five, Part K).

(ii) *Application of Subsection (b)(2).*—The commentary in Application Note 3 of this policy statement, except for the commentary in Application Note 3(A)(ii) relating to unidentified circumstances, shall apply to the court's determination of whether a case meets the requirement, set forth in subsection 18 U.S.C. 3553(b)(2)(A)(ii)(II) and subsection (b)(2) of this policy statement, that the mitigating circumstance forming the basis for a downward departure in child crimes and sexual offenses be of kind, or to a degree, not adequately taken into consideration by the Commission.

5. *Departures Based on Plea Agreements.*—Subsection (d)(4) prohibits a downward departure based only on the defendant's decision, in and of itself, to plead guilty to the offense or to enter a plea agreement with respect to the offense. Even though a departure may not be based merely on the fact that the defendant agreed to plead guilty or enter a plea agreement, a departure may be based on justifiable, non-prohibited reasons for departure as part of a sentence that is recommended, or agreed to, in the plea agreement and accepted by the court. *See* § 6B1.2 (Standards for Acceptance of Plea Agreements). In cases in which the court departs based on such reasons as set forth in the plea agreement, the court must state the reasons for departure with specificity in the statement of reasons form, as required by subsection (e).

Background: This policy statement sets forth the standards for departing from the applicable guideline range based on offense and offender characteristics of a kind, or to a degree, not adequately considered by the Commission. Circumstances the Commission has determined are not ordinarily relevant to determining whether a departure is warranted or are prohibited as bases for departure are addressed in Chapter Five, Part H (Offender Characteristics) and in this policy statement. Other departures, such as those based on the defendant's criminal history, the defendant's substantial assistance to authorities, and early disposition programs, are addressed elsewhere in the guidelines.

As acknowledged by Congress in the Sentencing Reform Act and by the Commission when the first set of guidelines was promulgated, 'it is difficult to prescribe a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision.' (*See* Chapter One, Part A). Departures, therefore, perform an integral function in the sentencing guideline system. Departures permit courts to impose an appropriate sentence in the exceptional case in which mechanical application of the guidelines would fail to achieve the statutory purposes and goals of sentencing. Departures also help maintain 'sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices.' 28 U.S.C. 991(b)(1)(B). By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so, along with appellate cases reviewing these departures, the Commission can further refine the guidelines to specify more precisely when departures should and should not be permitted.

As reaffirmed in the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (the 'PROTECT Act', Public Law 108–21), circumstances warranting departure should be rare. Departures were never intended to permit sentencing courts to substitute their policy judgments for those of Congress and the Sentencing Commission. Departure in such circumstances would produce unwarranted sentencing disparity, which the Sentencing Reform Act was designed to avoid.

In order for appellate courts to fulfill their statutory duties under 18 U.S.C. 3742 and for the Commission to fulfill its ongoing responsibility to refine the guidelines in light of information it receives on departures, it is essential that sentencing courts state with specificity the reasons for departure, as required by the PROTECT Act.

This policy statement, including its commentary, was substantially revised, effective October 27, 2003, in response to directives contained in the PROTECT Act, particularly the directive in section 401(m) of that Act to—

'(1) review the grounds of downward departure that are authorized by the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission; and

(2) promulgate, pursuant to section 994 of title 28, United States Code—

(A) appropriate amendments to the sentencing guidelines, policy statements, and official commentary to ensure that the incidence of downward departures is substantially reduced;

(B) a policy statement authorizing a departure pursuant to an early disposition program; and

(C) any other conforming amendments to the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission

necessitated by the Act, including a revision of . . . section 5K2.0'.

The substantial revision of this policy statement in response to the PROTECT Act was intended to refine the standards applicable to departures while giving due regard for concepts, such as the 'heartland', that have evolved in departure jurisprudence over time.

Section 401(b)(1) of the PROTECT Act directly amended this policy statement to add subsection (b), effective April 30, 2003.

§ 5K2.1. Death (Policy Statement)

If death resulted, the court may increase the sentence above the authorized guideline range.

Loss of life does not automatically suggest a sentence at or near the statutory maximum. The sentencing judge must give consideration to matters that would normally distinguish among levels of homicide, such as the defendant's state of mind and the degree of planning or preparation. Other appropriate factors are whether multiple deaths resulted, and the means by which life was taken. The extent of the increase should depend on the dangerousness of the defendant's conduct, the extent to which death or serious injury was intended or knowingly risked, and the extent to which the offense level for the offense of conviction, as determined by the other Chapter Two guidelines, already reflects the risk of personal injury. For example, a substantial increase may be appropriate if the death was intended or knowingly risked or if the underlying offense was one for which base offense levels do not reflect an allowance for the risk of personal injury, such as fraud.

§ 5K2.2. Physical Injury (Policy Statement)

If significant physical injury resulted, the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the extent of the injury, the degree to which it may prove permanent, and the extent to which the injury was intended or knowingly risked. When the victim suffers a major, permanent disability and when such injury was intentionally inflicted, a substantial departure may be appropriate. If the injury is less serious or if the defendant (though criminally negligent) did not knowingly create the risk of harm, a less substantial departure would be indicated. In general, the same considerations apply as in § 5K2.1.

§ 5K2.3. Extreme Psychological Injury (Policy Statement)

If a victim or victims suffered psychological injury much more serious than that normally resulting from commission of the offense, the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the severity of the psychological injury and the extent to which the injury was intended or knowingly risked.

Normally, psychological injury would be sufficiently severe to warrant application of this adjustment only when there is a substantial impairment of the intellectual, psychological, emotional, or behavioral functioning of a victim, when the impairment is likely to be of an extended or continuous duration, and when the impairment manifests itself by physical or psychological symptoms or by changes in behavior patterns. The court should consider the extent to which such harm was likely, given the nature of the defendant's conduct.

§ 5K2.4. Abduction or Unlawful Restraint (Policy Statement)

If a person was abducted, taken hostage, or unlawfully restrained to facilitate commission of the offense or to facilitate the escape from the scene of the crime, the court may increase the sentence above the authorized guideline range.

§ 5K2.5. Property Damage or Loss (Policy Statement)

If the offense caused property damage or loss not taken into account within the guidelines, the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the extent to which the harm was intended or knowingly risked and on the extent to which the harm to property is more serious than other harm caused or risked by the conduct relevant to the offense of conviction.

§ 5K2.6. Weapons and Dangerous Instrumentalities (Policy Statement)

If a weapon or dangerous instrumentality was used or possessed in the commission of the offense the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the dangerousness of the weapon, the manner in which it was used, and the extent to which its use endangered others. The discharge of a firearm might warrant a substantial sentence increase.

§ 5K2.7. Disruption of Governmental Function (Policy Statement)

If the defendant's conduct resulted in a significant disruption of a governmental function, the court may increase the sentence above the authorized guideline range to reflect the nature and extent of the disruption and the importance of the governmental function affected. Departure from the guidelines ordinarily would not be justified when the offense of conviction is an offense such as bribery or obstruction of justice; in such cases interference with a governmental function is inherent in the offense, and unless the circumstances are unusual the guidelines will reflect the appropriate punishment for such interference.

§ 5K2.8. Extreme Conduct (Policy Statement)

If the defendant's conduct was unusually heinous, cruel, brutal, or degrading to the victim, the court may increase the sentence above the guideline range to reflect the nature of the conduct. Examples of extreme conduct include torture of a victim, gratuitous infliction of injury, or prolonging of pain or humiliation.

§ 5K2.9. Criminal Purpose (Policy Statement)

If the defendant committed the offense in order to facilitate or conceal the commission of another offense, the court may increase the sentence above the guideline range to reflect the actual seriousness of the defendant's conduct.

§ 5K2.10. Victim's Conduct (Policy Statement)

If the victim's wrongful conduct contributed significantly to provoking the offense behavior, the court may reduce the sentence below the guideline range to reflect the nature and circumstances of the offense. In deciding whether a sentence reduction is warranted, and the extent of such reduction, the court should consider the following:

(1) The size and strength of the victim, or other relevant physical characteristics, in comparison with those of the defendant.

(2) The persistence of the victim's conduct and any efforts by the defendant to prevent confrontation.

(3) The danger reasonably perceived by the defendant, including the victim's reputation for violence.

(4) The danger actually presented to the defendant by the victim.

(5) Any other relevant conduct by the victim that substantially contributed to the danger presented.

(6) The proportionality and reasonableness of the defendant's response to the victim's provocation.

Victim misconduct ordinarily would not be sufficient to warrant application of this provision in the context of offenses under Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse). In addition, this provision usually would not be relevant in the context of non-violent offenses. There may, however, be unusual circumstances in which substantial victim misconduct would warrant a reduced penalty in the case of a non-violent offense. For example, an extended course of provocation and harassment might lead a defendant to steal or destroy property in retaliation.

§ 5K2.11. Lesser Harms (Policy Statement)

Sometimes, a defendant may commit a crime in order to avoid a perceived greater harm. In such instances, a reduced sentence may be appropriate, provided that the circumstances significantly diminish society's interest in punishing the conduct, for example, in the case of a mercy killing. Where the interest in punishment or deterrence is not reduced, a reduction in sentence is not warranted. For example, providing defense secrets to a hostile power should receive no lesser punishment simply because the defendant believed that the government's policies were misdirected.

In other instances, conduct may not cause or threaten the harm or evil sought to be prevented by the law proscribing the offense at issue. For example, where a war veteran possessed a machine gun or grenade as a trophy, or a school teacher possessed controlled substances for display in a drug education program, a reduced sentence might be warranted.

§ 5K2.12. Coercion and Duress (Policy Statement)

If the defendant committed the offense because of serious coercion, blackmail or duress, under circumstances not amounting to a complete defense, the court may depart downward. The extent of the decrease ordinarily should depend on the reasonableness of the defendant's actions, on the proportionality of the defendant's actions to the seriousness of coercion, blackmail, or duress involved, and on the extent to which the conduct would have been less harmful under the circumstances as the defendant believed them to be. Ordinarily coercion will be sufficiently serious to warrant departure only when it involves a threat of physical injury, substantial damage to property or similar injury resulting from the unlawful action of a third party or from a natural emergency. Notwithstanding this policy statement, personal financial difficulties and economic pressures upon a trade or business do not warrant a downward departure.

§ 5K2.13. Diminished Capacity (Policy Statement)

A downward departure may be warranted if (1) the defendant committed the offense while suffering from a significantly reduced mental capacity; and (2) the significantly reduced mental capacity contributed substantially to the commission of the offense. Similarly, if a departure is warranted under this policy statement, the extent of the departure should reflect the extent to which the reduced mental capacity contributed to the commission of the offense.

However, the court may not depart below the applicable guideline range if (1) the significantly reduced mental capacity was caused by the voluntary use of drugs or other intoxicants; (2) the facts and circumstances of the defendant's offense indicate a need to protect the public because the offense involved actual violence or a serious threat of violence; (3) the defendant's criminal history indicates a need to incarcerate the defendant to protect the public; or (4) the defendant has been convicted of an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code.

Commentary

Application Note:

1. For purposes of this policy statement—

'Significantly reduced mental capacity' means the defendant, although convicted, has a significantly impaired ability to (A) understand the wrongfulness of the behavior comprising the offense or to exercise the power of reason; or (B) control behavior that the defendant knows is wrongful.

Background: Section 401(b)(5) of Public Law 108–21 directly amended this policy statement to add subdivision (4), effective April 30, 2003.

§ 5K2.14. Public Welfare (Policy Statement)

If national security, public health, or safety was significantly endangered, the court may depart upward to reflect the nature and circumstances of the offense.

§ 5K2.16. Voluntary Disclosure of Offense (Policy Statement)

If the defendant voluntarily discloses to authorities the existence of, and accepts responsibility for, the offense prior to the discovery of such offense, and if such offense was unlikely to have been discovered otherwise, a downward departure may be warranted. For example, a downward departure under this section might be considered where a defendant, motivated by remorse, discloses an offense that otherwise would have remained undiscovered. This provision does not apply where the motivating factor is the defendant's knowledge that discovery of the offense is likely or imminent, or where the defendant's disclosure occurs in connection with the investigation or prosecution of the defendant for related conduct.

§ 5K2.17. Semiautomatic Firearms Capable of Accepting Large Capacity Magazine (Policy Statement)

If the defendant possessed a semiautomatic firearm capable of accepting a large capacity magazine in connection with a crime of violence or controlled substance offense, an upward departure may be warranted. A 'semiautomatic firearm capable of accepting a large capacity magazine' means a semiautomatic firearm that has the ability to fire many rounds without reloading because at the time of the offense (1) the firearm had attached to it a magazine or similar device that could accept more than 15 rounds of ammunition; or (2) a magazine or similar device that could accept more than 15 rounds of ammunition was in close proximity to the firearm. The extent of any increase should depend upon the degree to which the nature of the weapon increased the likelihood of death or injury in the circumstances of the particular case.

Commentary

Application Note:

1. 'Crime of violence' and 'controlled substance offense' are defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

§ 5K2.18. Violent Street Gangs (Policy Statement)

If the defendant is subject to an enhanced sentence under 18 U.S.C. 521 (pertaining to criminal street gangs), an upward departure may be warranted. The purpose of this departure provision is to enhance the sentences of defendants who participate in groups, clubs, organizations, or associations that use violence to further their ends. It is to be noted that there may be cases in which 18 U.S.C. 521 applies, but no violence is established. In such cases, it is expected that the guidelines will account adequately for the conduct and,

consequently, this departure provision would not apply.

§ 5K2.20. Aberrant Behavior (Policy Statement)

(a) *In General.*—Except where a defendant is convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, a downward departure may be warranted in an exceptional case if (1) the defendant's criminal conduct meets the requirements of subsection (b); and (2) the departure is not prohibited under subsection (c).

(b) *Requirements.*—The court may depart downward under this policy statement only if the defendant committed a single criminal occurrence or single criminal transaction that (1) was committed without significant planning; (2) was of limited duration; and (3) represents a marked deviation by the defendant from an otherwise law-abiding life.

(c) *Prohibitions Based on the Presence of Certain Circumstances.*—The court may not depart downward pursuant to this policy statement if any of the following circumstances are present:

(1) The offense involved serious bodily injury or death.

(2) The defendant discharged a firearm or otherwise used a firearm or a dangerous weapon.

(3) The instant offense of conviction is a serious drug trafficking offense.

(4) The defendant has either of the following: (A) more than one criminal history point, as determined under Chapter Four (Criminal History and Criminal Livelihood) before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category); or (B) a prior federal or state felony conviction, or any other significant prior criminal behavior, regardless of whether the conviction or significant prior criminal behavior is countable under Chapter Four.

Commentary

Application Notes:

1. *Definitions.*—For purposes of this policy statement:

'Dangerous weapon,' 'firearm,' 'otherwise used,' and 'serious bodily injury' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).

'Serious drug trafficking offense' means any controlled substance offense under title 21, United States Code, other than simple possession under 21 U.S.C. 844, that provides for a mandatory minimum term of imprisonment of five years or greater, regardless of whether the defendant meets the criteria of § 5C1.2 (Limitation on Applicability of Statutory Mandatory Minimum Sentences in Certain Cases).

2. *Repetitious or Significant, Planned Behavior.*—Repetitious or significant, planned behavior does not meet the requirements of subsection (b). For example, a fraud scheme generally would not meet such requirements because such a scheme usually involves repetitive acts, rather than a single occurrence or single criminal transaction, and significant planning.

3. *Other Circumstances to Consider.*—In determining whether the court should depart under this policy statement, the court may consider the defendant's (A) mental and emotional conditions; (B) employment record; (C) record of prior good works; (D) motivation for committing the offense; and (E) efforts to mitigate the effects of the offense.

Background: Section 401(b)(3) of Public Law 108–21 directly amended subsection (a) of this policy statement, effective April 30, 2003.

§ 5K2.21. Dismissed and Uncharged Conduct (Policy Statement)

The court may depart upward to reflect the actual seriousness of the offense based on conduct (1) underlying a charge dismissed as part of a plea agreement in the case, or underlying a potential charge not pursued in the case as part of a plea agreement or for any other reason; and (2) that did not enter into the determination of the applicable guideline range.

§ 5K2.22. Specific Offender Characteristics as Grounds for Downward Departure in Child Crimes and Sexual Offenses (Policy Statement)

In sentencing a defendant convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code:

(1) Age may be a reason to depart downward only if and to the extent permitted by § 5H1.1.

(2) An extraordinary physical impairment may be a reason to depart downward only if and to the extent permitted by § 5H1.4.

(3) Drug, alcohol, or gambling dependence or abuse is not a reason to depart downward.

Commentary

Background: Section 401(b)(2) of Public Law 108–21 directly amended Chapter Five, Part K, to add this policy statement, effective April 30, 2003.

§ 5K2.23. Discharged Terms of Imprisonment (Policy Statement)

A downward departure may be appropriate if the defendant (1) has completed serving a term of imprisonment; and (2) subsection (b) of § 5G1.3 (Imposition of a Sentence on a Defendant Subject to Undischarged Term of Imprisonment or Anticipated Term of Imprisonment) would have provided an adjustment had that completed term of imprisonment been undischarged at the time of sentencing for the instant offense. Any such departure should be fashioned to achieve a reasonable punishment for the instant offense.

§ 5K2.24. Commission of Offense While Wearing or Displaying Unauthorized or Counterfeit Insignia or Uniform (Policy Statement)

If, during the commission of the offense, the defendant wore or displayed an official, or counterfeit official, insignia or uniform received in violation of 18 U.S.C. 716, an upward departure may be warranted.

Commentary

Application Note:

1. *Definition.*—For purposes of this policy statement, 'official insignia or uniform' has the meaning given that term in 18 U.S.C. 716(c)(3).

3. Early Disposition Programs

§ 5K3.1. Early Disposition Programs (Policy Statement)

Upon motion of the Government, the court may depart downward not more than 4 levels pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the court resides.

Commentary

Background: This policy statement implements the directive to the Commission in section 401(m)(2)(B) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (the 'PROTECT Act', Public Law 108–21).''.

Chapter Six, Part A is amended by striking § 6A1.4 and its accompanying commentary in its entirety as follows:

''§ 6A1.4. Notice of Possible Departure (Policy Statement)

Before the court may depart from the applicable sentencing guideline range on a ground not identified for departure either in the presentence report or in a party's prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must specify any

ground on which the court is contemplating a departure. Rule 32(h), Fed. R. Crim. P.

Commentary

Background: The Federal Rules of Criminal Procedure were amended, effective December 1, 2002, to incorporate into Rule 32(h) the holding in *Burns* v. *United States,* 501 U.S. 129, 138–39 (1991). This policy statement parallels Rule 32(h), Fed. R. Crim. P.''.

Chapter Six, Part B is amended in the Introductory Commentary by striking ''The policy statements also ensure that the basis for any judicial decision to depart from the guidelines will be explained on the record.''.

The Commentary to § 6B1.2 is amended—

in the paragraph that begins ''Similarly, the court'' by striking ''As set forth in subsection (d) of § 5K2.0 (Grounds for Departure), however, the court may not depart below the applicable guideline range merely because of the defendant's decision to plead guilty to the offense or to enter a plea agreement with respect to the offense.'';

and in the paragraph that begins ''The second paragraph of subsection (a)'' by striking ''Section 5K2.21 (Dismissed and Uncharged Conduct) addresses the use, as a basis for upward departure, of conduct underlying a charge dismissed as part of a plea agreement in the case, or underlying a potential charge not pursued in the case as part of a plea agreement.''.

The Commentary to § 7B1.4 captioned ''Application Notes'' is amended—

by striking Notes 2, 3, and 4 as follows:

''2. Departure from the applicable range of imprisonment in the Revocation Table may be warranted when the court departed from the applicable range for reasons set forth in § 4A1.3 (Departures Based on Inadequacy of Criminal History Category) in originally imposing the sentence that resulted in supervision. Additionally, an upward departure may be warranted when a defendant, subsequent to the federal sentence resulting in supervision, has been sentenced for an offense that is not the basis of the violation proceeding.

3. In the case of a Grade C violation that is associated with a high risk of new felonious conduct (*e.g.,* a defendant, under supervision for conviction of criminal sexual abuse, violates the condition that the defendant not associate with children by loitering near a schoolyard), an upward departure may be warranted.

4. Where the original sentence was the result of a downward departure (*e.g.,* as a reward for substantial assistance), or a charge reduction that resulted in a sentence below the guideline range applicable to the defendant's underlying conduct, an upward departure may be warranted.'';

and by redesignating Notes 5 and 6 as Notes 2 and 3, respectively.

Section 8A1.2(b) is amended—

in paragraph (4) by striking ''For grounds for departure from the applicable guideline fine range, refer to Part C, Subpart 4 (Departures from the Guideline Fine Range)'' and inserting ''Determine whether a sentence below the otherwise applicable guideline range is appropriate upon motion of the government pursuant to § 8C4.1 (Substantial Assistance to Authorities—Organizations (Policy Statement))'';

and by inserting at the end the following new paragraph (5):

''(5) Consider as a whole the additional factors identified in 18 U.S.C. 3553(a) to determine the sentence that is sufficient, but not greater than necessary, to comply with the purposes set forth in 18 U.S.C. 3553(a)(2). *See* 18 U.S.C. 3553(a).''.

The Commentary to § 8A1.2 captioned ''Application Notes'' is amended in Note 2 by striking ''and E (Acceptance of Responsibility)'' and inserting ''E (Acceptance of Responsibility), and F (Early Disposition Program)''.

The Commentary to § 8C2.3 captioned ''Application Notes'' is amended in Note 2 by striking ''and E (Acceptance of Responsibility)'' and inserting ''E (Acceptance of Responsibility), and F (Early Disposition Program)''.

The Commentary to § 8C2.8 captioned ''Application Notes'' is amended in Note 5 by striking ''In a case involving a pattern of illegality, an upward departure may be warranted.''.

The Commentary to § 8C2.8 captioned ''Background'' is amended by striking ''In unusual cases, factors listed in this section may provide a basis for departure.''.

Chapter Eight, Part C, Subpart 4 is amended—

in the heading by striking ''DEPARTURES FROM THE GUIDELINE FINE RANGE'' and inserting ''SUBSTANTIAL ASSISTANCE TO AUTHORITIES'';

and by striking the Introductory Commentary as follows:

''Introductory Commentary

The statutory provisions governing departures are set forth in 18 U.S.C. 3553(b). Departure may be warranted if the court finds 'that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.' This subpart sets forth certain factors that, in connection with certain offenses, may not have been adequately taken into consideration by the guidelines. In deciding whether departure is warranted, the court should consider the extent to which that factor is adequately taken into consideration by the guidelines and the relative importance or substantiality of that factor in the particular case.

To the extent that any policy statement from Chapter Five, Part K (Departures) is relevant to the organization, a departure from the applicable guideline fine range may be warranted. Some factors listed in Chapter Five, Part K that are particularly applicable to organizations are listed in this subpart. Other factors listed in Chapter Five, Part K may be applicable in particular cases. While this subpart lists factors that the Commission believes may constitute grounds for departure, the list is not exhaustive.''.

Section 8C4.1(a) is amended by striking ''the court may depart from the guidelines'' and inserting ''a fine that is below the otherwise applicable guideline fine range may be appropriate''.

The Commentary to § 8C4.1 captioned ''Application Note'' is amended in Note 1 by striking ''Departure under this section'' and inserting ''Fine reduction under this section''.

Chapter Eight, Part C is further amended by striking §§ 8C4.2 through 8C4.11 in their entirety as follows:

''§ 8C4.2. Risk of Death or Bodily Injury (Policy Statement)

If the offense resulted in death or bodily injury, or involved a foreseeable risk of death or bodily injury, an upward departure may be warranted. The extent of any such departure should depend, among other factors, on the nature of the harm and the extent to which the harm was intended or knowingly risked, and the extent to which such harm or risk is taken into account within the applicable guideline fine range.

§ 8C4.3. Threat to National Security (Policy Statement)

If the offense constituted a threat to national security, an upward departure may be warranted.

§ 8C4.4. Threat to the Environment (Policy Statement)

If the offense presented a threat to the environment, an upward departure may be warranted.

§ 8C4.5. Threat to a Market (Policy Statement)

If the offense presented a risk to the integrity or continued existence of a market, an upward departure may be warranted. This section is applicable to both private markets (*e.g.,* a financial market, a commodities market, or a market for consumer goods) and public markets (*e.g.,* government contracting).

§ 8C4.6. Official Corruption (Policy Statement)

If the organization, in connection with the offense, bribed or unlawfully gave a gratuity to a public official, or attempted or conspired to bribe or unlawfully give a gratuity to a public official, an upward departure may be warranted.

§ 8C4.7. Public Entity (Policy Statement)

If the organization is a public entity, a downward departure may be warranted.

§ 8C4.8. Members or Beneficiaries of the Organization as Victims (Policy Statement)

If the members or beneficiaries, other than shareholders, of the organization are direct victims of the offense, a downward departure may be warranted. If the members or beneficiaries of an organization are direct victims of the offense, imposing a fine upon the organization may increase the burden upon the victims of the offense without achieving a deterrent effect. In such cases, a fine may not be appropriate. For example, departure may be appropriate if a labor union is convicted of embezzlement of pension funds.

§ 8C4.9. Remedial Costs That Greatly Exceed Gain (Policy Statement)

If the organization has paid or has agreed to pay remedial costs arising from the offense that greatly exceed the gain that the organization received from the offense, a downward departure may be warranted. In such a case, a substantial fine may not be necessary in order to achieve adequate punishment and deterrence. In deciding whether departure is appropriate, the court should consider the level and extent of substantial authority personnel involvement in the offense and the degree to which the loss exceeds the gain. If an individual within high-level personnel was involved in the offense, a departure would not be appropriate under this section. The lower the level and the more limited the extent of substantial authority personnel involvement in the offense, and the greater the degree to which remedial costs exceeded or will exceed gain, the less will be the need for a substantial fine to achieve adequate punishment and deterrence.

§ 8C4.10. Mandatory Programs To Prevent and Detect Violations of Law (Policy Statement)

If the organization's culpability score is reduced under § 8C2.5(f) (Effective Compliance and Ethics Program) and the organization had implemented its program in response to a court order or administrative order specifically directed at the organization, an upward departure may be warranted to offset, in part or in whole, such reduction.

Similarly, if, at the time of the instant offense, the organization was required by law to have an effective compliance and ethics program, but the organization did not have such a program, an upward departure may be warranted.

§ 8C4.11. Exceptional Organizational Culpability (Policy Statement)

If the organization's culpability score is greater than 10, an upward departure may be appropriate.

If no individual within substantial authority personnel participated in, condoned, or was willfully ignorant of the offense; the organization at the time of the offense had an effective program to prevent and detect violations of law; and the base fine is determined under § 8C2.4(a)(1), § 8C2.4(a)(3), or a special instruction for fines in Chapter Two (Offense Conduct), a downward departure may be warranted. In a case meeting these criteria, the court may find that the organization had exceptionally low culpability and therefore a fine based on loss, offense level, or a special Chapter Two instruction results in a guideline fine range higher than necessary to achieve the purposes of sentencing. Nevertheless, such fine should not be lower than if determined under § 8C2.4(a)(2).''.

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